CONSUMER CREDIT REPORTING: ASSESSING ACCURACY AND COMPLIANCE

VIRTUAL HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

MAY 26, 2021

Printed for the use of the Committee on Financial Services

Serial No. 117–27

U.S. GOVERNMENT PUBLISHING OFFICE
45–079 PDF WASHINGTON : 2021

HOUSE COMMITTEE ON FINANCIAL SERVICES

MAXINE WATERS, California, *Chairwoman*

CAROLYN B. MALONEY, New York
NYDIA M. VELÁZQUEZ, New York
BRAD SHERMAN, California
GREGORY W. MEEKS, New York
DAVID SCOTT, Georgia
AL GREEN, Texas
EMANUEL CLEAVER, Missouri
ED PERLMUTTER, Colorado
JIM A. HIMES, Connecticut
BILL FOSTER, Illinois
JOYCE BEATTY, Ohio
JUAN VARGAS, California
JOSH GOTTHEIMER, New Jersey
VICENTE GONZALEZ, Texas
AL LAWSON, Florida
MICHAEL SAN NICOLAS, Guam
CINDY AXNE, Iowa
SEAN CASTEN, Illinois
AYANNA PRESSLEY, Massachusetts
RITCHIE TORRES, New York
STEPHEN F. LYNCH, Massachusetts
ALMA ADAMS, North Carolina
RASHIDA TLAIB, Michigan
MADELEINE DEAN, Pennsylvania
ALEXANDRIA OCASIO-CORTEZ, New York
JESÚS "CHUY" GARCIA, Illinois
SYLVIA GARCIA, Texas
NIKEMA WILLIAMS, Georgia
JAKE AUCHINCLOSS, Massachusetts

PATRICK McHENRY, North Carolina, *Ranking Member*
FRANK D. LUCAS, Oklahoma
BILL POSEY, Florida
BLAINE LUETKEMEYER, Missouri
BILL HUIZENGA, Michigan
STEVE STIVERS, Ohio
ANN WAGNER, Missouri
ANDY BARR, Kentucky
ROGER WILLIAMS, Texas
FRENCH HILL, Arkansas
TOM EMMER, Minnesota
LEE M. ZELDIN, New York
BARRY LOUDERMILK, Georgia
ALEXANDER X. MOONEY, West Virginia
WARREN DAVIDSON, Ohio
TED BUDD, North Carolina
DAVID KUSTOFF, Tennessee
TREY HOLLINGSWORTH, Indiana
ANTHONY GONZALEZ, Ohio
JOHN ROSE, Tennessee
BRYAN STEIL, Wisconsin
LANCE GOODEN, Texas
WILLIAM TIMMONS, South Carolina
VAN TAYLOR, Texas

CHARLA OUERTATANI, *Staff Director*

Subcommittee on Oversight and Investigations

AL GREEN, Texas *Chairman*

EMANUEL CLEAVER, Missouri
ALMA ADAMS, North Carolina
RASHIDA TLAIB, Michigan
JESÚS "CHUY" GARCIA, Illinois
SYLVIA GARCIA, Texas
NIKEMA WILLIAMS, Georgia

ANDY BARR, Kentucky, *Ranking Member*
BARRY LOUDERMILK, Georgia
ALEXANDER X. MOONEY, West Virginia
DAVID KUSTOFF, Tennessee
WILLIAM TIMMONS, South Carolina, *Vice Ranking Member*

CONTENTS

CONSUMER CREDIT REPORTING: ASSESSING ACCURACY AND COMPLIANCE

Wednesday, May 26, 2021

U.S. House of Representatives,
Subcommittee on Oversight and Investigations,
Committee on Financial Services,
Washington, D.C.

The subcommittee met, pursuant to notice, at 12:02 p.m., via Webex, Hon. Al Green [chairman of the subcommittee] presiding.

Members present: Representatives Green, Adams, Tlaib, Garcia of Illinois, Garcia of Texas, Williams of Georgia; Barr, Loudermilk, Mooney, Kustoff, and Timmons.

Ex officio present: Representative Waters.

Also present: Representative Gottheimer.

Chairman Green. The Oversight and Investigations Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

As a reminder, I ask all Members to keep themselves muted when they are not being recognized by the Chair, to minimize disturbances while Members are asking questions of our witnesses. The staff has been instructed not to mute Members except where a Member is not being recognized by the Chair and there is inadvertent background noise.

Members are reminded that all House rules relating to order and decorum apply to this remote hearing. Members are also reminded that they may participate in only one remote proceeding at a time. If you are participating today, please keep your camera on, and if you choose to attend a different remote proceeding, please turn your camera off. If Members wish to be recognized during the hearing, please identify yourself by name to facilitate recognition by the Chair.

The title of today's hearing is, "Consumer Credit Reporting: Assessing Accuracy and Compliance."

I now recognize myself for 3 minutes to give an opening statement.

It is my honor to convene this hearing styled, "Consumer Credit Reporting: Assessing Accuracy and Compliance." This hearing will examine the role of the three national credit regulatory agencies, I will call them NCRAs, in the consumer credit reporting system that affects the lives of virtually every adult in the United States.

Other than assessing credit, employment, housing, insurance, or even utilities, the information provided by the major NCRAs has the power to either open or foreclose a vast array of opportunities that undergird economic security and social justice for consumers.

Yet once again, in 2020, consumers complained to the Consumer Financial Protection Bureau (CFPB) about NCRA reporting more than any other subject, outpacing complaints about credit repair, debt collectors, mortgage servicers, credit cards, and bank accounts; and surpassing complaints about predatory lenders, payday loans, title loans, and usury.

The number of NCRA-related complaints in 2020 was over 319,000, nearly double the number in 2019. So many, in fact, that for the first time, the CFPB will be issuing a separate supplemental report to Congress dedicated to this class of complaints alone. While this trend alone calls for oversight, the Coronavirus Aid, Relief, and Economic Security (CARES) Act imposed new protections for consumers with respect to credit reporting. Hence, this hearing will provide a timely window into the degree of compliance by the NCRAs with CARES Act mandates and whether additional protections are needed.

I look forward to hearing from today's witnesses about what is causing the increased level of complaints, whether rising complaint levels are likely to continue, what has been done and what remains to be done to address the elevated levels of complaints, the potential benefits afforded by alternatives such as a Federal credit bureau as proposed by President Biden, whether comprehensive reforms are needed, and whether consumers need more control over their data.

I would like to thank the staff for the outstanding work that they have done to help facilitate this hearing. I am grateful to the Chair of the full Financial Services Committee, the Honorable Maxine Waters, for all of the effort and energy that she puts into all of these hearings, and moving us forward.

And, finally, I want to thank the witnesses again for appearing today, and my colleagues who are with us as well. I thank all of you. And at this time, I am going to recognize the ranking member of the subcommittee, Mr. Barr, for his 5-minute opening statement.

Mr. BARR. Thank you, Mr. Chairman. I appreciate you holding this hearing today, and thank you to our witnesses for appearing before the subcommittee. I look forward to your testimony.

The allocation of credit is the lifeblood of the American economy. Lenders, insurers, and other financial firms rely on accurate credit reports to reflect the potential risk of a customer, and consumers expect that their credit reports are fair, and appropriately reflect their financial histories to ensure that they may access financial products at competitive prices.

Mechanisms exist for consumers to file a complaint or to dispute an inaccuracy in their credit report. The Fair Credit Reporting Act (FCRA) directs the CFPB to submit an annual report about complaints to Congress. In the most recent report, the CFPB stated that prior to COVID-19, the average number of complaints was approximately 300,000 per year, but in 2020, there were approximately 542,300 complaints, a 54-percent increase from 2019.

I look forward to learning more today from our witnesses about the potential causes for an increase in complaints and what the credit reporting agencies are doing to address them.

In March of last year, Congress acted to ensure that consumer credit histories were not adversely impacted as a direct result of the COVID-19 pandemic and the ensuing economic challenges. As part of the CARES Act, Congress amended the Fair Credit Reporting Act to ensure that consumers were protected during the pandemic, clarifying that accommodations made by lenders or other creditors for customers were not included as negative entries on their credit reports.

The credit bureaus themselves made additional accommodations to serve customers during the pandemic, and I look forward to hearing more about their activities during today's hearing.

Despite many advancements and innovations in financial services, a staggering number of Americans remain unable to access credit. A recent study by the Federal Reserve Bank of New York found that at the end of 2018, approximately 26.5 million adult Americans, or roughly 10.5 percent of the population, were not in the formal credit economy and, thus, did not have a credit history.

This so-called credit invisibility disproportionately impacts consumers in rural areas and can perpetuate the cycle of reduced access to traditional financial services. While many consumers may not have traditional credit histories, they should be able to leverage alternative examples of their financial health. On-time payment of cell phone bills, rent, utility bills, and other payments, and other alternative data are indicative of a consumer's ability to repay.

I hope to learn more about how the credit bureaus are innovating to account for this alternative data and the outlook for expanding credit availability to underserved or credit-invisible individuals.

Unfortunately, some on the other side, including President Biden, are using imperfections in the current credit reporting landscape to push for radical solutions that would increase prices for consumers, limit competition, and make credit less available, especially for low- and moderate-income borrowers.

The Biden Administration has proposed eliminating the private-sector credit bureaus and replacing them with a centralized, nationalized credit reporting bureau run by the CFPB. While the current credit reporting system is not perfect, nationalizing the process and thus eliminating all incentives for sound customer service and innovation will leave consumers further behind.

Appropriate government oversight of the credit reporting agencies and private-sector innovation is the most effective means to reduce credit data errors and bring about a more inclusive credit system.

We have also heard a growing chorus of my colleagues on the other side calling to eliminate risk-based pricing in financial services. The risk-based pricing in credit allocation insurance and other financial products is essential to ensuring that consumers are paying the appropriate price for the products, firms are adequately managing risk, and allocation of credit is not arbitrarily limited based on onerous one-size-fits-all restrictions.

Firms are prohibited from pricing risk based on race, nationality, religion, or other demographic characteristics, instead focusing on the metrics that demonstrably and accurately reflect a consumer's ability to repay.

A recent study from the U.S. Chamber of Commerce illustrates that eliminating risk-based pricing and replacing it with a uniform pricing model would raise prices on consumers and limit availability of credit and other financial services to low- and middle-income borrowers. A prohibition on using predictive data would not make the system more equitable, but instead dramatically exacerbate the inequalities we all hope to eliminate.

I look forward to discussing these important topics today. And, Mr. Chairman, on a personal note, this will be my last hearing as ranking member of the Oversight and Investigations Subcommittee, as I move on next month to serve as the ranking member of the National Security, International Development and Monetary Policy Subcommittee. It has been a pleasure serving on this subcommittee with you.

Thank you, and I yield back.

Chairman GREEN. The gentleman yields back. And the Chair would like to, if I may, briefly state that I have enjoyed working with you as well, and I am sure we will find additional opportunities to work together. Congratulations on your new station in life.

The Chair now recognizes the Chair of the full Financial Services Committee, the gentlewoman from California, the Honorable Maxine Waters, for 1 minute. You may be on mute, Madam Chairwoman. We may be having some technical difficulties.

While we examine our technology to ascertain whether we are having such difficulties, please allow me now to recognize the Vice Chair of the subcommittee, a person who has been a friend of mine for a number of years, the gentlewoman from Georgia, Ms. Williams, for 1 minute.

Ms. WILLIAMS OF GEORGIA. Thank you, Mr. Chairman, and I am honored to be serving in my first hearing today as Vice Chair of the Oversight and Investigations Subcommittee.

On this subcommittee, we consistently uplift those most marginalized, something that I strive for in all that I do in Congress. We uncover the information needed to inform better policy and ensure that government agencies and programs are indeed working for the people.

I am grateful for the opportunity to help lead the important work of the Financial Services Committee's investigative arm, and today we will take a deep dive into credit reporting. An individual's credit score can determine whether they can do things like buy a house, start a small business or, more broadly, build a better life for themselves and their families.

To help hardworking folks get ahead in the wake of this pandemic, ensuring that credit reporting is fair, accurate, and consumer-friendly will be of the utmost importance. I look forward to hearing from our witnesses today, and working together with my colleagues on this important issue.

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

Chairman GREEN. The gentlelady yields back. And the Chair neglected to congratulate the gentlelady for her new station in life. I commend you, and I do look forward to working with you as well.

The Chair will now introduce the witnesses. I welcome our witnesses, and I am pleased to have the opportunity to introduce them: Ms. Chi Chi Wu, a staff attorney at the National Consumer Law Center; Ms. Beverly Anderson, president of global consumer solutions at Equifax; Ms. Sandy Anderson, senior vice president of operations at Experian North America; Mr. John Danaher, executive vice president of consumer interactive at TransUnion; and Ms. Rebecca Kuehn, a partner at Hudson Cook Law Firm, who is testifying on behalf of the Consumer Data Industry Association.

The witnesses are reminded that your oral testimony will be limited to 5 minutes. You should be able to see a timer on your screen that will indicate how much time you have left. A chime will go off at the end of your time, and I would ask you to be mindful of the timer and quickly wrap up your testimony if you hear the chime so that we can be respectful of both the witnesses' and the committee members' time.

And without objection, your written statements will be made a part of the record. Once the witnesses finish their testimony, each Member will have 5 minutes to ask questions.

Before I go to Ms. Wu, I have been given an indication that Chairwoman Waters is now available; hence, I will recognize the Chair of the Full Committee for 1 minute, and then we will move on to Ms. Wu. Chairwoman Waters, you are now recognized.

Chairwoman WATERS. Thank you very much, Mr. Green, for holding this important hearing on credit reporting.

In February 2019, one of the first hearings I convened as chairwoman was the hearing with the three CEOs of Equifax, Experian, and TransUnion, the national credit bureaus, to examine the ways in which the current system fails to protect consumers. We advanced several bills through the House to fix the broken credit reporting system, but unfortunately, the Senate failed to act.

Consumer credit reporting complaints to the CFPB more than doubled from 2019 to 2020, suggesting a surge in more credit reporting errors during the pandemic. We must learn what is behind these trends and what the credit bureaus must do to protect our consumers.

I thank you very much, and I yield back the balance of my time.

Chairman GREEN. I now recognize Ms. Wu for 5 minutes to give an oral presentation of her testimony.

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

Ms. WU. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Barr, members of the subcommittee, and Chairwoman Waters, thank you for inviting me to testify today. I am testifying on behalf of the low-income clients of the National Consumer Law Center.

I have been testifying on credit reporting abuses since 2007. Before me at NCLC was Tony Rodriguez. He went on to the CFPB, and the Federal Trade Commiwion (FTC), and we just celebrated his retirement yesterday. Before him was our former director, Will Ogburn, in fact, the first director of NCLC, who testified in FCRA hearings in 1969.

I mention this because it shows that we have been balloting the abuses of credit bureaus for a very long time, and yet it hasn't gotten better. In fact, it might have gotten worse: 300,000 complaints to the CFPB in 2020. That is a lot of complaints, twice as many as last year, and nearly two-thirds of the complaints to the CFPB. And, of course, according to the FTC's 2012 study, there are 10 million Americans who have errors so serious on their credit reports that it could deny them credit or cost them more for credit.

And, no, this explosion in complaints isn't just credit repair outfits challenging accurate information. The CFPB has said there is no evidence of that. The credit bureaus have been blaming credit repair for decades. It is the same-old, same-old.

What is different? A pandemic, of course, with devastating economic impacts on many Americans, potentially causing more folks to check their credit reports, which the credit bureaus commendably did make available once per week for free; the CARES Act, with its complicated provisions that some creditors seem to be tripping up on; and a looming rental housing crisis with 8 million to 10 million Americans possibly facing eviction.

The last issue is another possible reason that complaints have exploded: The fact that nowadays 90 percent of landlords conduct credit checks as part of tenant screening pushed by the credit bureau's expansion into new uses and the thirst for more customers and more sales.

An article from this past Sunday's New York Times documents how millions of Americans are being shut out of stable rental housing by credit checks. The article notes how a survey of residents in extended hotels in Norcross, Georgia, 70 percent of whom were Black, named credit as the biggest barrier for more permanent housing, and 600 students stay at extended-stay hotels in the largest school system in Georgia, 600 children without a permanent roof over their heads, in part because of the credit bureaus.

Simply put, using credit scores in housing worsens the already terrible economic and racial inequality in our country. And, of course, being denied housing provides a great incentive to check your credit report and dispute errors. The credit bureaus only have themselves to blame. The more they hawk their products for inappropriate uses, the more that 10 million Americans with serious errors are going to find those errors and complain.

Speaking of credit repair, the credit bureaus complain so much about it, but according to a recent legal case, they have agreements with Lexington Law, the second-biggest credit repair firm. If they complain about it so much, why do they have agreements in it? By the way, the CFPB sued Lexington Law for deceptive advertising.

If you don't believe me that the explosion of complaints is not illegitimate credit repair, check out the narratives in the CFPB complaint database and read for yourself. We have highlighted a few in our written testimony. Here is an example.

"In addition to TD Bank posting the account as paid in full, they reported me as deceased. I wouldn't have known this except I was trying to get a mortgage and my bank told me that Experian and Equifax showed me as deceased based on TD Bank's report."

The consumer goes on to say, "I called X and X but also could not prove to them to their satisfaction, despite answering all their questions as to my identity, that I am, in fact, alive. I was unable to get the mortgage due to these errors on my credit report and the inability or unwillingness of these companies to correct their errors."

One reason why credit bureaus might actually not mind credit repair is this huge volume of disputes. In fact, they actually don't do a heck of a lot when they get a dispute. They have automated the heck out of the system to the point where when a consumer disputes online, it automatically flows to the information furnisher, with no need for work by the credit bureaus.

Even for paper disputes, the main job of offshore venders to handle these disputes is to pick a two- or three-digit code to categorize this dispute, maybe add a line of text, upload documents, and send it to the furnisher. So for nonexistent or very little work on most disputes, the automated system used for processing disputes called e-OSCAR charges $0.30 per dispute.

As you can imagine, more disputes equals more fees. Always follow the money. It is time for a public credit registry that will treat Americans fairly, fix disputes, and not try to expand credit reporting to every conceivable aspect of American life, however inappropriate. I thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Wu can be found on page 71 of the appendix.]

Chairman GREEN. Thank you, Ms. Wu.

The Chair now recognizes Ms. Beverly Anderson for 5 minutes to give an oral presentation of her testimony.

STATEMENT OF BEVERLY ANDERSON, PRESIDENT, GLOBAL CONSUMER SOLUTIONS, EQUIFAX INC.

Ms. BEVERLY ANDERSON. Chairman Green, Ranking Member Barr, members of the subcommittee, and Chairwoman Waters, thank you for the opportunity to testify today. I am Beverly Anderson, president of global consumer solutions, and I am responsible for providing free and paid credit and identity products, services, and education to consumers.

I want to recognize that credit reporting accuracy is a common priority that Equifax shares with consumers, lawmakers, regulators, and financial institutions. Under the Fair Credit Reporting Act, consumer reporting agencies and data furnishers must meet stringent requirements for accuracy, fairness, and privacy.

I have a personal passion to support financial inclusion and a professional responsibility to assist consumers as they consider the most significant financial decisions. I understand how frustrating it can be for a consumer to be on the cusp of an exciting financial event only to discover an issue with their credit report. When I hear these stories, it strengthens my resolve to do better.

The increase in complaints against Equifax through the CFPB consumer complaint database is concerning. I interpret the increase not as an indictment that the credit bureau's system is broken, but rather as evidence that the national credit bureaus play an important role in facilitating the dispute process between consumers and their creditors.

Let me briefly review three factors to contextualize the increase in complaint volume. First, consumers submitted more complaints against the national credit bureaus through the CFPB portal as the CARES Act protections appeared on their credit reports. The COVID pandemic presented an extraordinary set of challenges for American consumers.

Congress moved quickly in early 2020 to pass the CARES Act, which included new consumer protections such as mortgage forbearance, an eviction moratorium, and a pause on student loan payments. As a result, lenders took swift action to comply with the new CARES Act provisions and data reporting requirements. With the combination of consumer economic uncertainty and the implementation of new accommodations, consumers reviewed their credit reports more often.

Second, consumers routinely submit complaints to the CFPB that are not complaints about credit bureau actions but rather disputes about data reported to us. Consumer reporting agencies serve as an intermediary between consumers and their lenders.

Our data show that 95 percent of portal complaints involve disputes that typically relate to information provided by a lender, an outdated address, or a credit score. Therefore, most complaints against the national credit bureaus in the CFPB portal should not be attributed to errors made by the credit bureaus.

And, third, the portal has been inundated by submissions from credit repair organizations disputing adverse but accurate information on consumer reports. Recent internal Equifax reviews indicate that 65 percent of complaints in the portal appeared to be associated with credit repair organizations.

Let me close my opening remarks by reviewing Equifax's efforts to assist consumers through the pandemic. In April 2020, and at my direction, we quickly launched a COVID and credit financial resource vendor to help consumers understand and evaluate the impact of the pandemic on their finances. I personally conducted public webinars and recorded podcasts to assist consumers.

As the pandemic took hold, the three national credit bureaus collectively decided to provide consumers with free credit reports each week. And in March of this year, we extended that initiative through April of 2022. Equifax continues to invest millions of dollars to deliver exceptional care to consumers in our quest to become the most consumer-friendly credit reporting agency (CRA).

We modernized our telephone and back-office infrastructure. We have automated core processes, expanded call center hours, and upscaled our agents. My goal is for Equifax to be accessible, responsive, caring, and efficient at every touch point in a consumer's engagement. I am proud of the work that Equifax has done to assist consumers through the pandemic, and I pledge to do more.

I look forward to answering your questions. Thank you.

[The prepared statement of Ms. Beverly Anderson can be found on page 36 of the appendix.]

Chairman GREEN. Thank you, Ms. Anderson.

Ms. Sandy Anderson, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF SANDY ANDERSON, SENIOR VICE PRESIDENT, OPERATIONS, EXPERIAN NORTH AMERICA

Ms. SANDY ANDERSON. Thank you, Chairman Green, Ranking Member Barr, Chairwoman Waters, and members of the subcommittee. I am Sandy Anderson, senior vice president of operations for Experian North America.

Let me begin by stating why credit bureaus exist and how consumers benefit. Credit bureaus accurately compile individual's payment histories reported to us by creditors so that lenders can use this data to make sound underwriting decisions. Sound lending decisions for credit cards, autos, and mortgages mean fewer defaults. Fewer defaults mean lower cost of credit for consumers and greater availability of consumer credit across the economy.

Credit bureau data is blind to factors such as race, ethnicity, and gender, so it helps lenders ensure compliance with the Equal Credit Opportunity Act (ECOA). What we hear most often from consumers and policymakers is that they want us to focus on three clear objectives: ensure the information we hold on consumers is secure; make credit reports accurate; and manage a data dispute system that is easy for consumers to access and use.

Experian wholly understands these responsibilities and has significantly shifted its focus to the consumer. Experian has kept pace serving consumers during the COVID-19 pandemic and will continue as our nation's economy recovers. We have responded completely and accurately to all consumer complaints to the CFPB complaint portal. We believe most of the increase is due to third-party credit repair shops that file disputes on accurate but negative information to try and game the system.

The number-one priority at Experian is keeping consumer information safe and secure, and we are working on our own initiatives and with our regulators under continuous supervision on this priority.

Experian supports this committee's goal of enhancing the accuracy of credit reports and improving the dispute resolution process. We believe the best way to achieve and maintain improvements on behalf of consumers is through a robust and continuous supervision and examination program, which has been administered by the Consumer Financial Protection Bureau since 2013. We have implemented many new initiatives as a result.

Experian has invested heavily in systems and processes to improve data accuracy as we continually strive to reach 100-percent accuracy. Stringent requirements are in place to identify and eliminate inaccurate data submitted monthly by approximately 10,000 data furnishers before it is included in a consumer's file. Experian provides data furnishers with monthly reports describing any of their data we have rejected and why and providing them with historical information about their data contributions and consumer dispute performance.

Through this transparent feedback loop, Experian is making continuous progress in eliminating errors even before data is submitted to us. An important component of accuracy is to make credit reports accessible for consumers so that they can easily review and dispute errors in their file. Experian's online dispute portal, including a mobile, optimized, and highly-rated app, makes it easy for consumers to submit disputes and to receive the results of those disputes.

Experian also supports the committee's goal of creating more opportunities for financial inclusion and financial literacy for consumers who are thought of as credit invisible. Many consumers may not have a mortgage or credit cards, but they do make telephone, utility, and other recurring monthly payments. Experian is now accommodating this data through a groundbreaking product known as Experian Boost. We are delivering this data directly to lenders so that they can expand their efforts to reach underserved consumers.

Experian Boost is a game changer. It allows consumers to safely and easily opt in to having monthly payment information on accounts that are not reported to the CRAs included directly into their credit file. Experian Boost is particularly helpful to consumers who are new to credit or have had financial challenges. So far, more than 6 million consumers have chosen to use Experian Boost to improve their credit score.

To help improve financial literacy, Experian is also providing access to free credit monitoring, free credit reports, free credit scores, and financial education to more than 40 million U.S. consumers. Experian is also partnering with lenders through the OCC's Project REACh initiative to identify new sources of predictive data that can be used to improve access to credit for underserved and marginalized consumers.

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

[The prepared statement of Ms. Sandy Anderson can be found on page 43 of the appendix.]

Chairman GREEN. Thank you, Ms. Anderson.

Mr. Danaher, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF JOHN DANAHER, EXECUTIVE VICE PRESIDENT, CONSUMER INTERACTIVE, TRANSUNION

Mr. DANAHER. Chairman Green, Ranking Member Barr, Chairwoman Waters, and members of the subcommittee, thank you for the opportunity to participate in this afternoon's discussion of these critical policy issues. My name is John Danaher, and I serve as executive vice president of TransUnion's consumer interactive business.

TransUnion is a global information and insights company headquartered in Chicago with more than 4,000 employees in the United States and 8,200 worldwide. We seek to help people around the world, through the power of information, to identify and access opportunities that bring a higher quality of life.

Our consumer interactive segment helps consumers manage their personal finances and take precautions against identity theft. We provide consumers with credit scores, credit reports, credit monitoring, fraud prevention and support, and financial management tools. We also provide credit monitoring solutions that help businesses respond to data breach events.

Our direct to consumer products help Americans achieve financial freedom and elevate their lives. The past 14 months were unlike any in our history, and we believe all of us must work together to protect and support consumers. TransUnion recognizes our central role in ensuring the fairness and stability of our nation's consumer credit markets, and we are eager to partner with this committee to help all consumers, especially the most disadvantaged Americans and those affected by the pandemic.

The pandemic required novel and significant consumer support efforts both from the private sector and the Federal Government. At TransUnion, we immediately pivoted our workforce to remote servicing while still providing consumers the necessary support they needed to navigate the pandemic.

Our data indicates that both lending and the broader economy are normalizing, but serious challenges continue to persist for many consumers. Helping consumers affected by the pandemic secure the financial protection they need has been and continues to be one of our top priorities. We are regularly communicating with lenders, property management firms, scoring companies, and data furnishers on how they can provide relief to customers through established hardship programs.

It is incumbent on our industry to support the policy objectives of the bipartisan CARES Act, and we are pleased that the accommodations provisions at the core of that law are working. We estimate more than 200 million consumer accounts have been placed in protective accommodations because of the CARES Act.

At the onset of the pandemic, TransUnion led the effort to expand the availability of free credit reports to all consumers on a weekly basis. We are proud to report that more than 166 million consumers have used our services to access their credit data. It is undeniable that the pandemic is exacerbating preexisting structural inequalities with underrepresented Americans facing unique challenges.

We are striving to address matters of racial equity and want to be at the vanguard of defining consumer-focused principles for the next generation of data use. To that end, last year we launched TransUnion's Task Force on Racial Equity, which I lead. As part of this work, we are ensuring that all uses of TransUnion's products and solutions are consistent with our values and the goal of financial inclusion in the economies we serve.

We are also redoubling our efforts in supporting the proliferation of alternative data, which is the most direct way to expand credit to historically disadvantaged groups. Notably, we are working with the OCC on its Project REACh efforts. TransUnion believes alternative data is a racial justice issue. Millions of underrepresented consumers make rental, utility, and other payments every month, yet the current system gives them no credit, often rendering them credit invisible.

TransUnion is committed to helping Americans protect their financial health during and after the pandemic. We look forward to working with Congress to foster financial inclusion and further empower consumers. I appreciate the opportunity to be with you today, and I look forward to answering your questions.

[The prepared statement of Mr. Danaher can be found on page 48 of the appendix.]

Chairman GREEN. Thank you, Mr. Danaher.

Ms. Kuehn, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF REBECCA E. KUEHN, PARTNER, HUDSON COOK, LLP, ON BEHALF OF THE CONSUMER DATA INDUSTRY ASSOCIATION (CDIA)

Ms. KUEHN. Chairman Green, Ranking Member Barr, Chairwoman Waters, and members of the subcommittee, thank you for the opportunity to appear before you today to talk about the consumer reporting industry's commitment to the accuracy of credit reports. My name is Rebecca Kuehn, and I am a partner at Hudson Cook, where I chair the Credit Reporting, Privacy, and Data Security Practice Group.

I am appearing today on behalf of the Consumer Data Industry Association, or CDIA. CDIA represents the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. The credit reporting agencies here today and the CDIA members help the American consumer and the larger economy by maintaining a robust consumer reporting system that facilitates credit, employment, and housing transactions nationwide.

CDIA members are helping to solve the problem of the unbanked and credit-invisible populations through innovation by expanding the kinds of data collected, such as rental history or payments on telephone or other utility bills. This expansion gives lenders and others information that allows more consumers to access traditional financial services and to integrate more consumers into the mainstream financial system.

The principle law that governs the consumer reporting system is the Fair Credit Reporting Act (FCRA). The FCRA requires consumer reporting agencies to follow reasonable procedures to ensure maximum possible accuracy of the information in consumer reports. The maximum possible accuracy standard is not one of perfection, but it balances the protection of consumers and the needs of commerce.

The FCRA recognizes that accuracy begins with the data coming into the system. The lenders who provide that data, the furnishers, must have reasonable policies and procedures to ensure the accuracy and integrity of the information they provide to consumer reporting agencies. The FCRA also gives consumers the right to dispute the accuracy of information directly with those furnishers.

To ensure accuracy, the consumer reporting agencies screen lenders before they even onboard them as furnishers, and furnished data undergoes a number of checks and quality control measures before it is added to a credit file. The nationwide consumer reporting agencies obtain information electronically using a standardized reporting format to facilitate the accurate and consistent reporting of data throughout the system.

The FCRA also provides consumers with the right to access information about them and to dispute any inaccuracies. This dispute process is an important and necessary component of ensuring accuracy. For this reason, the nationwide consumer reporting agencies have made significant investments in consumer dispute resolution to make it easier for consumers to identify and correct potential errors in their files.

These improvements, which are outlined in my written testimony, include an escalation process for addressing disputes related to mixed consumer files and identity theft. It also is important to recognize that there is a market incentive to ensure maximum possible accuracy. The customers of the credit bureaus, financial institutions, and their regulators rely on and demand accurate data to make critical decisions about credit. That demand drives accuracy.

In my written testimony, I address the number of credit reporting complaints to the CFPB and why those are not a good measure of accuracy, particularly given the impact of bad actors, credit repair operators on the numbers of complaints. I will be happy to address any questions the subcommittee has.

But with my remaining time, I want to turn to the protections that Congress enacted in response to the COVID-19 pandemic. The CARES Act, passed in March 2020, implemented a number of significant protections for consumers, including special credit reporting changes and payment deferrals. These changes allowed consumers to preserve their credit history while they work through the challenges of the pandemic, and the data shows that the impact of these protections has been significant. The number of missed payments has gone down, and the national average FICO score went up during 2020.

The three nationwide consumer reporting agencies have resources on their websites to inform consumers of their options and protections under the CARES Act, along with other resources that are available to help them manage their credit during the pandemic. In addition, the nationwide consumer reporting agencies have voluntarily increased the number of free reports available to a consumer from once per year to once per week through April 20, 2022.

As we emerge from the pandemic, CDIA and its members are committed to providing consumers with the tools they need to manage their financial future. I thank you for the opportunity to testify before you today, and I will be happy to answer any questions.

[The prepared statement of Ms. Kuehn can be found on page 53 of the appendix.]

Chairman GREEN. Thank you, Ms. Kuehn.

The Chair will now recognize Members for 5 minutes for questions. I now recognize the Chair of the Full Committee, the gentlewoman from California, Chairwoman Waters, for 5 minutes.

Chairwoman WATERS. Thank you very much, Congressman Green.

I am going to address this question to Ms. Beverly Anderson. Following enactment of the CARES Act, you said, "It will take a moment to figure out how to execute against what has been stipulated by the CARES Act, so something is bound to slip through the cracks."

Earlier this year, the Subcommittee on Consumer Protection and Financial Institutions held a hearing called, "Slipping Through the Cracks", which provided a number of legislative solutions to help America's consumers in the pandemic. We cannot accept that consumers will simply slip through the cracks.

Let me give you one example we heard at the subcommittee hearing. Carla Sanchez-Adams, managing attorney for Texas RioGrande Legal Aid, said, "Many of our clients who have been treated for the virus have expressed concern over medical debt collection and insurance coverage. Ms. M. had a medical debt account appear on her credit report for treatment her grandson received. She was also contacted by debt collectors regarding the same medical debt.

"Ms. M.'s grandson was covered by Medicaid, and under Texas law, neither Ms. M. nor her grandson were responsible for the costs of any medical services provided to them. However, the debt collectors continued to collect on the debt and report the debt."

So, this grandmother's credit was harmed through no fault of her own while her grandson was getting medical treatment for which he was covered. It should not be complicated, and consumers should not have to get a lawyer every time someone makes a mistake that shows up on their credit report, making it expensive for them to get a loan, among other harms.

Yes or no, is Ms. M.'s case what you mean by saying, "something is bound to slip through the cracks?"

Ms. BEVERLY ANDERSON. Thank you, Madam Chairwoman, for your question. I appreciate the fact that you have listened to one of my podcasts or a webinar. And what I was simply stating—and remember, this was in the early days of the pandemic, and consumers were literally asking us questions about the various stipulations and protections in the CARES Act. They wanted to know how the CARES Act would protect them, what things might change, what things would be different on their credit report, and we were simply articulating that there might be things that are confusing.

Chairwoman WATERS. Okay. Thank you very much. Reclaiming my time, what have you done to ensure that people are not simply falling through the cracks? What have you done to rectify that, to lessen the number of mistakes that you make? Because this is what is harming our consumers, the mistakes, and you can't correct them once you do it, and we don't get a lot of help from the credit bureaus. What have you done?

Ms. BEVERLY ANDERSON. Data accuracy is an important part of our mission—

Chairwoman WATERS. Yes, we know that, but what have you done?

Ms. BEVERLY ANDERSON. —as it is with data furnishers. And so, since 2012, we have been actively involved in addressing issues of accuracy in terms of the way in which we work with furnishers. We have an entire team who spends time vetting furnishers, vetting the data that they provide us, and creating remediation plans, quality controls and monitoring. And if a furnisher, in fact, fails to meet our standards of data quality, we will prevent them from reporting—

Chairwoman WATERS. Reclaiming my time, how effective have you been? And how much reduction have you had in these kinds of, "falling through the cracks" instances?

Ms. BEVERLY ANDERSON. We know that we have made considerable progress, and we know that there is going—

Chairwoman WATERS. How do you know that?

Ms. BEVERLY ANDERSON. We monitor all of the data that we receive, and we make sure that we are checking accuracy at every turn.

Chairwoman WATERS. Give me some numbers. What is different now than before?

Ms. BEVERLY ANDERSON. We know that we have created an opportunity for consumers to have—

Chairwoman WATERS. How do you know?

Ms. BEVERLY ANDERSON. Because of the data—

Chairwoman WATERS. We don't have much time, and that is why I have to take back my time. But I want to know how you are able to define that you have been effective?

Ms. BEVERLY ANDERSON. We look at metrics in a number of ways, and I would be happy to bring some of those metrics back and share them with you.

Chairwoman WATERS. Thank you very much.

Mr. Chairman, I am going to ask that Ms. Anderson send us back some information and some reports which show that they have reduced or eliminated the number of mistakes that cause people to fall through the cracks.

I yield back the balance of my time.

Chairman GREEN. The gentlelady yields back.

And without objection, the question will be submitted to Ms. Anderson for her reply.

At this time, the Chair recognizes the ranking member of the subcommittee, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

My first question is about risk-based pricing. Lenders, insurers, and other financial market participants rely on risk-based pricing for their products and services. They use data indicative of a consumer's ability to repay blind of race, nationality, religion, or other amenable characteristics to give consumers the best price.

Ms. Kuehn, would you discuss the importance of risk-based pricing in financial services; and, specifically, what impact would a government-imposed prohibition on risk-based pricing or a mandate for use of uniform pricing have on the price, availability, and access to financial services?

Ms. KUEHN. Thank you, Representative, for your question. The studies that have come out that are focused on risk-based pricing have shown that if we abandon risk-based pricing, the result would be an overall increase in the price of credit and a lessening of the availability of credit for consumers. Risk-based pricing has enabled more consumers to qualify for credit, even if traditionally, they would have been declined. If we reverse this course, there will be fewer consumers who qualify for credit.

Mr. BARR. Thank you for that. And I do worry about proposals that would politicize the assignment of credit scores based not on accurate data but on other factors that could be politically motivated. That would, as you point out, increase the cost of credit for everyone.

Let me talk about President Biden's proposal for a Federal credit bureau. As you all know, and has been pointed out today, President Biden proposed eliminating private credit reporting agencies and replacing them with a public government credit bureau within the CFPB. I believe this is an unnecessary Federal takeover of a private industry at the expense of taxpayers.

Ms. Kuehn, what are some of the issues that you foresee with a single, government-run credit bureau, and please amplify your testimony about what I thought was a point well taken about the market incentive that exists currently to maintain and improve the accuracy and completeness of credit reports?

Ms. KUEHN. Thank you, Representative. From my background at the FTC, I am very pro-competition, and the current market now has three large credit reporting bureaus who compete with each other for accuracy and on other products and services and innovations. We believe that a government-run credit bureau would not have those same incentives to find new solutions for consumers or expand access.

The proposal today for the government-run credit bureau would leverage the same data that is here already in the system. Our members are looking for new and different sources of data, and that type of innovation fuels additional entrants into the credit market.

In addition, we take issue with this concept that the government-run credit bureau would be more answerable to consumers. Under the current system, consumers have not only the right to dispute, but they also have significant private causes of action that enable them, if all else fails, to bring private lawsuits against the credit bureaus and obtain money in court. It is unclear whether the government-run credit bureau would be similarly answerable to consumers when problems occur and with large sets of data, sir.

Mr. BARR. Ms. Kuehn, that is a good point about being responsive to consumers, but I am also worried about the politicization that could happen with a single government bureau. We have seen that with the CFPB itself. And so, the accuracy of information based on just data and not other extraneous factors, I think, is really, really important.

Finally, alternative data, and I will ask Ms. Kuehn, but any of the representatives of the CRAs can chime in because of the innovations that are happening in terms of alternative data. I think Experian Boost is an example of this. Mr. Danaher, you had an interesting piece of testimony about what is the—let's see, I highlighted it—the CreditVision Suite. I thought that was very interesting and innovative. How would utilization of this data by credit reporting agencies help Americans gain access to credit?

Ms. KUEHN. What we have seen so far—go ahead.

Mr. BARR. Go ahead.

Ms. KUEHN. Sorry. What we have seen so far, Representative, is that it reaches more consumers. For those who don't have a traditional credit history, these alternative data sources act as good history they can build on to further their credit goals. And so, for folks like new entrants to the credit market, be it younger Americans or immigrants, we are able to leverage this information that they already have and turn it into credit information. Thank you.

Mr. BARR. My time has expired, but I love this private sector innovation on financial and credit inclusion that I doubt a government agency would ever be able to do.

I yield back.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes Ms. Tlaib, the gentlelady from Michigan, for 5 minutes.

Ms. TLAIB. Thank you so much, Mr. Chairman. I really do appreciate this incredibly important hearing, especially because so many of our families are directly impacted by the way credit reporting is conducted now.

I do have some questions for everyone on the panel, and I think this is so important because the initial intent for credit reporting was for lending, and now it is impacting access to transportation. It is also the leading cause for many of our veterans, who really come back from serving our country with no access to credit because they weren't here to spend or to apply for credit cards or whatever the processes that these private agencies decide related to what a credit score is.

My question to those on the panel is, what does a credit score have to do with someone's driving record, whether or not they are a good driver? Does anybody know the answer to that question?

Ms. WU. Thank you for the question, Congresswoman Tlaib. It is an excellent question. And I would say, absolutely nothing. A credit score should be used for one thing only and that is credit. It doesn't have—

Ms. TLAIB. That is correct.

Ms. WU. —anything to do with your driving, with your ability to do a job as a worker, with your honesty. It has nothing to do with your character. It predicts whether there is going to be a 60-day late payment in the next 2 years, and it shouldn't be used for housing and is shutting out so many low-income Americans from permanent housing, as the New York Times documented in a very heartbreaking manner.

Ms. TLAIB. Yes. Ms. Wu—

Ms. WU. Credit scores should only—

Ms. TLAIB. Yes. And, Ms. Wu, you should know—and many of the folks, I would love to hear their answers, too—the University of Michigan did a wonderful study showing that it actually kept people in the cycle of poverty, that the fact that credit scores are now being used for auto insurance, which is happening right now in my district, we have the highest in the nation, over $5,000 average per household.

And so for many of my frontline workers, many of my teachers, some of whom have second jobs just to pay for auto insurance because, again, the use of the credit score is a heavy weight on the calculation of the rates of auto insurance. Does anybody else know what the credit score has to do with somebody's driving record? Why is that being considered? Why are you all reporting credit scores to auto insurance industries other than making money?

Ms. KUEHN. Thank you, Representative, for your question. The FTC actually did a study on credit-based insurance scores following the Fair and Accurate Credit Transactions (FACT) Act in 2003, and in its look at the use of credit in insurance determinations found that there was a correlation between the way someone pays their bills and whether or not they are going to cost more as an insurance recipient.

Ms. TLAIB. So if they are low income and they have a hard time paying their bills, then let's raise their rates on auto insurance. It has nothing to do with whether or not they are a good driver; it is, let's punish them because they are poor, because they can't afford to pay their auto insurance. That is what I am hearing when I hear about these studies.

But I am really wondering whether or not you all would support a study of the disparate impact of using credit scores as a factor for auto insurance rates? Would anybody be opposed to that? Would you want to know if structural racism exists in the use of credit scoring for auto insurance? Would you want to know that as a business in the United States?

Ms. KUEHN. Representative, the FTC study that focused on credit-based insurance scores looked at that as part of its assessment, and similar to the Federal Reserve study, found that the factors that go into credit scores are neutral and therefore—

Ms. TLAIB. Interesting.

Ms. KUEHN. —in the appropriate risk rank—

Chairman GREEN. Even though it has resulted in more Black folks getting higher rates of auto insurance than their White counterpart neighbors?

Ms. KUEHN. That is—

Ms. TLAIB. So, disparate impact, Ms. Kuehn, do you see what I am saying here? The result—you can say it is neutral, but the application in itself—and Chairman Green knows that I have been pushing for this study. He knows that this is really critically important to understanding, when we say disparate impact, what we mean is the—it is not direct intentional discrimination. But by using the credit score for that, it is, in essence, keeping people in poverty, and that tends to impact communities of color specifically.

And it is just ridiculous that someone who is a doctor—this is the honest truth—and somebody with a DUI, a driving under the influence violation, is paying less insurance than somebody with a bad credit score, not the greatest credit score, even though they don't have a DUI on their record.

Do you see the absurdity of it all? Do you understand that my folks who are low income, the ones who are cleaning your hotel rooms, the ones who are putting food on your table at the restaurants, these folks who can't afford to pay some of the high cost of living in the United States, they can't even pay their water bills, you are telling me, let's punish them, because they can't afford high rates of auto insurance? Let's go ahead and sell credit reports to auto insurance industries.

It has nothing to do whether or not they are going to be a safe driver, it has nothing to do whether or not their car is a safe car, it has nothing to do with the length of time it takes them to go from their home to their job. It is absurd that you all stand with that when we all know it is because you get the new customers. You get customers, meaning they buy your credit reports from you and you make money off of keeping people in poverty.

Do you see what I am saying? So, it is really hard for me to continue to hear this kind of rhetoric and the excuses that come out of these credit reporting agencies. Shame on you. Shame on all of you for keeping people in poverty in our country. Shame on you for targeting Black and Brown communities, because I see it. That is exactly what you do.

And when I see, Mr. Chairman—the last point is so important. When I see the number-one issue, the number-0one reason that we see bankruptcy, personal bankruptcy in our country is medical debt.

So, I hope the credit reporting agencies support our bill that passed out of the Financial Services Committee, that bars medically necessary debt, procedures that are needed and required—this is H.R. 2537, the Consumer Protection for Medical Debt Collections Act, which requires them not to put medically necessary debt on your credit report because it—listen, they needed it to live. It is not their fault that they got sick.

And just because they are poor, they shouldn't be pushed back and not allowed to get these procedures done. In this country, you shouldn't have to die because you are poor. Do you understand? So, it is so important, Mr. Chairman, that we continue to have hearings like this to expose the truth.

I appreciate it, and I yield back.

Chairman GREEN. The gentlelady yields back.

Mr. BARR. Mr. Chairman, point of order.

Mr. Chairman, can we have—

Chairman GREEN. Excuse me, please. Let the Chair recognize you first, if you would, please.

Whom should I recognize?

Mr. BARR. This is Mr. Barr.

Chairman GREEN. Mr. Barr, you are now recognized for your point of order.

Mr. BARR. Thank you. I just wanted to make sure we are checking the accuracy of the clock. Could you check with the clerk? I think we have had some inadvertent pauses on the time—the countdown on the clock. Could you just check on that, Mr. Chairman?

Chairman GREEN. I will keep an eye on it. Thank you very much for calling it to my attention.

And with that said, the Chair will now recognize the gentleman from Georgia, Mr. Loudermilk, for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman. I appreciate the opportunity to be a participant in this hearing. It is very important, and one of the complaints that we sometimes hear about the credit bureau is, there is not enough competition. I, and I know many of my colleagues, support competition in this industry and have supported legislation and conducted oversight of the FHA to bring more competition to the credit reporting and scoring, but the Biden Administration has proposed eliminating competition by creating another government entity, a government credit bureau.

Ms. Anderson of Experian, what would the consequences be if Congress replaced the current system with a government-run credit bureau.

Ms. SANDY ANDERSON. Yes. Thank you for that question, Congressman. We believe at Experian that the system is working: it does drive competition; it does drive innovation; it allows us to bring to market solutions like Experian Boost to bring in data that is not part of the existing credit reports; and it allows consumers to expand that information in their credit report and allows lenders to use that in order to serve underserved and financially challenged consumers.

So, we believe that this system works with the appropriate level of oversight by the CFPB and that competition drives innovation.

Mr. LOUDERMILK. I appreciate that. And using the tools that we need, it is all about mitigating risk. It is about, lenders want to lend money. That is how they make their profit. Auto dealers, they want to sell cars. That is how they make a living, but the only way that they can do this and do it affordably, in other words, making loans at an interest rate commensurate with the risk, is if they know what the risk is.

And in some cases, people will be denied credit or they will be charged more for credit simply based on the risk. And so, my fear is that a government bureau is not going to be looking just at the data, but at an expected outcome, and that is when we get in trouble.

A recent study from the U.S. Chamber of Commerce indicates that risk-based pricing in lending is good for consumers and that credit scores predict risk without bias. The other Ms. Anderson of Equifax, can you discuss why it is so important to have robust credit scores in the credit-based economy and why is it counterproductive to suppress negative information on your credit reports?

Ms. BEVERLY ANDERSON. Thank you, Congressman. I absolutely believe that it is necessary and important to have credit scores in the economy. It is important for us to understand by using access to data and providing that data to lenders so that they can, in fact, make fully informed decisions on extending credit to consumers and extending credit to consumers at reasonable rates based upon the risk.

I also think it benefits consumers. Consumers have the opportunity to get access to credit and to also get access to credit at affordable rates. The access of credit scores in the system allowed for consumers to get credit, particularly quick, consistent access to credit that you don't see in many countries. Today, a consumer can walk onto an auto lot and buy a car, because of the ability for a lender to have full information, and make a "yes" credit decision. So, it is important for us to have a fully functioning credit system with full information.

Mr. LOUDERMILK. So, you would say that a good credit rating system that mitigates risk is good for the consumers, because it helps effectively lower the rates for consumers to increase their buying power? If we didn't have this way of determining who is of greater risk, would you say that the result would be that most, if not all consumers would then pay a higher rate because they have to make up for the bad debt that would be out there that would be issued by those who didn't pay? Does that make sense?

Ms. BEVERLY ANDERSON. Yes, I agree.

Mr. LOUDERMILK. Okay. Mr. Danaher, as you know, the alternative data provides major benefits to consumers who previously had little or no credit history. Should Congress pass legislation to expand the types of data included in credit reports?

Mr. DANAHER. Thank you, Congressman. Yes, we fully support the reporting of alternative data as we are characterizing it, rental payments, utility payments, telcopayments, because we believe that greatly expands access to credit.

Our analysis shows that maybe up to 60 million Americans who are currently invisible or slightly invisible to the system would become visible. And as you pointed out, lenders want to lend and lenders will figure out how to lend to those folks once they are visible to the system.

So, we fully support any efforts for the provision of alternative data to us to expand access to consumers.

Mr. LOUDERMILK. Following up with that, are there some improvements that can be made to the system such as updating credit files promptly instead of the consumer having to wait 30 days for changes to be reflected on their credit report? Do you agree that is a needed reform, and can you elaborate on that?

Mr. DANAHER. Yes, I do. The FCRA and those standards were set years ago, before the great advances in technology, and we do have the ability now to take in data faster and that benefits consumers.

Mr. LOUDERMILK. Okay. Thank you.

I yield back.

Chairman GREEN. The gentleman's time has expired.

And with reference to the ranking member's comment, I do agree that we are having some problems with our timer. In fact, this time we extended more than 6 minutes to the member, but I will try as best as I can to keep an eye on it, and staff is working on the problem.

With this said, Ms. Adams, the gentlelady from North Carolina, will be recognized for 5 minutes for her questions.

Ms. ADAMS. Thank you, Mr. Chairman, for convening this hearing today. And to our witnesses, thank you for joining us as well.

The role that our credit bureaus play as consumer credit report databases is critical both to lenders, but especially to borrowers. A borrower's credit report could mean the difference in getting affordable capital or being forced into a more expensive product or not receiving credit at all. It has been more than 15 years since Congress has enacted comprehensive reform of the consumer reporting system and it is widely accepted that the current system has numerous shortcomings that need to be addressed.

And that is why I am planning to reintroduce my bill, the Improving Credit Reporting for All Consumers Act, that would improve the dispute process for consumers, place better requirements on furnishers to retain records on consumers, and provide consumers greater transparency regarding the documents used to determine the accuracy and completeness of disputed items.

We must do all that we can to ensure that consumers are fully knowledgeable about their options and have the necessary resources available to them to ensure that their financial health and well-being is secure.

Ms. Anderson, and Mr. Danaher, I believe that you all would agree that maintaining accuracy, completeness, transparency, and access at the bureaus is very important. Since the FTC study of credit reporting accuracy was nearly a decade ago, there has been no broad-based public analysis of the accuracy of and the error rates for consumer credit reports. And I hope that you will help us to better understand what those error rates look like.

Can each of you, to the best of your knowledge, tell the subcommittee the error rates in your consumer credit reporting products with regards to each of the following categories and information—trade lines, collections, inquiries, consumer identifying information, and public records?

Did you all hear the question?

Hello?

Chairman GREEN. We heard you.

Ms. ADAMS. Oh, okay.

Chairman GREEN. To whom are you addressing your question?

Ms. ADAMS. To both—to Ms. Anderson and—

Chairman GREEN. We will start with Ms. Anderson.

Ms. Anderson, would you have a—

Ms. ADAMS. —and Mr. Danaher.

Ms. BEVERLY ANDERSON. There are two of us. Which Ms. Anderson?

Ms. ADAMS. Oh, okay. Oh, both Ms. Anderson's and Mr. Danaher.

Ms. BEVERLY ANDERSON. I will step in and go first. I would agree. Accuracy is very, very important, and I shared my perspective a little bit earlier. I think there is a ton of work that has been done across the years with furnishers clarifying the report, bringing data accuracy into being, but I also believe that there is more work that we can do as we all work to ensure maximum accuracy.

The data that you are asking for, I would be happy to follow up with, but I just wanted to acknowledge that. I completely agree.

Ms. ADAMS. That will be fine, if you all would send that to us in writing. Do we have any other responses or would you all—can you all just send it to us in writing?

So let me ask you, if you do track these error rates, what are the metrics used to track accuracy and the error rates in the consumer data using your products and the frequency of such tracking? Mr. Danaher, what about you?

Mr. DANAHER. Thank you, Congresswoman. We track those in two ways. One is, we look at all of the disputes that we get from consumers and we determine what the cause of the error was.

And as Ms. Anderson pointed out, we can get you that by category, so we can follow up and report that data to you. The other way that we track it is by looking at what data furnishers provide us and error rates by data furnisher. So, if we find that we are getting disputes from consumers at higher concentration from a particular data furnisher, we work with them to try and correct it.

If it can't get corrected, as Ms. Anderson pointed out, we have the same process. We will prevent that data furnisher from reporting data to us. So, we have statistics on both sides of that.

Ms. ADAMS. Okay. Good enough. Let me ask Ms. Wu, do you feel that a new broad-based public analysis of the accuracy of and error rates for consumer credit reports would be warranted to update the important work the FTC undertook a decade ago?

Chairman GREEN. Ms. Wu, before you answer, please allow me to intercede. We are beyond the 5 minutes. We will receive Ms. Wu's answer, and then the Chair will have to move on to the next witness. The timer that we have, as Mr. Barr has indicated and I agree, is inaccurate at this time.

So Ms. Wu, if you will kindly answer, please?

Ms. WU. Yes, of course. Thank you, Chairman Green, and thank you, Congresswoman Adams. I certainly agree that more data is always useful. If there is to be a study, it needs to be started right now, because it took the FTC 10 years to do that study. It is incredibly intensive.

With respect to the furnisher reports that Mr. Danaher mentioned, they do have reports on different furnishers and how accurate they are. And this committee may want to ask for those reports because that gives one indication of accuracy and, of course, the other indication is the massive number of complaints to the CFPB. Thank you.

Chairman GREEN. The gentlelady's time has expired.

The Chair will now recognize Mr. Mooney for 5 minutes.

Mr. MOONEY. Thank you, Mr. Chairman. These credit reports give lenders an insight into how likely a borrower is to pay back a loan. If the potential borrower has an incomplete credit history, or a history of poor credit, then the prospect of payback is less certain. This results in higher pricing or even an unwillingness to extend credit at all.

In other words, [inaudible]—

Chairman GREEN. Mr. Mooney, would you please check to see if you have muted yourself?

Mr. Mooney, we cannot hear you. Would you please check again to see if you muted yourself?

Mr. MOONEY. Okay. It is not on mute. Can you hear me now?

Chairman GREEN. We can hear you now. Thank you. And I will extend your time by 30 seconds.

Mr. MOONEY. Okay. Way to measure uncertainty. The more uncertain the loan, the higher the price to compensate for the risk.

Mr. Danaher, can you please tell us what would happen to the cost and availability of credit if we were to suppress adverse information on credit reports?

Mr. DANAHER. Thank you, Congressman. I think two things would likely occur in that case. First, the cost of credit would increase as lenders priced, as you say, for the unknown, for the risk.

And second, I think there would be a contraction of credit. Lenders would be less willing to lend to marginal borrowers because they would not have that insight into exactly how that borrower might perform.

So, I think that risk-based pricing does result in lower prices for many consumers, but it also greatly expands the universe of potential borrowers because you are able to price appropriately for risk.

Mr. MOONEY. Got it. My next question is for Ms. Kuehn. Your testimony listed past instances when either legislative or regulatory changes led to improved accuracy on consumer credit reports. Do you have any policy recommendations to improve credit report accuracy going forward?

Ms. KUEHN. We have seen a lot of work going on these last few years, particularly with the advent of the Consumer Financial Protection Bureau. This was the first regulator with examination authority.

So whereas, the FTC could investigate issues of accuracy, the examiners at the CFPB are down there daily looking at the operations of the consumer reporting agencies and working with them to find ways to improve accuracy.

This is an ongoing process that, frankly, is usually outside of the public view and has made a lot of strides in improvements to the processes and systems. This is why the CFPB announced recently that they intend to undergo a new study on accuracies, since it has been so long since the FTC study, and are they going to look at different methodologies, hopefully faster than the 10 years that Ms. Wu referred to, to be able to conduct the study on this and look for these improvements.

Mr. MOONEY. Thank you, Mr. Chairman.

I yield back the balance of my time.

Chairman GREEN. The gentleman yields back.

The Chair now recognizes the gentleman from Illinois, Mr. Garcia, for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Mr. Chairman, and Mr. Ranking Member, and thanks to all of the witnesses. The reality is that people in working-class communities like mine in the district I represent worry a lot about their credit score. It is hard enough to rent an apartment, get a job, or buy a house, and a low credit score can lock people out of building a better future for themselves and their families.

In normal times, it is concerning, but right now, while Congress and the White House are focused on building back better and promoting an equitable recovery from the COVID-19 pandemic, these barriers are a real policy problem. We talked today about the inadequacy of the dispute resolution process at the credit rating agencies, and how an error on someone's credit report can wreck their financial future. But existing dispute processes are too automated and frequently side with the lender or furnisher instead of the subject of the report.

We have known about this problem for years. I have a question for the representatives from Equifax and Experian. Have your companies worked together to address issues in your dispute resolution process, and please be mindful that the clock is running pretty quickly here?

Equifax, please?

Ms. BEVERLY ANDERSON. The dispute process is a very important process for consumers, and we have three ways that a consumer can engage with us around disputes—an online dispute process which gives them the ability to track exactly where the dispute is. They can dispute by our contact centers and by mail. We work directly as an intermediary with consumers, as well as with furnishers to do our best to rectify and resolve that dispute quickly.

We actually have the ability, if we have the right information, to resolve a dispute and assist a consumer without going through the furnisher. We also can work directly with the furnisher through investigations. In 2015, we agreed with the other bureaus to work together to share cross information on disputes so that we do actively compare and contrast notes and information so that we do a very good job on behalf of the consumer. I look forward to—

Mr. GARCIA OF ILLINOIS. Can we let Ms. Sandy Anderson also take a crack at that?

Ms. SANDY ANDERSON. Thank you, Congressman. Similar to what Ms. Anderson at Equifax stated, we have similar processes. We continuously look at, how do we improve the dispute process, allow consumers to reach out to us in their channel of choice, and we also look for ways that we can resolve that dispute directly with the consumer and/or going to the data furnisher.

Mr. GARCIA OF ILLINOIS. And have you discussed implementing stronger standards across the industry to help decide when to investigate a claim made by a furnisher?

Ms. SANDY ANDERSON. As Ms. Anderson referenced, our cooperation under the End Cap Agreement allowed for us to make improvements there and we continue to look at how do we do that as an industry.

Mr. GARCIA OF ILLINOIS. Okay. Ms. Wu, do you think that the industry takes dispute resolution issues like parroting seriously? Can companies improve the dispute resolution process themselves or do you think that an independent body or stronger standards would help consumers straighten out issues?

Ms. WU. Thank you, Congressman Garcia. I think we need an independent body. The incentives are always with the credit bureaus to side with the furnishers. Those are their customers. The idea that there is any competition for consumers, it doesn't exist.

If I am unhappy with Equifax because they gave my data away in the Equifax data breach, I still can't walk away from Equifax. We need an independent body, either an ombudsperson at the CFPB and the FTC, or ideally, a public credit registry, because the credit rating agencies' incentive is just to sell this data as much as possible. A public credit registry would give us a lot more control.

And one more thing, on this risk-based pricing issue, just remember, risk-based pricing caused the mortgage crisis of 2008–2009.

Mr. GARCIA OF ILLINOIS. Thank you very much. No further questions.

I yield back, Mr. Chairman.

Chairman GREEN. The gentleman yields back.

The Chair now recognizes Mr. Kustoff of Tennessee for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman. And thank you for convening today's hearing, and I thank the witnesses for appearing.

If I could, we know that identity theft and breaches, of course, have been well covered by this committee. I think one thing that all three of the credit reporting agencies recommend for for individuals to do are credit freezes.

And I will say to all of your credit, I think you have made the process of requesting a credit freeze safe, you have made it reliable, and while there are a number of checks and balances, it can be done fairly expeditiously.

Mr. Danaher, if I could to you, the same is probably not true for children, in other words, those under 18 years of age. My question to you is—actually, two questions. One is, when would you recommend a credit freeze for a child?

And two, what, if anything, can be done by your agency and others to make the process easier to request a credit freeze for a child?

And that is to Mr. Danaher.

Mr. DANAHER. Oh, thank you, Congressman. Sorry. I didn't hear that.

Yes, we believe the process for adding a credit freeze to a minor's credit file or preventing a credit file from being opened for a minor until they are of age—I think it is 16 on our system—can be made easier, and we are currently wrestling with that right now. The issue for us is proving who can set a freeze for a minor, in other words, verifying the identity of the person trying to set the freeze.

So whether it is a parent, guardian, et cetera, like knowing the relationship between the person trying to set the freeze and the minor—currently, we have to ask for documentation on that, and people submit manual documentation so that we can verify that it is being set by the appropriate person.

But we are looking at ways to automate that and make it easier for parents, guardians, et cetera, to protect the identities and the credit files of their minor children.

Mr. KUSTOFF. If I could, to Ms. Anderson of Experian, I will ask you the same question: Is there an easier way? Are you looking at an easier process to place credit freezes for the benefit of children?

Ms. SANDY ANDERSON. There is always room for process improvement, and we certainly take that seriously and continue to look at it, but just as a reminder, the display of anybody under the age of 18 is blocked. So, that information would not go out of our systems even if it was in the system of record.

Mr. KUSTOFF. Would the children still be at risk of identity theft if the record was not frozen?

Ms. SANDY ANDERSON. There is always risk of identity theft with fraudsters getting access to personal PII, but, again, getting access to that data from our systems when we don't release that data until they are 18.

Mr. KUSTOFF. Thank you, Ms. Anderson.

And Ms. Anderson of Equifax, if I can ask you a different question. I am referring back to your written testimony. You do note that the credit scores during COVID hit an historic high. I think you said it was around 710 or 711, and you cited some of the reasons.

At Equifax, do you project over the next 6 to 12 months whether that trend will continue?

Ms. BEVERLY ANDERSON. Certainly, we did, in fact, see credit scores improve over the COVID timeframe, and we believe that as long as the consumers have access to the kinds of protections that we have seen during the CARES Act, we imagine that behavior could, in fact, improve.

Of course, I don't want to sit here and forecast what the future looks like, but certainly we believe that the economy is recovering, consumers feel positive about where things stand relative to COVID, and jobs are starting to return. So, we definitely feel positive.

Mr. KUSTOFF. Thank you, Ms. Anderson. And thank you, Mr. Chairman.

Chairman GREEN. The gentleman's time has expired. The Chair has an announcement. The Chair will step away, and in the absence of the Chair, the gentlewoman from Georgia, Ms. Williams, the Vice Chair, will assume the position of Chair.

I have Ms. Garcia of Texas next, then Mr. Timmons of South Carolina, and thereafter, you would recognize yourself for 5 minutes. And perhaps I will be back before that time, but if not, you will recognize me after you have recognized yourself.

I yield now to Ms. Garcia of Texas for 5 minutes, and Madam Chairwoman, I shall return.

Ms. GARCIA OF TEXAS. Mr. Chairman and Madam Chairwoman now, thank you for bringing us to talk about such an important issue. This is an issue that I have heard a lot about going back to my legal aid days when I had occasion to call the National Consumer Law Center and I can say that they were always very helpful in getting through some of our client issues.

Credit scoring is a fundamental part of our economic system. A person's credit score determines their access into our financial marketplace. As I have said many times before, access to credit means access to building wealth. This system is founded on the idea that it is fair and accurate, but recently we found a series of problems with disputes and inaccuracies.

While I realize that sometimes these things do happen, it is important that we get to the bottom of this to ensure that it doesn't happen to the degree that it hurts our consumers. Mine is a working-class district. Many people in my district, as consumers, don't understand the processes of the consumer credit agencies. They don't understand what credit scores mean, so it really, really keeps them away from the marketplace.

Ms. Wu, I wanted to start with you. You have told us some of the stories, and in my district, because it is a 77-percent Latino district, with a very high population of Spanish-speaking persons with limited English literacy, can you describe the various phrases by those who prefer a language other than English and, more importantly, what legal framework exists to protect those who are subject to even more information challenges than the average consumer?

Ms. WU. That is a great question. Thank you, Congresswoman Garcia. The fundamental problem is this: Credit reports are not available in languages other than English. We have sent letters to the credit bureaus asking them, please, translate the credit report. It should be easy in this day and age of automated translation and then having someone go through it to check everything, and we got a big, fat no from the credit bureau, and we got a no from CDIA, that they wouldn't translate the credit report.

How are you supposed to monitor and keep track of your credit, check for errors, and dispute if you can't even read the information? Equifax, to its credit, did say they are looking into it, but otherwise, a big, fat no.

Ms. GARCIA OF TEXAS. Let's ask each one of them.

So Ms. Sandy Anderson, is it true that Equifax is thinking about it or is already doing it?

Ms. SANDY ANDERSON. I represent Experian, Congresswoman, but for us, we currently don't offer credit reports in any other language other than English. We do have Spanish-speaking agents that consumers can reach out to and discuss their credit report and questions, so we do provide that. We also work with different community groups that provide financial education services in the consumer's native language.

Ms. GARCIA OF TEXAS. Okay. Now, let's ask the other Ms. Anderson.

Ms. BEVERLY ANDERSON. Thank you, Congresswoman. We are very close to launching our first Spanish credit report. We are excited about the work that we have been doing there. In the meantime, we have Spanish agents in our call centers and translation language vendors who help us when we have consumers who need additional support from a language perspective.

Ms. GARCIA OF TEXAS. Right. And the last one, Mr. Danaher?

Mr. DANAHER. Congresswoman, we do make credit reports available both in English and Spanish. We also have Spanish-speaking customer support agents who will answer any questions somebody may have in Spanish.

As we talked about when we met earlier this week, we are also looking at prioritizing other languages and trying to figure out what the demand might be for consumers to see their data in languages other than English and Spanish.

Ms. GARCIA OF TEXAS. To Ms. Tlaib's point earlier when she was asking some questions, there are studies that have found that there is disparate treatment of minorities, and certainly the recent complaint bulletin that was issued by the Consumer Financial Protection Bureau in April of 2021, just last month, clearly showed that in 2020, the CFPB received more complaints per capita for consumers living in predominantly minority counties, and from 2019 to 2020, complaints increased at a greater rate in predominantly minority counties compared to predominantly White, non-Hispanic counties. It is there. We have to do something to do better.

And with that Madam Chairwoman, I know my time is running out. I want to ask for unanimous consent to submit for the record a copy of the complaint bulletin outlining some of the items that I just mentioned.

With that, I yield back.

Chairwoman WATERS. Ms. Williams, will you please take the chairman's chair and the gavel?

Ms. WILLIAMS OF GEORGIA. [presiding]. Thank you, Chairwoman Waters. And thank you, Ms. Garcia, and your questions will be submitted for the record.

Ms. GARCIA OF TEXAS. So, my document is approved for the record?

Ms. WILLIAMS OF GEORGIA. Yes.

Chairwoman WATERS. Without objection, it is so ordered.

Ms. GARCIA OF TEXAS. Thank you, ma'am.

I yield back.

Ms. WILLIAMS OF GEORGIA. The Chair now recognizes Mr. Timmons from South Carolina for 5 minutes.

Mr. TIMMONS. Thank you, Madam Chairwoman.

First, I want to point out that risk-based pricing definitively did not cause the financial crisis of 2008. In fact, it was the absence of accurate risk-based pricing. The distortionary influence of government policies subsidizing credit in ways that concealed the real credit risk that encouraged lenders to put people in homes with mortgages they couldn't afford. I just wanted to begin with that.

So now, I have an actual question. Given the data breaches in the past and, particularly, the ransomware attack involving Colonial Pipeline, I would imagine cybersecurity is top of mind for your institutions. Can you describe the increased security posture you all have put in place after the Equifax breach, and briefly describe your efforts to make sure that all consumer credit information is kept safe and secure?

And any one who wants to answer that?

Ms. BEVERLY ANDERSON. Why don't I start, since you referenced the Equifax breach?

Mr. TIMMONS. Okay. Thank you.

Ms. BEVERLY ANDERSON. Thank you for that question, Congressman.

I would like to say that Equifax is certainly focused on security and we believe that the work we have done over the course of the last several years puts us at the forefront of being an industry leader in security. We spent a billion and a half dollars over the last 3 years delivering top notch security and IT infrastructure into a cloud native environment and multi-millions of dollars creating a security response and monitoring system.

We have hired a number of cybersecurity experts in our company and we have made security a core tenet to our culture as a company. Most recently, we produced a report sponsored by security experts called, "Bright Site," which indicated that our company is in the top 3 percent of security of the top 1,000 largest U.S. firms.

So, we are excited about the work we have done to secure our customers' and our consumers' data.

Mr. TIMMONS. Sure. Thank you for that. And I will open this up to anyone else. My second question is going to be about the increasing patchwork framework of data privacy and security regulations at the State level across the United States.

Are your companies concerned that privacy and security compliance costs are going to increase, and would you prefer Congress to preempt States to create one nationwide standard?

Ms. KUEHN. I will take that one. Thank you for the question. A nationwide standard would make it easier to figure out when consumers need to be notified in the event of a breach, but all of the consumer reporting agencies comply with Federal standards for data security to ensure the security of information no matter where consumers are located.

Mr. TIMMONS. Thank you. Would either Experian or TransUnion want to weigh in on that as well?

Ms. SANDY ANDERSON. Thank you, Congressman. Yes, we would support a Federal privacy law.

Mr. DANAHER. Congressman, yes. We agree, too. It is easier for us and more productive to manage the one standard rather than 40 or 50.

Mr. TIMMONS. Sure. Thank you. When you consider your cybersecurity budgets, do you also include the associated compliance costs? I don't want to get into that right now, but we might send some follow-up questions. I would love to understand more because when considering your cybersecurity budget, that should be a part of it.

And when you have to hire an army of attorneys to comply with all of the various privacy and data security regulations, it really adds up. So, I appreciate that.

Quickly, before I close, I do want to respond to the gentlewoman from Michigan, Ms. Tlaib, who was litigating the practice of auto insurers using credit scoring data in their underwriting. The average auto insurance rate in Michigan is $2,300 a year, versus just $1,500 a year in South Carolina where this underwriting factor is used. Insurance is a highly regulated business on the State level. South Carolina's best, what our market and consumers need, not Congress, and definitely not anyone from Michigan.

With that, I yield back. Thank you.

Chairman GREEN. The gentleman yields back.

The Chair thanks the Vice Chair for standing in, in my absence.

The Chair is now honored to recognize the Vice Chair, Ms. Williams, for 5 minutes.

Ms. WILLIAMS OF GEORGIA. Thank you, Mr. Chairman. According to a recent CFPB consumer complaint bulletin, consumer complaints rose across-the-board between 2019 and 2020, but at an even faster rate in predominantly non-White counties. Earlier this month, I offered and passed an amendment on the House Floor that will study this kind of disparity and provide policy recommendations to ensure greater equity.

Ms. Wu, how important is it to analyze and address racial disparities to advance the broader goal of creating a more consumer-friendly financial marketplace?

Ms. WU. It is absolutely critical, and it is probably the most important issue facing credit reporting and credit scoring, the fact that there are vast racial disparities in credit scores.

The Urban Institute found that more than 50 percent of White households have a FICO score above 700, compared to only 20 percent of Black households. That is why risk-based pricing hurts Black consumers more, that is why these practices of using credit scores for auto insurance hurts Black consumers more, and that is why errors affect minority communities more because folks who have lower credit scores are more prone to errors in their credit report, and that makes sense.

If you have an 800, that means you have a perfect credit record; you are not going to get errors. And so, the racial disparity should be top of mind for anybody who cares about racial justice.

Ms. WILLIAMS OF GEORGIA. Thank you, Ms. Wu.

Also, in your testimony you mentioned how important it is to take the pandemic's impact into account when it comes to negative credit reporting. Currently, the law provides that a Federal student loan borrower's credit score can't be negatively affected if they miss the Federal student loan payment during the pandemic, but this protection was made possible with bipartisan support.

I recently worked with my colleague, Congresswoman Alma Adams, to pass an amendment to provide student loan borrowers the same relief from private student loans. How would providing all student loan borrowers equitable relief and credit reporting during the pandemic help everyday folks who have experienced financial disruption and are struggling to get back on their feet?

Ms. WU. It certainly would help—borrowers with private student loans should have the same protections as borrowers with Federal loans. And, in fact, the CARES Act protection didn't even cover all borrowers with Federal loans, and so it is important that all of them got relief given the economic dislocation caused by the pandemic.

I also note that slipping through the cracks definitely happened with Federal student loan borrowers. There was a lawsuit against one servicer, Great Lakes, for messing up the credit reporting. That is why we advocated for a moratorium on negative information during the pandemic, because of the severe nature of the economic dislocation. The CARES Act provisions are complicated and we have definitely seen a lot of creditors mess up on them.

That is actually what the slipping through the cracks is, that Ms. Beverly Anderson warned has been happening.

Ms. WILLIAMS OF GEORGIA. Thank you so much, Ms. Wu.

And with that, Mr. Chairman, I yield back.

Chairman GREEN. The gentlelady yields back. And the Chair now recognizes Mr. Gottheimer for 5 minutes.

Mr. GOTTHEIMER. Thank you, Chairman Green, for allowing me to attend this important hearing. And thank you to our witnesses for being here today.

The United States is the most credit fraud-prone country in the world. Every year, 15.4 million Americans are victims of credit card fraud or around 42,000 people every single day. The FTC has found that one in five consumers have verified errors in their credit reports and one in 20 consumers have errors so serious that they have been denied credit or forced to pay higher interest rates. That adds up to 42 million Americans with errors on their credit and another 10 million with errors that can be life-altering.

Scams increase during times of crisis, and COVID-19 has been no exception.

As the nation works into the economic recovery from the recession brought upon by the crisis, I think we can all agree it is more important than ever that all Americans have equal and just access to credit.

Ms. Anderson, early into the pandemic your company, Experian, joined TransUnion and Equifax in announcing that Americans would be able to access their credit report for free on a weekly basis. Knowing that Americans would be under significant stress from keeping their families and communities safe and worrying about their jobs, why did you your company still choose not to give Americans unlimited free access to their reports?

Ms. SANDY ANDERSON. Congressman, thank you for that question. We do provide access to free credit reports on a weekly basis as an industry. Experian also provides free credit monitoring, free access to credit reports, and free credit scores to over 40 million U.S. consumers today, and we continue to grow that as consumer needs rise.

Mr. GOTTHEIMER. So, you are doing exactly what TransUnion and Equifax offer?

Ms. SANDY ANDERSON. I can't speak for the other two, but certainly Experian is expanding our free offering to consumers.

Mr. GOTTHEIMER. So during the pandemic, everyone has been able to access their credit for free on a weekly basis?

Ms. SANDY ANDERSON. Correct.

Mr. GOTTHEIMER. Okay. That is good.

Ms. Wu, you have been concerned, particularly during the pandemic, about credit issues and Americans having access to information about their credit?

Ms. WU. What we have been concerned about is the impact of the pandemic on consumer's credit reports and their credit records, especially debt collection items.

We had heard that scores [inaudible] And risen. It is due to a number of things. One is the fact that you have case sheet recovery. So, if you have some scores that go up and some scores that go down, on average, you may get the same scores or a slight uptick, but what I am worried about is the 8 to 10 million renters who are facing eviction, who may then face debt collection items for back rent. That is going to hurt their credit reports.

Also, medical debt. A lot of people lost their employer-provided health insurance. When you get medical debt, you get debt collection items. They sharpen your credit report, and they hurt your ability to get credit, to get housing, and to get employment.

So, these are some of the things I worry about. I do commend the credit bureaus for providing free credit reports once per week. I think it should be permanent. You had a bill last year that would provide something similar to that, and I think it is a great idea.

Mr. GOTTHEIMER. Thank you so much. I am glad we got a chance to work together on these issues.

Do you agree that we should make it easier for Americans to get their information for free, and initiate disputes when it comes to credit, given how important this credit information can be in every aspect of people's lives, from what they pay for insurance to their mortgage, you name it, it seems to be affected by people's credit scores?

Ms. WU. Absolutely. It should be easy and it should be fair. Easy should mean not just the credit reports, but the scores. You need the credit scores to know where your credit standing is. And it shouldn't be just the one credit score that lenders use the most often; it should also be other risk scores.

The credit bureaus are developing all of these new products and these new scores that judge consumers. All of those should be available, not just the regular credit score, but healthcare scores, fraud risk scores, and tenant screening scores.

And then, it should be fair. When you dispute, you should be able to get a fair determination, one that doesn't always side for the furnisher, and that is why the ombudsperson concept in your bill last year was so important to give the CFPB the ability to be the referee when the consumer disagrees with the results.

Mr. GOTTHEIMER. Exactly. I think you are referencing the Protecting Your Credit Score Act. It creates an online portal, as you know, to provide Americans with free, unlimited access to their credit reports, credit scores, credit freezes, the ability to dispute errors and fraud, and the ability to secure and track their credit data. All of that transparency to help Americans boost their credit and financial security through economic declines and beyond, and it is clear we still need this legislation.

And you are making a great point about making sure that it is all the scores, not just ones they can create other ways around.

Thank you so much, and I thank the witnesses for being here today.

And thank you, Mr. Chairman.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes himself for 5 minutes for questions.

Permit me to ask the witnesses to comply in the following fashion: I shall pose a question, and I will ask that you simply raise your hand if you understand the question as I have posed it or if your answer is to be yes or no, and I will be sure to be clear as to whether I want you to raise your hand if it is yes or no.

Let me ask first—and I assume that you are very much aware of this given that you are at the hearing—were you aware of the title of this hearing today? The title is, "Consumer Credit Reporting: Assessing Accuracy and Compliance?"

Were you aware of the title of the hearing prior to coming today? If so, would you kindly raise your hand? Thank you very much.

Let the record reflect that all of the witnesses were aware, prior to today. Now, is it true that as a major business, you maintain records so that you can ascertain the accuracy rate that you have within your business? If you believe that as a major business, you should do this, would you kindly raise your hand, maintain your accuracy rate?

Okay. Thank you very much. All of the witnesses agree that they should maintain an accuracy rate.

Would you kindly now tell me what your accuracy rate is? Let me start with you, Ms. Sandy Anderson.

Ms. SANDY ANDERSON. Thank you, Mr. Chairman. We track a number of metrics to determine accuracy rate, and right now, we are tracking at over 99 percent.

Chairman GREEN. And what metric was that, please?

Ms. SANDY ANDERSON. That is our accuracy metric that we use to track material errors in credit reports as they are used by lenders and consumers.

Chairman GREEN. Am I to understand that with reference to your errors, you are not 100-percent accurate in terms of the information that you provide?

Ms. SANDY ANDERSON. Correct.

Chairman GREEN. Thank you very much.

Let's go to Mr. Danaher. The question is the same to you, sir.

Mr. DANAHER. Mr. Chairman, our analysis shows that credit reports are 98-percent accurate with regard to material accuracy. So, 2 percent or so of credit reports are inaccurate, with material consequences for the borrower.

Chairman GREEN. Thank you.

Let me move now to Ms. Beverly Anderson.

Ms. BEVERLY ANDERSON. The last accuracy data measured by the CFPB happened in 2012. We know that there is another report that they would like to have to update the accuracy data, and we welcome that study. We have a number of measures in our business that measure the accuracy of our data furnishers, the level of dispute—

Chairman GREEN. Ms. Anderson, I will have to intercede. I need to know what your accuracy rate is. You have acknowledged that you knew what we were going to discuss today, and you are saying that 2012 data probably is a little bit outdated, but what is your accuracy rate, please?

Ms. BEVERLY ANDERSON. Our data will be similar to the other two bureaus.

Chairman GREEN. What does similar mean in terms of a number, please?

Ms. BEVERLY ANDERSON. I will have to get back to you with the number.

Chairman GREEN. I would ask that you do so, and I express my dismay that you are not prepared, given that you were well-aware of the title of this hearing and what we would be asking.

Let me go on to something else that is exceedingly important. Minorities seem to have higher inaccuracy rates or error rates than others in this business. Do you keep a record of the accuracy rate as it relates to minorities?

Let me start with you, Ms. Anderson, do you keep such a record? Ms. Beverly Anderson, can you hear me?

Ms. BEVERLY ANDERSON. Yes, I can.

Chairman GREEN. Do you keep such a record, and I will ask that you respond—

Ms. BEVERLY ANDERSON. Yes. We do not have race data on our file.

Chairman GREEN. Let me move on to Mr. Danaher.

Mr. DANAHER. No, Mr. Chairman. We don't have any insight into the race of the people on the credit file with regard to accuracy.

Chairman GREEN. And then, Ms. Sandy Anderson.

Ms. SANDY ANDERSON. Thank you, Mr. Chairman. No, we don't have race data in our credit file either.

Chairman GREEN. My time has expired.

Let me thank the witnesses for their testimony, and for devoting the time and resources to share their expertise with the subcommittee. Your testimony today will help to advance the important work of this subcommittee and of the U.S. Congress.

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

I would also, while it is after the fact and a little bit late, remind Members that we are not to address our comments to other Members, but rather to the Chair.

With that said, this hearing is now adjourned.

[Whereupon, at 1:56 p.m., the hearing was adjourned.]

APPENDIX

May 26, 2021

Written Testimony of Beverly Anderson
President, Global Consumer Solutions, Equifax Inc.
U.S. House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations
May 26, 2021

Chairman Green, Ranking Member Barr, and distinguished members of the Subcommittee, thank you for the opportunity to be here today. I am Beverly Anderson, President of Global Consumer Solutions at Equifax. I am responsible for the strategy, business development, growth and consumer experience of direct and indirect Equifax solutions that serve consumers with credit, identity protection and financial education needs. I have served in this role since December 2019 following my tenure as Executive Vice President of Cards and Retail Services at Wells Fargo where I led consumer credit cards, co-brand cards, loyalty solutions, retail finance, digital payments and enablement capabilities for almost eight years.

I appreciate the opportunity today to discuss the issue of credit reporting accuracy that Equifax shares as a common priority with consumers, lawmakers, regulators, and financial institutions. As one of the three national consumer reporting agencies ("CRAs") in the United States, Equifax has a legal obligation to utilize "reasonable procedures to assure maximum possible accuracy,"[1] and we also recognize the business value of maintaining the most accurate data possible. As the Equifax executive in charge of developing and delivering our consumer facing solutions, I am personally committed to helping consumers as they seek an understanding of their financial profiles and consider their most significant financial decisions.

I also manage our internal operations that include the receipt, review, investigation and response to disputes sent to Equifax directly from consumers and data furnishers, as well as from the Consumer Financial Protection Bureau (CFPB) Consumer Complaint Database. Equifax takes seriously the increase in complaints directed at Equifax through the CFPB's Consumer Complaint Database. Although the increase in complaints has been significant, several underlying contributing factors should be recognized in order to put the increased complaint volume in context.

Equifax shares the Committee's goals to ensure the financial ecosystem is functioning in a way that benefits consumers and operates with accurate and complete information. We are trusted to protect the personal data we hold, to provide accurate information to financial institutions making important risk decisions, and to facilitate greater access to credit for consumers.

[1] 15 U.S.C. § 1681e.

CFPB COMPLAINT PORTAL AND THE RISE IN COMPLAINTS DURING THE PANDEMIC

The increase in complaints directed against Equifax and the other two national CRAs through the CFPB Consumer Complaint Database - particularly during the course of the pandemic - is concerning. I interpret the increase in complaint portal volume not as an indictment that the consumer reporting system is broken, but rather as evidence that the national CRAs play a meaningful and necessary role in facilitating the dispute process between consumers and their creditors. Recognizing the rise in complaints, the CFPB also reported in their annual report to Congress that companies provided a timely response to approximately 99% of the complaints that the Bureau sent for response in 2020.[2]

A review of several factors contributing to the rise in complaint volume through the CFPB Consumer Complaint Portal will hopefully contextualize the numbers.

Heightened concern over financial obligations

Over the last fifteen months, many consumers have experienced dramatic financial changes while lenders needed to quickly comply with new CARES Act relief provisions and reporting requirements. Consumers reviewed their credit reports more often to confirm their credit standing and take greater control of their financial well-being. Because of this increased scrutiny, consumers frequently submitted concerns about their credit reports and the CARES Act accommodations provided by banks and other lenders to the national CRAs through the CFPB complaint portal. According to the CFPB, beginning in April 2020, consumers began to submit more than 3,000 complaints mentioning coronavirus keywords nearly every month, with over 32,000 complaints mentioning coronavirus keywords in 2020.[3]

Complaints against CRAs should be considered in the context of number of consumers

While consumer complaints increased year over year by nearly 54%,[4] the CFPB acknowledged in its annual report to Congress that complaint volume should be considered in the context of company size and market share. For example, companies with more customers may reasonably have more complaints than companies with fewer customers.[5]

The national CRAs are in a unique position as compared to other financial services providers. Equifax compiles information on over 250 million U.S. consumers while the largest banks may serve about a quarter of those consumers. The amount of information and number of

---

[2] *Consumer Response Annual Report: January 1 - December 31, 2020*. Consumer Financial Protection Bureau, March 24, 2021, p. 16, available at https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[3] *Consumer Response Annual Report: January 1 - December 31, 2020*. Consumer Financial Protection Bureau, March 24, 2021, p. 11, available at https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[4] CFPB 2020 Consumer Response Annual Report Press Release, March 24, 2021, https://www.consumerfinance.gov/about-us/newsroom/cfpb-annual-complaint-report.

[5] CFPB, Consumer Complaint Database, https://www.consumerfinance.gov/data-research/consumer-complaints.

consumers served by the credit reporting system is one reasonable explanation for the volume of complaints mentioning CRAs.

Not only is the number of consumers served by CRAs vastly greater than virtually all other financial services providers, but consumer reporting agencies also serve as the intermediary between consumers and their lending institutions. Given this dynamic, consumers submit complaints to the CFPB Consumer Complaint Database that are not actually customer service complaints about a CRA, but rather disputes about information on their credit report. These disputes might relate to information provided by a lender, an outdated address, or a credit score, which is information that originates with an entity other than a consumer reporting agency. For this reason, most complaints against the national CRAs in the Consumer Complaint Database should not be attributed to errors made by the consumer reporting agencies when the CFPB has given consumers the ability to dispute issues with their lenders through the bureaus.

CFPB portal does not distinguish FCRA statutory disputes from complaints

The CFPB complaint portal combines consumer complaints with disputes about information on credit files. As described above, the Fair Credit Reporting Act ("FCRA") mandates that CRAs investigate consumer disputes with their banks and other lenders. Recent internal Equifax reviews show that 95% of CFPB complaints include a dispute about information received by Equifax from a third party. Since the complaint portal was established, the consumer reporting industry has expressed concern to the CFPB regarding the characterization of information submitted to the complaint portal and the CFPB's role in publishing information without further explanation. In 2015, the Consumer Data Industry Association ("CDIA") wrote to the CFPB:

> Definitions matter materially in the categorization of complaints coming through the CFPB's portal. Unlike all other industries that are within the CFPB's purview, the federal Fair Credit Reporting Act (FCRA) establishes a detailed mechanism for consumers to use when submitting a dispute about data in their files. The CFPB examines our members' consumer services teams and is fully aware of the millions of dollars invested in working with consumers who have questions or wish to submit disputes. Therefore, the CFPB should differentiate the disputes from the complaints submitted through its portal and track only the complaints about our members' practices following a consumer exercising his or her right under the FCRA.[6]

As outlined in the 2015 CDIA letter, the CFPB complaint portal permits consumers to submit a complaint without first exercising their FCRA rights to initiate a dispute directly with a consumer reporting agency or the data furnisher. In further comments submitted to the CFPB in 2015, the CDIA pointed out that

---

[6] Consumer Data Industry Association Letter to CFPB Director Cordray, August 2, 2015, available at https://www.cdiaonline.org/wp-content/uploads/2021/04/cordray-complaint-narrative-letter-080515.pdf.

> [w]hen the CFPB first began accepting credit reporting complaints in October 2012, the intake form for credit reporting complaints included the following comment: “To address your issue, you must file a dispute with your credit reporting company.” However, as of December 18, 2013, that comment was removed from the intake form, and consumers were no longer directed to provide credit bureaus with an opportunity to resolve their dispute prior to submitting a complaint directly to the CFPB.[7]

Today, the CFPB complaint portal simply asks the consumer “Have you already tried to fix this problem with the company?” and does not direct nor advise the consumer of their rights under the FCRA to submit a dispute directly to a CRA or the data furnisher. Recent internal Equifax reviews indicate that approximately 60% of CFPB complaints appear to be disputes of first impression with Equifax and have not been filed with the consumer reporting agency within the past 90 days.

Credit repair organizations inundate the portal

The CFPB complaint portal has been inundated with the rise of credit repair organizations’ submissions disputing accurate but adverse information on consumers’ credit reports. Recent internal Equifax reviews indicate that more than 65% of complaints in the CFPB complaint portal appear to be associated with credit repair organizations. Credit repair organizations purport to assist consumers in “cleaning up” their credit reports for a fee by disputing negative information on consumers reports. These firms submit numerous disputes (not complaints, as distinguished above) to the CFPB Complaint Database on behalf of consumers to attempt to overwhelm the system and ultimately get the negative information removed from the report. While this practice may appear to benefit consumers, the benefit is superficial. If a credit repair organization is successful in clearing accurate, negative information from a report, that consumer may go on to accumulate new credit obligations that the consumer is not able to afford, with lenders now blind to previous obligations or payment behavior. The CFPB Complaint Database would be improved by requiring validation that items submitted by credit repair organizations are done so with the consent and full understanding of the consumer.

While Equifax is respectful of the CFPB’s efforts to establish the portal and recognizes the benefit to consumers of a central government channel to express concerns about financial service providers, many of the complaints against Equifax are not attributable to actions or mistakes on Equifax’s part, but instead to the extraordinary circumstances of the COVID pandemic, the CFPB’s decision to allow consumers to submit disputes through its portal rather than through the statutory dispute process, and an increase in credit repair organization submissions.

[7] Consumer Data Industry Association Comments in Response to Request for Information Regarding the Consumer Complaint Database: Data Normalization, Docket No.: CFPB-2015-0030, August 31, 2015, available at https://www.cdiaonline.org/wp-content/uploads/2020/12/CDIACommentsreCFPBDataNormalizationFinal.pdf.

Equifax respectfully provides these observations after years of experience with the CFPB Complaint Database. Our recommendations are supported by our analysis of the CFPB portal as compared to disputes submitted directly by consumers to Equifax.

ERRORS AND HOW WE ADDRESS THEM

Equifax works every day to deliver the most accurate data possible. The credit reporting industry has a demonstrated track record of accuracy as it pertains to credit reports; however, despite our best efforts, errors still occur resulting in consumer complaints. The various stakeholders in the financial ecosystem including CRAs, financial institutions, consumers, lawmakers and regulators have a shared interest in maintaining the accuracy of data. I understand how frustrating it can be for a consumer to be on the cusp of an exciting financial event only to discover a problem with their credit report. When I hear these stories, it strengthens my resolve to push to do better. At Equifax, we seek to eliminate errors, and I pledge our company's collective efforts to continue that pursuit.

Because of the foresight and diligence of Congress, the credit reporting industry operates under a defined and robust regulatory structure established by the FCRA, with continuous active oversight by the Consumer Financial Protection Bureau and the Federal Trade Commission. Under the FCRA, consumer reporting agencies, as well as data furnishers and users of consumer reports such as banks, must meet stringent requirements of accuracy, fairness and privacy. CRAs are required to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual to whom a report relates. Moreover, if a consumer disputes the accuracy of any information in their credit report, CRAs are required to conduct a reasonable reinvestigation within statutory timeframes.

THE CARES ACT AND STATUS OF COMPLIANCE

Throughout the COVID-19 pandemic, Americans have faced dramatic and quickly evolving economic stressors. Due to the uncertainty of the economic outlook, Congress moved quickly in early 2020 to enact new consumer protections and relief measures, including the CARES Act. The CARES Act provided relief to states and consumers, including the enactment of several consumer protections, such as mortgage forbearance, eviction moratoria, and a pause on student loan payments. In the time period since these protections were enacted, there has been a shift in many consumers' financial circumstances. Many consumers have paid down debt, placing some in better financial positions than they were in before the pandemic. Equifax analysis found that outstanding balances on credit cards have decreased by 10.4% year-over year, demonstrating that some consumers are in a position to pay down debt. Similarly credit card severe delinquency rates are at 1.67%, down from 2.38% a year ago. As a result of these and other positive consumer behaviors, credit scores reached a record high FICO score average of 711[8].

---

[8] Gravler, Elizabeth. "The average FICO credit score hit a record-high 711 this summer—here's how to raise yours to meet it." *CNBC*, March 19, 2021, www.cnbc.com/select/average-fico-credit-score-hits-record-high/. Accessed May 18, 2021.

We have a strong history in anticipating and addressing consumers' needs during times of crisis and hardship. Equifax will continue to work with lenders and other data furnishers to help ensure the CARES Act is implemented effectively to protect consumers. Through direct consumer engagement and lender communications, Equifax and credit reporting stakeholders have responded to the crisis. Based on the consumer credit data recently reported to us by data furnishers, we have seen a significant increase in accounts reported with accommodations since April 2020 as lenders provide relief to their customers.

Under my leadership, Equifax has taken meaningful actions to assist consumers including:

- We quickly launched a COVID + Credit Financial Resource Center in April 2020 to help consumers understand potential impacts on their finances and credit as well as to navigate financial considerations related to the pandemic. The online resource center (www.equifax.com/personal/covid-19/coronavirus-manage-personal-finances/) gives consumers access to articles, podcasts, videos, and more.
- I have personally conducted a series of publicly available webinars entitled "You Ask. Bev (Equifax) Answers" where I have answered questions to assist consumers manage their finances and utilize the free resources available to them through Equifax.com. I also recorded several podcasts named "Equifax CreditTalks" to discuss challenges faced by consumers that are also available to the public
- In April 2020, Equifax, Experian, and TransUnion collectively announced an initiative to give consumers access to a free credit report each week at www.annualcreditreport.com. In March 2021, the three national CRAs extended the initiative to make free credit reports available to consumers through April 2022. Consumers have responded favorably to the increased access to free reports, rising from 5.7 million reports delivered in the 12 months leading to March 2020 to 7.3 million reports delivered in the 12 months leading to March 2021.
- We offer consumers a free monthly VantageScore® 3.0 credit score based on Equifax data with Core Credit™.
- We provide immediate easy access to freeze or unfreeze a credit file, place a fraud alert, or start a dispute digitally through a myEquifax account.
- We share information about the financial services community's response to the pandemic.

Equifax has invested and continues to expand its online consumer support center named myEquifax (www.my.equifax.com) since its launch in September 2018. To date, more than eleven million consumers have accessed myEquifax to more easily manage their security freezes or fraud alerts, and access other free services. Based on third party evaluations of our market peers, many of our consumer services are deemed easy to access and use in all of our direct channels. Consumers have increasingly joined myEquifax as we deliver more services and capabilities. Recent enhancements to myEquifax include new tools to help consumers process and manage disputes on their credit reports. This new service gives consumers transparency and peace of mind that their disputes are being managed promptly.

We have also made improvements in our call centers to better serve consumers. The changes include expanded call center hours, improved phone systems, reduced time to answer our phones and an improved telephonic interface. We have invested over $50 million in our consumer-facing infrastructure over the last two years, and I plan for additional investments and enhancements over the coming months. My goal is for Equifax to be easy to navigate and consumer friendly at every touchpoint of a consumer's engagement.

ADEQUACY OF OUR RECENT RESPONSES TO COMPLAINTS IN THE CFPB PORTAL

Equifax takes its obligations to respond to consumer complaints in the CFPB portal seriously. Historically, we provided more substantive and complete responses to consumers through the CFPB portal after resolving a complaint, often through Equifax's dispute process. As discussed above, Equifax experienced an increase in disputes submitted through the CFPB complaint portal during the pandemic. We worked hard to balance our priority of assisting consumers with making sure our employees and their families were safe, which in some cases involved shifting resources to virtual locations. As the COVID pandemic progressed, we focused on investigating and resolving consumer disputes through our traditional statutory mechanisms and simplified the manner in which we communicated the resolution of disputes that were submitted through the portal. Consumers continued to receive dispute results directly, but a more abbreviated version of the resolution was provided on the portal. As we return to more normal operating procedures, I anticipate that we will resume sending the CFPB a more detailed description of the dispute resolution.

To close, thank you for the opportunity to appear before this Subcommittee. Equifax is committed to working collaboratively to ensure that we continue to fulfill our duties to help consumers manage their financial affairs accurately and with excellent customer service. I am proud of the work my team has done in assisting consumers through the COVID epidemic, and know that we have more work to do. I am committed to ensuring that the millions of American consumers who need access to reasonable and affordable credit to power their financial dreams are treated fairly and have a consistently positive experience with Equifax.

Sandy Anderson
Senior Vice President of Operations, Experian NA

Statement for the Record

House Financial Services Subcommittee
On Oversight and Investigations

"Consumer Credit Reporting: Assessing Accuracy and Compliance"

May 26, 2021
12 noon ET

Chairman Green, Ranking Member Barr and Members of the Subcommittee, I am Sandy Anderson, Senior Vice President of Operations for Experian North America. I appreciate the opportunity to discuss Experian's important work, how we are making consumers a central focus of our business, and how we are investing to improve the credit reporting system.

Let me begin by stating why credit bureaus exist, and how consumers benefit. Credit bureaus accurately compile individuals' payment histories reported to us by creditors so that lenders can use this data to make sound underwriting decisions. Good lending decisions for credit cards, autos and mortgages mean fewer defaults. Fewer defaults mean lower costs of credit for consumers and greater availability of consumer credit across the economy. Because credit bureau data is blind to factors such as race, color, religion, and gender, it helps lenders ensure compliance with the Equal Credit Opportunity Act.

What we hear most often from consumers, Members of Congress and regulators is that everyone wants us to focus on three clear objectives: ensure the information we hold on consumers is secure; make credit reports accurate; and manage a data dispute system that is easy for consumers to access and use.

Experian wholly understands its responsibilities in these three areas and has significantly shifted its focus to the consumer. Experian has kept our pace serving consumers during the COVID-19 pandemic and will continue as our nation's economy recovers. We have responded completely and accurately to all consumer submissions to the CFPB complaint portal, even as submissions have increased. We believe most of his increase is due to third-party credit repair organizations that file disputes on accurate but negative information to try to game the system.

The number one priority at Experian is keeping consumer information safe and secure. With every front-page cybersecurity headline, both businesses and the public become increasingly aware of the high-stakes nature of this challenge. Experian is committed to achieving the highest possible levels of data security and integrity and are working, on our own initiative and with our regulators under continuous supervision, on this priority. We support enactment of a federal data security standard and breach notification law and have supported this since 2005.

Experian also supports this committee's goal of enhancing the accuracy of credit reports and improving consumers' experience through the dispute resolution process. We believe the best way to achieve and maintain improvements on behalf of consumers in both these areas is through a robust and continuous supervision and examination program administered by the Consumer Financial Protection Bureau. This program has been in place since 2013 and we have implemented many new initiatives as a result. The CFPB should continue to focus on ongoing improvements by credit bureaus, lenders, and all entities that furnish information to credit bureaus or use information from credit bureaus.

Experian has invested heavily in systems and processes to improve data accuracy as we continually strive to reach 100 percent accuracy. Stringent requirements are in place to identify and eliminate inaccurate data submitted monthly by approximately 10,000 data furnishers before it is included in a consumer's file. An important feature of this program is a monthly report to each furnisher describing any of their data we have rejected and why – and providing them with historical information about their data contributions and consumer dispute performance. These reports cover more than 99 percent of the data we receive each month. Through this transparent feedback loop, Experian is making continuous progress in eliminating errors even before data is submitted to us.

An important component of accuracy is to make credit reports accessible for consumers so they can easily review and dispute errors in their file. Experian's online dispute portal, including a mobile-optimized and highly rated app, makes it easier for consumers to submit disputes and to receive the results of those disputes. Consumers can also still easily reach us by telephone or mail.

Experian also supports the Committee's goal of creating more opportunities for financial inclusion and financial literacy. Studies suggest that as many as 60.4 million American adults are unlikely to be able to access fair and affordable credit. As you know, many consumers may not have a mortgage or credit cards, but they do make telephone, utility and other recurring payments. Experian is now accommodating this data through a ground-breaking product known as Experian Boost. We are delivering this data directly to lenders so they can expand their efforts to reach underserved consumers.

Experian Boost is a game-changer. It allows consumers the opportunity to safely and easily opt-in to having monthly payment information on accounts that are not reported to the CRAs included directly into their credit report, which can improve their credit score. Experian Boost is particularly helpful to consumers who are new to credit or have had financial challenges. So far, more than 6 million consumers have chosen to use Experian Boost to improve their credit score and gain access to credit.

Experian is also providing access to free credit monitoring, free credit reports, free credit scores and financial education to more than 40 million US consumers.

Experian is also partnering with lenders involved in the OCC's project REACh, or the Roundtable for Economic Access and Change, to identify new sources of predictive data that can be used to improve access to credit for underserved and marginalized consumers. Likewise, we would like to continue to work with this Committee toward the goal of removing barriers that prevent more predictive sources of data from being incorporated into consumer credit reports. This effort would generate positive economic benefits for millions of consumers.

I’d like to close by saying that Experian is proud of the improvements we have made in the areas of data security, data accuracy, in the dispute resolution process, and in advancing financial inclusion and financial literacy. Experian is dedicated to helping empower consumers to create a better future for themselves.

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

HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

May 26, 2021

Testimony of John Danaher

TransUnion

Chairman Green, Ranking Member Barr, and Members of the Committee, thank you for your invitation to be a witness at today's hearing.

My name is John Danaher, and I am Executive Vice President, Strategic Advisor for TransUnion's Consumer Interactive business.

TransUnion is a global information and insights company headquartered in Chicago, Illinois, with more than 4,000 employees in the United States and 8,200 worldwide. Consistent with our mission, we seek to help people around the world – through the power of information – identify and access opportunities that bring a higher quality of life. We strive to ensure fairness for consumers in the marketplace, through access to information, education and empowerment, and precision in the products and services we provide.

The Consumer Interactive segment provides solutions that help consumers manage their personal finances and take precautions against identity theft. Services in this segment include providing credit reports and scores, credit monitoring, fraud prevention and support, and financial management tools for consumers. We also provide credit monitoring solutions that help businesses respond in the event they have a data breach. Our products are provided through user-friendly online and mobile interfaces, accompanied by educational content and customer support. We are proud of our direct-to-consumer products and believe they truly help consumers achieve financial freedom and elevate their lives.

TransUnion also helps businesses identify underserved markets, extend opportunities for credit and employment, and mitigate business risks. We process more than 2 billion credit updates to our database every month, and match these to more than 236 million credit active Americans. At our core, TransUnion is a data technology company and a record keeper of financial information supporting the relationships between financial services companies and the consumers they serve. Supporting consumers – particularly the most historically disadvantaged groups of consumers – requires the entirety of the consumer credit ecosystem to work together. There are four core components of this ecosystem: the first and most crucial, of course, are consumers themselves, joined by; those who offer financial products to consumers and report related consumer payment information; the companies that develop and offer credit scores; and the consumer reporting agencies, who are tasked with maintaining the payment records and providing data and analytical tools to offerors of financial products. The tools we provide allow lenders and others to expand financial access and provide financial products to the greatest number of consumers possible while also accurately pricing risk in support of overall financial stability.

As a global information and insights company, we recognize our central role in the various markets in which we operate and we take seriously the accompanying responsibilities to accurately and fairly represent consumers. Reliable data stewardship – and the overall quality and integrity of our solutions – is a necessary precondition to carrying out our mission of using Information for Good. We are striving to address matters of racial equity and want to be at the vanguard of defining consumer-focused principles for the next generation of data use.

To that end, last year we launched TransUnion's Task Force on Racial Equity, one component of which is a review of our algorithmic tools and solutions designed to ensure they operate as intended. As the executive sponsor for the Task Force, I am responsible for overseeing this effort to ensure that all uses of TransUnion's products and solutions are consistent with our values and the goal of financial inclusion in the economies that we serve.

We appreciate the Committee's leadership in developing public policy to foster greater economic opportunity, racial equity, and consumer protection. It is undeniable that the COVID-19 pandemic is exacerbating pre-existing structural inequalities, with underrepresented Americans facing unique and significant challenges. TransUnion is committed to being part of the solution to these problems and we look forward to engaging with you, your Committee colleagues, and other stakeholders to develop solutions that support the most vulnerable among us.

How TransUnion is Working to Help Consumers During the Pandemic

Since the beginning of the pandemic, we have prioritized helping affected consumers secure the financial protection they need. Our position is clear: we believe every stakeholder in the consumer credit system – consumer reporting agencies, lenders, data furnishers, scoring companies, and policymakers – must come together to support consumers in a united manner. TransUnion has proactively adjusted our operations to do just that, and we are proud of our employees for rising to the occasion during this difficult time to continue providing essential services to consumers throughout the pandemic.

We are regularly communicating with lenders, property management firms, and data furnishers on how they can provide relief to customers through established hardship programs. We recognize it is incumbent on our industry to support the policy objectives of the bipartisan CARES Act and we are pleased that the accommodations provisions at the core of that law are working to protect consumers. We have also added resources online that directly inform consumers of how to work with their lenders if they are experiencing financial challenges. Importantly, TransUnion provides free credit monitoring, identity protection tools, and credit reports so Americans can monitor their financial health in real time. At the onset of the pandemic, TransUnion led the effort to expand the availability of free credit reports to all consumers on a weekly basis. We are proud to report that more than 166 million consumers have used our services to access their credit data.

TransUnion remains committed to working with federal and state governments, financial institutions, lenders, and fellow consumer reporting agencies to help consumers navigate adverse economic and credit circumstances resulting from the COVID-19 crisis. Underpinning this commitment is our belief that the continued integrity and viability of consumer credit markets will be critical to helping Americans weather the negative economic impacts of this crisis. During and after the pandemic, the ability to access credit products will be a critical financial lifeline for consumers.

How to Improve Credit Reporting and Credit Inclusion

Expanding credit access for consumers, with a particular focus on the most disadvantaged among us, is a core priority for TransUnion. It is a prerequisite that our processes ensure data integrity, information security, and adherence to FCRA requirements. But we are committed to far more than that and we aspire to bring the power of broadly available credit to all consumers. There are many ways that all stakeholders can partner to improve outcomes for consumers and benefit our economy. Collectively, we can empower consumers through more complete information that is updated in a timelier manner and resolve issues before consumers ever need to dispute them. During the pandemic, TransUnion partnered with consumer groups, racial justice organizations, and the Office of the Comptroller of the Currency on Project REACH, which sought to bring to market data assets that would support financial inclusion and expanded credit access. It would be a privilege to partner with this Committee on similar work and we have several recommendations to improve our industry and the consumer credit market more generally.

- **Alternative Data is Critical for Credit Inclusion:** Expanding the availability and use of alternative data would do more to broaden credit availability and benefit consumers than any other policy initiative. Incorporating more alternative data, particularly rental data, into our consumer credit system not only promotes financial inclusion, it is also a matter of fundamental economic justice. Monthly rent payments are the most significant payment that many consumers make – yet renters rarely receive credit for these payments because few property managers report payment data. California recently enacted innovative legislation to support the reporting of public housing payments, which will benefit renters most in need. Other consumer-empowering data sources that are currently outside the scope of traditional reporting operations are utility, mobile phone, and cable payments. TransUnion estimates that Congress enacting legislation to facilitate greater use of alternative data would improve credit scores and credit files for more than 40 million Americans.
- **Improving the Dispute Process:** The consumer dispute process is critical to our efforts to achieve maximum data accuracy. However, some bad actors in the credit repair space prey on credit vulnerable populations and significantly distort the dispute process, drawing resources away from consumers that need real help. To improve the consumer dispute process, the FTC

and CFPB should increase oversight of the credit repair industry to ensure consumers are not taken advantage of in their efforts to improve their credit. We also recommend that the CFPB reinstate the policies of the Obama-era CFPB requiring lenders to be the initial recipient of disputes before they are escalated to the agency and requiring third-party complaint filers to attest that they are not credit repair organizations.

- **Student Loan Reporting**: Student loans are often a consumer's first credit obligation and an important way for many consumers to begin establishing a credit history. Consistent payment for student loans often sets borrowers up for a lifetime of credit success, as lenders tend to extend other types of credit on better terms to young consumers who have shown an ability to manage their student loans. Consumer reporting agencies frequently provide guidance directing student lenders to report all loan data regarding a borrower as one account. Nevertheless, some student loan servicers continue to report each disbursement as a separate account, which, if a payment is missed, results in a disproportionate negative impact. TransUnion recommends policymakers encourage reporting standards for student loans to better support for our nation's student borrowers.
- **Timelier Reporting of Consumer Credit Events:** Timelier reporting of positive consumer payment events, particularly of critical credit events such as loan payoffs, would be beneficial to consumers. Since debt balances are updated on a monthly basis, this delay can result in disputes being initiated, or worse, a consumer being denied credit entirely or not getting the best rate for a financial product because their payoff has not yet been reflected in their credit report. TransUnion recommends timelier reporting of key credit events, such as loan payoffs, whenever feasible. This would enhance credit report accuracy and resolve issues before consumers dispute them.
- **Seeing Beyond the Score:** Finally, innovations such as trended data help consumers re-establish and improve their credit. TransUnion pioneered the development of trended data through our CreditVision suite of solutions to broaden the aperture on that factors that go into credit underwriting decisions. Instead of a traditional credit score, which provides a score representing a moment in time, our trended data tools consider a 30-month trajectory of a consumer to help lenders understand where they are coming from, and more importantly, where they are going. These new data approaches blend traditional credit reporting information with alternative credit data – such as deposit account history, short-term lending, and address stability – to help lenders extend credit at more favorable rates to more consumers. We've used trended data to help over 35 million previously credit invisible or disadvantaged consumers gain greater access to credit (many for the first time) and on better terms, and have the ability to score over 60 million more people versus traditional credit score models. Policymakers should support the expansion of these sorts of innovations and broaden their use in credit underwriting.

****

We commend this Committee and Congress for taking strong action to provide consumers and businesses economic relief by passing the CARES Act. TransUnion is committed to helping Americans protect their financial health during and after the pandemic. We look forward to working with Congress on balanced proposals that would increase transparency, foster financial inclusion, and empower consumers to better understand how their actions affect their ability to receive credit products and services.

I appreciate the opportunity to be with you today, and look forward to answering your questions.

Statement of Rebecca E. Kuehn
Partner, Hudson Cook, LLP
On Behalf of the Consumer Data Industry Association

Subcommittee on Oversight & Investigations
Committee on Financial Services
United States House of Representatives

Hearing on "Consumer Credit Reporting: Assessing Accuracy and Compliance"

May 26, 2021

Chairman Green, Ranking Member Barr, and members of the Subcommittee, thank you for the opportunity to appear before you. My name is Rebecca Kuehn, and I am a partner at the law firm Hudson Cook, LLP, where I chair the Credit Reporting, Privacy, and Data Security Practice Group. Earlier in my career, I worked at the Federal Trade Commission (FTC), where I was Assistant Director of the Division of Privacy and Identity Protection in the Bureau of Consumer Protection, which oversees issues related to consumer privacy, credit reporting, identity theft, and information security. There, I led the Fair Credit Reporting Act program, and oversaw the Commission's enforcement, outreach, and rulemaking activities in that area.

I am appearing today on behalf of the Consumer Data Industry Association (CDIA).

CDIA is the voice of the consumer reporting industry including the nationwide credit reporting agencies, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help all consumers – regardless of age, race, gender identity, sexual identification or any other discriminatory qualifier – achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud.

Through data and analytics, CDIA members help to ensure fair and safe transactions for consumers, facilitating competition and expanding consumers' access to financial and other products suited to their unique needs. CDIA members' market-leading innovations prevent fraud and ease people into homes, jobs and cars with quiet efficiency. CDIA members work every day to empower economic opportunity for consumers, businesses, government agencies and nonprofits.

Credit reporting companies and other CDIA members are helping solve the problem of the unbanked and credit invisible populations by expanding the kinds of data collected, such as rental history or payments on telephone and other utility bills, giving lenders and others information that allow more consumers to responsibly access traditional financial services and integrate consumers into the mainstream financial system. In 2019, the Consumer Financial Protection Bureau (CFPB) noted in its Report on Fair Lending that roughly 20% of the adult population in the United States have no credit records, or such limited credit records that they are unable to fully participate in the marketplace for credit.[1] CDIA strongly believes that use of alternative data such as rental payments, utility and telecom payments will expand access to credit and bolster financial inclusion efforts and welcomes legislation design to remove barriers to report and use this data.

Today I want to focus on three key points:

- The accuracy of credit information and protecting the integrity of the dispute resolution system;

---

[1] Consumer Financial Protection Bureau, *Fair Lending Report of the Bureau of Consumer Financial Protection* (June 2019), p. 8, *available at*: https://files.consumerfinance.gov/f/documents/201906_cfpb_Fair_Lending_Report.pdf.

- Increases in consumer submissions to the CFPB complaint portal as a result of the growth of credit repair companies, an ongoing issue throughout the credit reporting system; and
- The impact of COVID-19 on consumers' credit, the protections enacted by the CARES Act, and the steps that CDIA and its members have taken to help consumers during the COVID-19 pandemic.

I. Accuracy and Dispute Resolution

Consumer reporting agencies (CRAs) help the American consumer and larger economy by maintaining a robust consumer reporting system that facilitates consumer credit, employment and housing transactions nationwide. CRAs strive to continually improve the reports they provide and the systems through which they deliver them, including the accuracy of consumer report information. In any discussion of accuracy, it is important to start with an understanding of the framework established by the Fair Credit Reporting Act (FCRA)[2] and the steps taken by regulators and the industry to ensure that high standards are achieved.

The Standard for Accuracy

CRAs have many duties under the FCRA, principal among these is the responsibility to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."[3] Congress did not require consumer reports to meet a standard of perfection, nor did it impose a strict liability standard for inaccuracies. FCRA Section 602(b), 15 U.S.C. § 1681(b), states that "[i]t is the purpose of [the FCRA] to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce. . . with regard to the confidentiality, accuracy, relevancy, and proper utilization of [consumer report] information in accordance with the requirements of this title."

---

[2] 15 U.S.C. §§ 1681, *et seq*.
[3] Section 607(b), 15 U.S.C. § 1681e(b).

The FTC has recognized the need for balance. In its report to Congress on the credit reporting system, the FTC noted that the FCRA was designed to provide CRAs flexibility in their approach to accuracy: "Rather than precisely regulating the way that CRAs maintain their files, Congress opted to hold CRAs accountable for their procedures, and to give consumers the opportunity to check the accuracy of their files."[4] The right of a consumer to access and dispute inaccurate information is an important component of accuracy – the FCRA "promotes accuracy by creating a self-help mechanism that empowers consumers to obtain copies of their reports and dispute erroneous or incomplete information."[5]

The FCRA also focuses on data provided by "furnishers," which are entities that have some relationship with the consumer and are providing data to consumer reporting agencies for inclusion in a consumer report. Reporting accurate information about consumers begins with the data coming into the system. As part of their accuracy procedures, CRAs screen potential furnishers and their data before they are even accepted as a furnisher. The nationwide consumer reporting agencies obtain information electronically using a standardized reporting format (the Metro 2 format) to facilitate the accurate and consistent reporting of data throughout the credit reporting system. Additionally, CRAs analyze the furnished data and perform data quality

---

[4] Federal Trade Commission, *Report to Congress Under Section 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (FACTA Report), December 2004, at p. 8, n. 9, *available at* https://www.ftc.gov/sites/default/files/documents/reports/under-section-318-and-319-fair-and-accurate-credit-transaction-act-2003/041209factarpt.pdf.

[5] *See* Federal Trade Commission, *Prepared Statement of Federal Trade Commission, on Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information, Before the House Committee on Financial Services* (FTC Testimony), June 19, 2007, at. p. 4, *available at* https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-credit-reports-consumers-ability-dispute-and-change/070619credittestimony.pdf; *see also* FACTA Report, at p. 8 ("In guaranteeing consumers access to their own credit reports and creating the dispute process, Congress recognized that consumers have a critical role in ensuring the accuracy of credit reports.").

checks prior to adding the data to credit files.[6] Over time, these processes have evolved and improved, demonstrating CDIA members' continuous commitment to maintaining a high degree of accuracy in the data they report.

There is also a market incentive to ensure maximum possible accuracy. Users of credit reports rely on accurate data to make critical decisions about loans, employment, government benefits, and other important business needs. Financial institutions require accurate data to perform sound risk assessments and will look for a new provider if the data they obtain has systemic problems. Each CRA strives to meet these expectations for its customers.

As part of their overall approach to accuracy, the nationwide consumer reporting agencies have made significant investments in consumer dispute resolution. Much of the focus on improvements to consumer dispute resolution has been on making it easier for consumers to identify and correct potential errors in their files. The National Consumer Assistance Plan (NCAP), developed out of a voluntary settlement agreement with 30 state attorneys general and the nationwide consumer reporting agencies, was an important milestone in these efforts. To ensure accuracy, the nationwide consumer reporting agencies focused on improvements in several key areas:

1. Limiting collections being reported, including the type of collections, the timing of reporting and updating of reporting, and requiring debt collectors to include the name of the original creditor;
2. Retiring legacy reporting formats and requiring all furnishers to report in the Metro 2 format;

[6] *See* 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* (Key Dimensions), December 2012 (noting that CRAs have established standardized reporting formats and that they "deliver credit reporting information to users in standardized electronic formats"), at pp. 3, 10, 14.

3. Prohibiting reporting on medical debts until at least 180 days have passed and removing medical debts paid or being paid by insurance companies from consumer reports to allow time for the insurance claim process;
4. Requiring the date of birth to be reported for authorized users; and
5. Establishing additional standards for ensuring the accuracy of public record information.

Since NCAP, the nationwide consumer reporting agencies have continued to work together to further improve the accuracy of consumer reports and encourage consumer education and empowerment. Today, consumers have a wide variety of tools available to them to proactively manage their credit, including access to free credit freezes and free annual credit reports from the nationwide consumer reporting agencies. The nationwide consumer reporting agencies all have enhanced their focus on education, empowering consumers with information about responsible credit management.

In addition, the nationwide consumer reporting agencies also invested in improving the dispute process in several key ways, as follows:

1. Sharing information about consumers who are reported as deceased;
2. Improving notices to consumers about the results of dispute investigation, the option to submit documents or a statement on their file, and the right to obtain an additional free consumer report after the investigation is complete;
3. Enhancing the e-Oscar system that is used by nationwide consumer reporting agencies and data furnishers to communicate dispute information and the results of the investigations, including any updates or deletions, and providing for additional dispute analysis; and

4. Implementing an escalation process for addressing disputes related to mixed consumer files and identity theft.

These enhanced dispute systems, processes, and analytics will further serve to ensure the accuracy of consumer report information.

Credit Reports Have a High Degree of Accuracy.

CDIA members strive to be as accurate as possible, and creditors and employers rely on accurate consumer reports to support effective decision-making. The FTC recognized that there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports."[7] The Federal Reserve Board said that "[o]verall, research and creditor experience has consistently indicated that credit reporting company information…generally provides an effective measure of the relative credit risk posed by prospective borrowers."[8]

Comprehensive studies demonstrate that credit reports have a high rate of accuracy where accuracy is judged by whether the error has a material impact on a consumer's credit score. In 2011, the Policy and Economic Research Council (PERC) looked at over 81,000 credit accounts on consumers' credit reports. This study was the most comprehensive and statistically validated study to ever be performed on the accuracy of data collected and maintained by the nationwide consumer reporting agencies, Equifax, Experian and TransUnion. The study was a third-party, peer-reviewed study dealing with credit report errors and their material effect on the creditworthiness of consumers. In this study, just 0.93% of all credit reports examined by the consumers prompted a dispute that resulted in a credit report correction and an increase of a

---

[7] FACTA Report, at p. 7.

[8] Federal Reserve, *An Overview of Consumer Data and Consumer Reporting, Federal Reserve Bulletin,* at pp. 50-51 (citations omitted), *available at* http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf; *see also* Federal Reserve, *Credit Reporting Accuracy and Access to Credit, Federal Reserve Bulletin,* Summer 2004, p. 320.

credit score of 25 points or greater.[9] Similarly, a 2012 study conducted by the FTC showed that 98.7% of all credit reports are materially accurate.[10] The FTC data showed that just 2.2% of participants had errors in their reports that lowered their score tier by one or more tiers, such as moving them from prime to subprime.

Congressional, Industry, and Regulatory Steps Leading to Improved Accuracy

As the credit reporting ecosystem has evolved, the FCRA has also evolved to address changing needs and issues arising in the consumer credit space. In particular, the FCRA has undergone both occasional fine tuning and significant revisions, including two in 1996 and 2003. In 1996, Congress amended the FCRA to impose new responsibilities on furnishers, the lenders and other companies that provide information to consumer reporting agencies.

The 2003 Fair and Accurate Credit Transactions Act (FACT Act) added a number of new or amended provisions to the FCRA designed, among other things, to prevent and assist victims of identity theft and enhance consumer privacy and consumer report accuracy. Significantly, the FACT Act increased consumers' opportunities to review their credit records and identify issues. Consumers have the right to receive a free credit report from the nationwide CRAs every twelve months, through the centralized source at www.annualcreditreport.com, as well as from nationwide specialty CRAs.

The FACT Act and subsequent amendments to the FCRA also increased transparency into consumers' credit scores. The FACT Act gave consumers the ability to purchase a credit score from a CRA and required mortgage lenders to provide score disclosures. The Risk Based

---

9 Turner, Michael A., Robin Varghese, and Patrick D. Walker (2011). U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts (PERC Study).

10 Federal Trade Commission, *Section 319 of the Fair and Accurate Credit Transactions Act of 2003: Fifth Interim Federal Trade Commission Report to Congress Concerning the Accuracy of Information in Consumer Reports* (FTC Report), December 2012, *available at* http://www.ftc.gov/os/2013/02/130211factareport.pdf.

Pricing Rule, promulgated by the FTC and the Federal Reserve in 2011, permitted users of consumer reports that engage in risk based pricing to comply with the rule by providing consumers who did not receive favorable rates with a specific notice, or, alternatively by providing each applicant with a credit score disclosure and information on where to obtain a copy of their credit report. As a result of subsequent amendments to the FCRA, there is a requirement to provide credit scores on risk-based pricing notices and adverse action notices, when a credit score was used in whole or in part to make a decision about a consumer.

The FACT Act extended a significant remedy to consumers whose consumer reports were impacted by identity theft. Specifically, victims are entitled to obtain underlying documentation associated with fraudulent transactions from creditors and have assurances that creditors will not furnish information resulting from fraudulent transactions to CRAs. FCRA Section 605B adds further protections to victims of identity theft by requiring CRAs to block the reporting of any information that the consumer identifies as resulting from identity theft, within four business days of receiving the following: (1) appropriate proof of the identity of the consumer; (2) a copy of the identify theft report; (3) the identification of the information resulting from the identify theft; and (4) a statement by the consumer that the information is not information relating to any transaction by the consumer. The CRA must then promptly notify the furnisher of the block and the identity theft report. This FCRA Section 605B process gives the CRA and the furnisher the opportunity to investigate the blocked transaction to understand whether there are other steps that could have been taken to detect the identity theft and to ensure that the victim's account is not subject to collection activity.

The FACT Act expanded the responsibilities of furnishers with respect to accuracy. Primarily, and most significantly, the FACT Act directed federal agencies to promulgate regulations requiring furnishers to establish reasonable policies and procedures to comply with guidelines to be specified by the agencies regarding the accuracy of the information submit to all CRAs.[11] Second, the FACT Act granted consumers the right to dispute the accuracy of information appearing on their consumer reports directly with the furnisher of the disputed information. Third, the Act prohibited furnishers from re-reporting disputed information after it was found to be inaccurate or incomplete. The Furnisher Rule implemented these requirements, assuring furnishers report information on consumers accurately and with integrity.[12]

In 2012, the CFPB began supervising the credit reporting companies for, among other things, compliance with the FCRA, making accuracy a focus in its examination efforts. The nationwide consumer reporting agencies have been subject to continuous examination cycles, where they have been examined for the adequacy of their compliance management systems, their procedures to ensure the maximum possible accuracy of credit reports, their dispute handling procedures, and other important and highly regulated functions, such as data security. The nationwide consumer reporting agencies expend substantial resources responding to examiner requests and must maintain transparency with their examiners. If the examiners discover any areas in which a CRA is not living up to its obligations, the CFPB can resolve the issue through the supervisory process, or, if the issue is sufficiently serious, choose to bring a public enforcement action.

In its March 2017 Supervisory Highlights reports, for example, the CFPB detailed improvements implemented by CRAs including review of data governance programs, establishment of quality control programs, enhancement in oversight of third-party public records providers, review of new and existing furnishers and monitoring of furnisher dispute

[11] *See* 16 C.F.R. 660, *et seq.* (The Furnisher Rule).
[12] *Id.*

data. In a more recent issue of Supervisory Highlights, the CFPB included discussion of furnisher reviews and examiner's findings with respect to furnisher compliance with FCRA accuracy and dispute investigation requirements. The CFPB has also issued supervisory guidance directed to furnishers of information regarding reporting of accurate information and investigate disputes. Through its supervisory process, the CFPB gains insights into various CRAs and can provide guidance to other CRAs on process improvements, improving the entire ecosystem.

The Credit Repair Industry

A robust dispute process is an important tool to maintain the accuracy of information in consumer reports. When a consumer identifies information in a consumer report that appears to be incorrect, the consumer may submit a dispute directly to the furnisher of the information or, alternatively, submit a dispute to the CRAs. The CRAs and furnishers must investigate the disputed information.[13] The nationwide consumer reporting agencies continually look for opportunities to enhance the efficiency of the investigation process so that consumer disputes can be resolved as expeditiously as possible. Undoubtedly, new technology and software continue to help evaluate the nature of disputed information and allow for swift detection and correction of errors, further ensuring the accuracy of the information on consumer reports.

The credit repair industry abuses this important consumer right by frivolously or fraudulently disputing knowingly accurate information in CRA databases, harming the accuracy and integrity of the credit reporting system and, more importantly, harming consumers. As the FTC observed, "unscrupulous credit repair firms can degrade the accuracy and quality of information in credit reports."[14] To the extent that these credit repair activities are successful in

---

[13] 15 U.S.C. § 1681i; 15 U.S.C. §§ 1681s-2(a)(8) and (9).

[14] FTC Testimony, at p. 18 citing to *FTC v. ICR Services, Inc.*, Civ. No. 03-C-5532 (N.D. Ill. 2003).

removing accurate information, they affect a lender's ability to appropriately assess the risk of their lending decisions, which in turn affects lending quality overall. Consumers may be approved for loans that are beyond their ability to pay, leading to over-indebtedness. Misuse of the dispute process is detrimental to consumers and the lenders that rely on accurate information to appropriately assess risk.

Credit repair companies provide misinformation or mislead consumers into disputing knowingly accurate information simply because it is negative, and in some cases, when there is no negative information at all. In other cases, consumers are expecting instant updates of information and may dispute a tradeline that was accurate at the time it was furnished and which will be updated in the normal furnishing process. For these "services," credit repair companies charge substantial fees. In an effort to curb these abuses, the FTC and the CFPB have brought enforcement actions against businesses engaging in fraudulent credit repair.[15]

One such enforcement case illustrates the harms to consumers. In an enforcement action brought in 2019, the FTC charged the defendant credit repair companies with violations of federal law based on their false claim that they "can improve consumer's credit scores by

---

[15] The FTC, which enforces the Credit Repair Organizations Act (CROA), 15 U.S.C. §§ 1679-1679l, and Telemarketing Sales Rule, 15 CFR Part 310 recently brought actions against Grand Teton Professionals, LLC d/b/a Deletion Expert, Inquiry Busters and Top Tradelines, and a group of related companies, for among other things, operating unlawful credit repair scams that deceived consumers across the country. *See* Complaint in case of *Federal Trade Commission v. Grand Teton Professionals, LLC, et al.*, Civ. No. 3:19-cv-00933 (D. Conn. June 17, 2019 (https://www.ftc.gov/news-events/press-releases/2019/06/ftc-stops-operators-fake-credit-repair-scheme). The FTC filed other cases to protect consumers from fraudulent credit repair schemes. *See, e.g., Federal Trade Commission v. Strategic Student Solutions, LLC, et. al.,* Civ. No. 17-cv-80619 (S.D. Fla. May 15, 2017) https://www.ftc.gov/news-events/press-releases/2017/05/ftc-stops-operators-unlawful-student-debt-relief-credit-repair. The CFPB has used its authority under the Dodd Frank Act to pursue unfair, deceptive, and abusive acts or practices, as well its authority to enforce the Telemarketing Sales Rule, to bring enforcement actions against Prime Marketing Holdings, LLC for misleading consumers about the costs and benefits of services, and charging illegal fees. *Consumer Financial Protection Bureau v. Prime Marketing Holdings, LLC*, Civ. No. 16-cv-7111 (C.D. Cal. Sept. 22, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-credit-repair-company-misleading-consumers-and-charging-illegal-fees/.

removing all negative items and hard inquiries from their credit reports or by adding seasoned tradelines to their credit histories."[16] The consumer declarations submitted to the court by the FTC illustrate the financial harms that consumers can suffer – paying thousands of dollars each for the empty promise of a quick fix.

In particular, one consumer, Jennifer, was charged $1,999 in exchange for the promise that the process of removing all negative items and hard inquiries (whether accurate or not) would be completed within 8 weeks. Another consumer, David, paid a $2,250 up front fee to remove certain late payments from his credit report. Neither Jennifer nor David received the services they were promised. Yet another consumer, Kenneth, who wanted to improve his credit to qualify for a business loan to start his own company, paid $3,000 to have the credit repair company raise his score to 720 in 30-60 days. After about a year, Kenneth was able to raise his score, but solely through his own efforts and changes that he made, not thanks to the credit repair company.[17]

This case also highlights one of the other ways in which credit repair operators abuse the tools that were designed to help consumers. The FTC further alleged that the companies "encourage consumers to file an identity theft affidavit to remove negative information and inquiries, even when consumers explain that they were not victims of identity theft."[18] The misuse of the FTC identity theft report as a tool for credit repair has a significant, negative effect on the overall accuracy and reliability of credit reports, as it blocks accurate information from being reported and impacts a creditor's ability to collect on legitimately-incurred debts.

---

16 *Federal Trade Commission v. Grand Teton Professionals, LLC, et al.,* Case No. 3:19-cv-00933-VAB (D. Conn.), Complaint at ¶ 20 (*Grand Teton Complaint)* (filed June 17, 2019).

17 *See Federal Trade Commission v. Grand Teton Professionals, LLC, et al.,* Case No. 3:19-cv-00933-VAB (D. Conn.), Declarations in Support of Motion for Temporary Restraining Order (Dkt. Nos. 10-1, 10-2, and 10-3) (filed June 17, 2019)

18 *Grand Teton Complaint* at ¶ 42.

Credit repair companies submit multiple, if not dozens of disputes for each consumer, whether the data are accurate or not. The time and resources expended investigating disputes made by credit repair companies take away time and resources from focusing on legitimate disputes, which could otherwise be handled more quickly. The disputes are often baseless and lack any supporting documentation, but still require sufficient attention and effort of the nationwide consumer reporting agencies and data furnishers. These disputes artificially inflate the statistics about dispute volumes and types of disputes and also distort the statistics reflected in the CFPB's complaint portal (which is similarly misused by credit repair companies), making the system appear less accurate than it is.

II. The CFPB's Recent Report on Complaints

In a recent report on its consumer complaint portal, the CFPB noted that consumer submissions related to consumer reporting agencies jumped 54% in 2020. [19] However, a deeper analysis of the submissions show there has not been an increase in complaints about consumer reporting agencies – such as a consumer expressing dissatisfaction about something a consumer reporting agency has done, problems with contacting a consumer reporting agency, how a dispute was handled, or a problem with a product. Instead, the data reveals that 73% of submissions related to consumer reporting agencies were disputes, which are subject to an established statutory scheme.[20]

[19] Bureau of Consumer Financial Protection, Consumer Response Annual Report, January 1 – December 31, 2020 (March 2021), *available at*: https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf

[20] In order to provide accurate complaint data associated with the nationwide consumer reporting agencies and other consumer reporting agencies, CDIA believes that the CFPB should work to differentiate disputes. This differentiation, which should be in both the design of the portal and the information that the CFPB makes available to consumers, should separate those disputes that are subject to the established FCRA statutory scheme from the complaints that may be submitted through the CFPB portal.

Based on the experiences of CDIA members, the increase in consumer submissions largely reflects the increased use of the CFPB complaint portal by credit repair companies, which now seek to take advantage of the CFPB complaint process as another avenue to flood the system with disputes in an effort to remove accurate, negative information from a consumer's credit report. Credit repair operators submit disputes simultaneous to the furnishers, the credit reporting agencies, and the CFPB complaint portal in the hopes that something slips through. The CFPB's report acknowledges that some consumers are working with credit repair companies, although the report does not distinguish between submissions filed directly by consumers and by third parties. The inclusion of disputes submitted by credit repair operators distort the statistics reflected in the CFPB's complaint portal.[21]

III. Reporting Under CARES Act During COVID-19

The nationwide consumer reporting companies have long had systems in place to minimize the impact of disasters and other singular situations on consumers' credit standing. These programs also extend to consumers' financial hardships outside of a disaster.

- Lenders and creditors have programs, like forbearance programs and deferred payment plans, to help consumers through financial distress, including natural and declared disasters.
- Credit bureaus have long had codes in place to enable lenders and creditors to report consumers in financial distress (forbearance plans, deferred payment plans) or who are subject to natural or declared disasters.

[21] In light of the pandemic, there was some concern that the increase in complaints can be attributed to COVID-19. But the report suggests this may not be entirely true. 32,100 complaints mentioned coronavirus or related words, representing just 6% of submissions in 2020.

- These credit reporting codes for consumers have been in place since before September 11, and have helped consumers then, now, and in the hurricanes, floods, fires, tornadoes in between.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed by Congress in March 2020, implemented a number of additional protections for consumers and their credit files. The CARES Act requires lenders and creditors who agree to account forbearance or modified payments to report those obligations as "current" if the consumer has trouble making a full payment during the COVID-19 crisis.[22] In addition, the CARES Act provides temporary relief for federal student loan borrowers, suspending monthly payments and interests for loans in repayment through September 2021. For those federal student loans, the CARES Act requires that the payments that have been suspended be treated as it if were a regularly scheduled payment made by a borrower.[23] The CARES Act also provided additional relief for federal mortgage loans.[24]

Federal and state banking regulators have encouraged financial institutions to work with consumers during this public health emergency. These agencies have "encourage[d] financial

[22] *See* CARES Act, Section 4021. Under this section, furnishers of information to credit reporting agencies who agree to account forbearance, or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as "current" or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current. This applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement. Such credit protection is available beginning January 31, 2020 and ends at the later of 120 days after enactment or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

[23] CARES Act, Section 3513.

[24] CARES Act, Section 4022(b)(2) ("Duration of Forbearance. Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.").

institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations because of the effects of COVID-19."[25]

And there are signs that, despite the challenges that the pandemic has created, consumers have been weathering the storm. The national average FICO score increased by seven points in 2020, the largest annual improvement in at least a decade.[26] Consumers reduced their credit card debt by 14%, which impacts credit utilization, and the portion of consumers with a subprime score decreased nearly 3%.[27] A FICO spokesperson said that for 2020, "[m]issed payments reported are down, consumer debt levels are decreasing and the significant steps taken by both the government [with] stimulus spending and private sector [with] lender payment accommodations to help consumers affected by COVID-19 are all contributing to this trend in average score."[28]

The consumer reporting industry is doing its part to help consumers and the economy during the pandemic[29]. Following the enactment of the CARES Act, CDIA issued guidance to help furnishers report accommodations under CARES Act[30] and to report accounts after accommodations end.[31] CDIA has provided numerous training sessions to furnishers on the CARES Act reporting requirements.

---

[25] Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Agencies Joint Statement, March 22, 2020).

[26] Experian 2020 Consumer Credit Review, https://www.experian.com/blogs/ask-experian/consumer-credit-review/.

[27] *Id.*

[28] *Id.* These findings were consistent with what the CFPB reported early in the pandemic. In a report issued in August 2020, the CFPB noted that from March 2020 to June 2020, consumers had not experienced significant increases in delinquency or other negatives credit outcomes following the onset of the COVID-19 pandemic, and that credit card balances fell substantially. https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-examines-pandemic-impact-on-consumer-credit/.

[29] https://www.cdiaonline.org/covid-19/.

[30] https://cdia-news.s3.amazonaws.com/COVID-19/CRA+Data+Reporting++COVID-19+CARES+Act+Guidance+4-2-2020-2.pdf.

[31] https://cdia-news.s3.amazonaws.com/CARES+Act+Post-Accommodation+Reporting+Guidance.pdf.

The three nationwide consumer reporting agencies each have COVID-19 resources on their websites to help inform consumers of the options and resources available to help them manage their credit during the pandemic.[32] To help people across the country manage their financial health during the ongoing hardship caused by COVID-19, the three nationwide consumer reporting agencies voluntarily increased the number of free credit reports available to consumers from once per year to once per week through April 20, 2022. These companies also have offered a number of other free services to consumers during the pandemic, including credit monitoring.[33] As the nation works towards recovery, CDIA and its members are committed to providing consumers with the tools that they need to be knowledgeable about their financial information.

* * *

Thank you again for the opportunity to testify before you today. I am happy to answer any questions.

[32] https://www.equifax.com/personal/covid-19/coronavirus-manage-personal-finances/; https://www.transunion.com/covid-19; https://www.experian.com/blogs/ask-experian/coronavirus/.
[33] https://www.cdiaonline.org/covid-19/.

National Consumer Law Center
Fighting Together for Economic Justice

Testimony before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Regarding

"Consumer Credit Reporting: Assessing Accuracy and Compliance"

May 26, 2021

Chi Chi Wu

Staff Attorney

National Consumer Law Center

7 Winthrop Square, 4th Fl.

Boston, MA 02110

617-542-8010

cwu@nclc.org

Testimony of Chi Chi Wu, National Consumer Law Center
Before the U.S. House of Representatives Committee on Financial Services
Subcommittee on Oversight and Investigations
regarding
"Consumer Credit Reporting: Assessing Accuracy and Compliance"
May 26, 2021

Introduction and Summary

Chairman Green, Ranking Member Barr, and Members of the Subcommittee, thank you for inviting me to testify today regarding assessing the accuracy and compliance of the consumer credit reporting industry. I offer my testimony here on behalf of the low-income clients of the National Consumer Law Center.[1]

NCLC has long advocated for stronger laws and regulation to ensure accuracy and fairness in the U.S. credit reporting system and to reform Equifax, Experian and TransUnion, known as the nationwide consumer reporting agencies under the Fair Credit Reporting Act (FCRA) and colloquially as "credit bureaus." It's been two years since I last testified before the full House Financial Services Committee about this very same topic and the situation has only gotten worse. The same problems and abuses continue to inflict harms on consumers, including:

- Accuracy problems such as:
    - Mixed files, where the credit histories of two different consumers are mixed together
    - Identity theft accounts not being properly removed from the victim's file
    - Falsely being declared dead
    - Errors by the creditors and debt collectors who supply information to the credit bureaus, *i.e.,* "furnishers." This includes a new type of inaccuracy – violations of the CARES Act credit reporting protections

- A broken dispute resolution system that is over-automated and uniformly biased against consumers, almost always taking the side of the creditors and debt collectors that supply information.

Indeed, these problems may have only increased. Complaints to the Consumer Financial Protection Bureau (CFPB) about credit reporting problems have doubled in the last year. The credit bureaus claim this increase is all due to credit repair, but there is no evidence of that, as the

[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by abuses from credit reporting agencies from every part of the nation. It is from this vantage point that we supply these comments. *Fair Credit Reporting* (9th ed. 2017) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, with editorial review by Carolyn Carter and assistance from Leonard Bennett, Sylvia Goldsmith, Matthew Osborne, Joanne Faulkner and other consumer attorneys.

CFPB itself has noted. In fact, there is some indication that, for all their complaints, the credit bureaus have entered into agreements to cooperate with credit repair firms.

We've also seen new problems such as the credit bureaus selling novel products that they do not treat as "consumer reports" governed by the FCRA. As a result, consumers have no way to see what these products are saying about them, let alone try to fix errors. This can harm consumers, for example those who are wrongfully tagged as a "fraud risk."

And of course, during the past 15 months, we've experienced a huge financial disruption caused by the COVID-19 pandemic. This has resulted in massive spikes in job losses, severe economic dislocation, and an impending threat of a tsunami of evictions and foreclosures. All of these events have or could have impacts on consumers' credit scores. While the CARES Act has helped, it has not been enough. We should have a moratorium on negative credit and consumer reporting for the COVID-19 pandemic period.

A. Our Financial Good Names

Credit reports and credit scores play a crucial role in consumers' lives, and their importance has only grown in recent years. Of course, credit reports and scores can determine a consumer's ability to obtain credit and the amount they have to pay for it, which affects their ability to purchase a home – the pathway to establishing middle class wealth for most consumers But even for renters, 90% of landlords use credit reports and scores,[2] which means a bad score could shut out a renter out of apartments in a decent school district or even permanent housing. An article in the New York Times Magazine just this past Sunday documented how much a bad credit score can hurt the ability of many Americans to simply find a stable roof over their heads:

> Without any say in the matter, Americans are now labeled with a new layer of identity: a three-digit judgment of economic worthiness. "It's a number that went from being nonexistent to being a gatekeeper to getting housing," says Lisa Servon of the University of Pennsylvania, the author of "The Unbanking of America." The $14.4 billion credit-reporting industry in the United States — the consumer-credit subset of that market is dominated by the big three: Experian, TransUnion and Equifax — quietly assumed a new yet profound role in the American class system to the extent it influenced who could live where and who received a second chance after financial disaster.
>
> * * * * *
>
> All this financial surveillance of America's poor has helped lead to the creation of a permanent credit underclass. A survey conducted in the fall of 2018 in Norcross, Ga., a city of about 17,000 outside Atlanta, concluded that nine of the city's 14 hotels, motels and extended stays had become "primarily residential facilities." When the respondents — 70 percent of whom were Black — were asked to name the biggest barrier to more permanent housing, one person after another cited bad credit. "They are trapped by the credit bureaus," says Malik Watkins, an affordable-housing researcher at the Carl Vinson Institute of Government at the University of Georgia, who was an author of the survey. In

[2] Transunion SmartMove, TransUnion Independent Landlord Survey Insights, Aug. 7, 2017, https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page.

> Gwinnett County Public Schools, the largest school system in Georgia, 91 bus stops at hotels, motels or extended stays pick up nearly 600 students.[3]

In addition, credit reports and scores can affect whether and at what price Americans can obtain insurance and hence their ability to own a car. Some employers use credit reports, affecting a consumer's ability to find a job. Even hospitals have been known to pull a credit report before offering medical services[4] and the Department of Homeland Security had included a credit score check in its now-vacated Public Charge Rule.[5] It's essentially the report card for a consumer's financial life.

Yet for such an important record, credit reports and scores suffer from profound problems and abuses. They reflect huge racial disparities, with more than 50 percent of white households having a FICO credit score above 700, compared with only 20.6 percent of black households,[6] a finding that is similar to a dozen earlier studies on the topic.[7] Members of the Subcommittee can check out statistics for their own states and counties using the Urban Institute's Credit Health app: https://apps.urban.org/features/credit-health-during-pandemic/.

Credit scores and reports also rely too much on the past, trapping unfortunate Americans who stumble one time into a vicious downward spiral when they are shut out of opportunities for jobs and apartments.[8] And as this hearing focuses on, credit reports are still too full of errors - parents and students would never accept report cards so full of mistakes and inaccuracies.

As many know, the often-cited 2012 Federal Trade Commission (FTC) study on credit reporting errors found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it.[9] With an estimated 208 million Americans in the credit reporting system,[10] this means that 42

---

[3] Mya Frazier, When No Landlord Will Rent to You, Where Do You Go?, N.Y. Times, May 23, 2021, https://www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html?referringSource=articleShare

[4] PJ Randhawa & Erin Richey, KSDK News, Nov. 21, 2020, Why some hospitals run credit checks on patients, https://www.ksdk.com/article/news/investigations/hospitals-want-your-credit-score-for-what/63-b360768d-a138-40f6-b572-e3fa0bc95526.

[5] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,503 (final rule Aug. 14, 2019). Regarding the current status of the rule, *see* USCIS, Public Charge Letter to Interagency Partner, April 12, 2021, https://www.uscis.gov/sites/default/files/document/notices/SOPDD-Letter-to-USCIS-Interagency-Partners-on-Public-Charge.pdf.

[6] Jung Hyun Choi, et al., Urban Inst., Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets (Nov. 2019), https://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets, at 8.

[7] Earlier studies are listed in National Consumer Law Center, Policy Brief: Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination, May 2016, https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

[8] National Consumer Law Center, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, December 2013, https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

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

[10] Kenneth Brevoort, Philipp Grimm & Michelle Kambara, CFPB Office of Research, CFPB Data Point: Credit Invisibles 12 (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

million consumers have errors in their credit reports, and 10 million have errors that can be life altering.

Another indication of the massive accuracy problems is the dramatic explosion during the pandemic of complaints to the CFPB about credit reporting. In 2020, the CFPB received over 319,000 complaints about credit or consumer reporting, over twice as many as in 2019 and constituting 59% of the overall complaints received by CFPB last year. [11] Since the CFPB started accepting complaints about credit reporting in December 2011, there have been over 700,000 such complaints.[12] And in 2021, there are already over 90,000 credit reporting complaints in the first four months, constituting 59% of complaints to CPFB in the first third of the year.[13]

The level of errors in credit reports and volume of complaints is unacceptable for an industry so important to the financial lives of Americans. After 50 years of advocacy, legal changes, regulation, and enforcement, we are still faced with a fundamentally flawed credit reporting system. As the CFPB has noted, "experience indicates that [the credit bureaus] lack incentives and under-invest in accuracy."[14]

To understand why the credit reporting system is so dysfunctional, we must always keep in mind two critical facts:

1. Credit bureaus are entirely private companies that are publicly traded, which means their highest duty is to shareholder profit, not the public good or the American consumer.

2. The paying clients of credit bureaus are not consumers, but the creditors and debt collectors who furnish or use the information contained in the credit bureaus' databases.

The fact that these are private, profit-seeking companies explains why the credit bureaus are expanding their products into uses that ultimately harm Americans and contribute to the massive inequality in our nation. The fact that their customers are creditors and other users of information explains the unacceptable error rates and bias against consumers who complain about errors.

These factors are why it's time for a new paradigm for credit reporting, a public credit registry. While public agencies are far from perfect, at least they would not have profit-making as their top priority. They would be responsive to public pressure and government oversight. Most importantly, they could prevent the use of credit reports and scores for purposes such as employment or rental housing, where they are inappropriate and widen the already yawning racial and economic inequality in this country.

---

[11] Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2020 (March 2020), at 9, https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[12] Data generated from CFPB Consumer Complaints Database, https://www.consumerfinance.gov/data-research/consumer-complaints/search/ (viewed May 22, 2021).

[13] *Id.*

[14] Consumer Financial Protection Bureau, Supervisory Highlights Consumer Reporting Special Edition, Winter 2017, at 21, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

B. Voices of Frustration

In 2020, we celebrated the 50th Anniversary of the Fair Credit Reporting Act. This means that the problems and abuses of credit bureaus have been the subject of attention and reform for over half a century. Unfortunately, in these five decades, the situation has only gotten worse as credit reports remain full of flaws but are used by more and more businesses to deny consumers the necessities of life. The following are some of the key types of errors in credit reports, including examples from legal cases, media articles, and the CFPB complaint narratives.

<u>1. Mixed files</u>

In 1968, Senator William Proxmire, often considered the father of the FCRA, noted: "There are many varieties of inaccurate information, but I shall mention only two. One is the case of mistaken identity, where two individuals with the same names are confused, and the deserving individual is denied credit because of something done by the other person."[15] Fifty years later, this type of error- the mixed file - still harms too many consumers. Mixed files are caused by insufficient and overly loose matching criteria, in particularly the practice of matching data based on only 7 out of 9 digits of a Social Security number.

In May 2015, the credit bureaus entered into a settlement with over 30 Attorneys General agreeing to a number of reforms, including establishing minimum standards for matching criteria and providing for escalated handling for mixed file disputes.[16] Yet six years later, consumers are still facing problems from mixed files.

> *Twin trouble*
> Just this month, Verge news writer Mitchell Clark wrote an extensive article about how his file at the credit bureaus has been consistently mixed with his twin sister Alita:
>
> Sometimes they associate her name with my social security number, sometimes it's the other way around — and sometimes we both show up under the same SSN…. Over and over, Alita and I have been rejected for credit cards, despite both having good credit. I was rejected for a car loan by a bank that I've used for years — despite having enough cash to immediately pay off the loan. Neither of us has had issues with getting access to housing, but it's hard to feel sure it won't happen in the future. The problem isn't banks or lenders but the credit system itself, a vast and invisible information network with little incentive to correct even the simplest of problems.[17]

---

[15] 114 Cong. Rec. 24,903 (1968).
[16] Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, In the Matter of Equifax Info. Serv. L.L.C., Experian Info. Sols., Inc., and TransUnion L.L.C., § IV (E)(5) and (F)(7) (May 20, 2015), https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx
[17] Mitchell Clark, Credit agencies can't tell my sister and me apart, The Verge, May 12, 2021, https://www.theverge.com/22421193/credit-reporting-infrastructure-errors-experian-equifax-transunion.

2. Identity theft

Credit bureaus and furnishers both bear a share of the blame for the fallout from identity theft. The credit bureaus' loose matching procedures contribute to the problem of identity theft, and their data breaches give thieves the tools needed to commit fraud. When consumers try to fix the aftereffects of identity theft, furnishers often fail to believe them and the credit bureaus take the furnishers' side. Furnishers often require police reports, even though practitioners report that many police departments are unwilling to provide them and the FTC has stated that its Identity Theft Affidavit is sufficient to dispute accounts resulting from identity theft.[18] In fact, some practitioners report that furnishers are insisting on a criminal prosecution before they will treat a fraud account as identity theft, which can be an almost impossible bar. Other practitioners report that credit bureaus will not treat a police report as valid if it does not contain a police officer's signature or an official police department seal, or both, even though many police departments will only provide a computer-generated report with the officer's name printed.

> *Not a Best Buy*
> Thomas Kemlage is a prominent dentist in his 50s. In the Fall of 2019, Dr. Kemlage discovered a $1,700 charge for electronics purchases at Best Buy on his JPMorgan Chase card. He immediately reported the fraudulent charges to Chase, which instructed him to file a police report, which he did on December 6, 2019. The police actually investigated and "determined from Best Buy surveillance video that 'the purchase at Best Buy was made by someone other than me.'" Yet not only did Chase refuse to remove the charge, it reported his account as over 180 days past due and charged off, seriously harming his credit record. Dr. Kemlage disputed this reporting and requested a fraud block, as was his right under the FCRA. All three credit bureaus refused to apply a fraud block. Experian's stated reason for this denial was that "[t]he identity theft report that you provided to us does not meet the guidelines established by the federal Fair Credit Reporting Act for the following reason(s): The report does not reference identity theft" – despite the fact that both the police report as well as an FTC Identity Theft Affidavit that Dr. Kemlage submitted described the identity theft at issue.[19]
>
> Additional examples from the CFPB Complaint Database of the credit bureaus and furnishers refusing to believe identity theft victims and refusing to remove fraudulent accounts from the victims' credit report are included in Appendix A.

3. Being declared dead

In one of the worst types of credit reporting errors, consumers are labeled as "deceased" when they are alive and breathing. Another reform required by the 2015 AG settlement was to

[18] Seena Gressin, Federal Trade Commission, Most ID theft victims don't need a police report, Apr. 27. 2017, https://www.consumer.ftc.gov/blog/2017/04/most-id-theft-victims-dont-need-police-report "In most cases, you can use your Identity Theft Report in place of a police report to clear your account and credit records of transactions that resulted from the identity theft.").
[19] Complaint, Kemlage v. Equifax Info. Serv., LLC, Cause No. 4:21-cv-00469 (Apr. 22, 2021)

identifying ways to "preventing inaccurate reporting of Disputed Deceased Indicators."[20] Six years later, consumers are still facing the terrible burden of being falsely declared dead.

> *Being declared dead leads to a broken heart*
> In January 2017, James Rennick applied for a home-equity loan in order to renovate his house. His wife of five decades, Angela, was dying of lung, kidney, bone and brain cancer and Rennick wanted to make renovations to ease her last days and to cover burial costs. But Rennick was unable to get a loan because Equifax and Experian had declared him dead. Rennick's credit history information was mixed up with that of another man, an unrelated James Palmer. As a result, not only was he unable to accommodate his dying wife, Rennick himself "died of a broken heart" according to his daughter. Both Rennick and his wife had to be cremated "because there wasn't enough money for the more expensive option of burial."[21]

4. Furnisher errors

Errors in credit reports can often be caused by furnishers. Common errors include attributing an account or debt to the wrong consumer, incorrectly recording a payment history, or failing to properly report a bankruptcy or loan modification. Debt collectors are a frequent source of errors.[22]

> *Debts of the father*[23]
> Medical bills are the most common type of debt collection item on credit reports. In some cases, they might not even be reported for the correct patient. For example, in March 2018, debt collection agency AR Resources (ARR) reported 19 medical bills of 83-year old Francisco Perez Gonzalez on the credit report of his son, Francisco J. Perez Ramones. ARR refused to correct this error despite the son disputing these debts around 30 times. These disputes noted that the son and father had different names and dates of birth, yet ARR refused to correct the information. The credit bureaus simply accepted ARR's response despite clear evidence that the debt collector had tagged the wrong consumer. Furthermore, this collector seems to have questionable dispute investigation policies – one of its investigators stated in a deposition that "she wouldn't 'delete an account just because the last name is different' because that is inconsistent with ARR's policies."[24]

---

[20] Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, In the Matter of Equifax Info. Serv. L.L.C., Experian Info. Sols., Inc., and TransUnion L.L.C., § IV(F)(2)(A) (May 20, 2015), https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx

[21] Andrew Keshner, This woman says Equifax mixed up her father's credit report and 'destroyed' his life — and now she hopes to convince a jury, Marketwatch, Oct. 29, 2019, https://www.marketwatch.com/story/this-woman-says-equifax-mixed-up-her-fathers-credit-report-and-destroyed-his-life-now-she-hopes-to-convince-a-jury-2019-10-25. *See also* Malverty v. Equifax Information Services, LLC, 407 F.Supp.3d 1257 (2019).

[22] The CFPB found that debt collectors are responsible for 40% of disputes to the credit bureaus even though they only supply 13% of the accounts to credit reports. CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data 14, 29 (2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[23] Perez Ramones v. Experian Info. Sols., LLC, 2021 WL 1839535 (S.D. Fla. May 7, 2021).

[24] *Id.* at *5.

5. CARES Act violations

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides credit reporting protections if a creditor approves a consumer for an "accommodation," *i.e.*, a forbearance, payment deferral, loan modification, or other relief granted to a consumer affected by the COVID-19 pandemic.[25] If the creditor granted an accommodation and the consumer was current at the time, the CARES Act requires the account to be reported as current so long as the consumer complies with the accommodation agreement. If the consumer was already delinquent when they received the accommodation, but complies with the accommodation agreement, the creditor must report the same delinquency status during the accommodation period.[26] This past year, a common furnisher error was failing to properly follow the credit reporting requirements of the CARES Act.

> *Violation of CARES Act After Loan Transfer (Texas)*
> I'm currently on a forbearance plan until XX/XX/XXXX and I've been on one since XX/XX/XXXX of last year due to Covid. I filed applied for a forbearance plan with LoanCare and per the terms of the plan if my loan was current prior to entering the forbearance that's how it would be reported. Until XX/XX/XXXX XXXX was reporting my [sic] correctly to the credit bureaus then suddenly after selling my loan they reported me late and closed my account. This needs to be corrected ASAP! My loan was current before and according to the plan so why am I being reported late now when it was being reported Pay as agreed until now.
> CFPB Complaint No. 4311035, filed April 20, 2021

> *Violation even when consumer paid the bills (Ohio)*
> XXXX XXXX XXXX marked me late on my lease on XXXX, XXXX and XXXX of XXXX. From the date my lease was taken out, I made {$300.00} weekly payments every single week. I never missed a payment. When covid hit, we lost our jobs and used the advanced payments to pay for our lease. We spoke to several representatives throughout XXXX to make sure we were current on our payments. We were advised several times we were good until XX/XX/XXXX. It wasn't until I checked my credit report to see that we were marked late. What is weird is that XXXX was paid on time but XXXX was late. I spoke to a sweet girl name XXXX who advised that this was their error and it would be removed off of my credit report. This has not been taken care of.
> CFPB Complaint No. 4331459, filed April 27, 2021

C. A Broken Dispute System

One of the key tools in the FCRA to combat inaccuracies is the consumer's right to dispute errors and the credit bureaus' obligation to conduct a reasonable investigation. Yet the FCRA-mandated dispute system has been a travesty of justice for decades, as documented by NCLC's 2009 report *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*. The report documented how the credit bureaus'

[25] Pub. L. No. 116-136, § 4021 (Mar. 27, 2020).
[26] *Id.*

entire role in dispute "investigation" was to convey disputes to furnishers through the highly automated e-OSCAR system. This system primarily using shorthand two- or three-digit codes, with, in a minority of instances, up to just a line or two of text. The credit bureaus used the same four or five codes over 80% of the time. Workers did not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute.

In preparation for the February 2019 credit reporting hearing before the full Committee, we released a 10-year update entitled *Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors.* This updated report documented how, despite a decade of attempts at reform, credit bureaus and furnishers continued to have serious problems in ensuring the accuracy of credit reports, and the dispute process remains ineffective and biased. *Automated Justice Redux* contains story after story from lawsuits and the CFPB Complaint Database to illustrate the frustrations and harms caused to consumers from these problems.

Both the 2009 report and the 2019 update described how credit bureaus are universally biased in favor of furnishers and against consumers in disputes. In a practice known as "parroting," credit bureaus blindly adopt the response of the furnisher without performing any independent review. The credit bureaus' practice is akin to a referee who always rules for one team. In 2017, the CFPB characterized parroting as a violation when it stated in a Supervisory Highlights report that it had cited the credit bureaus for "fail[ing] to review and consider the attached documentation and relied entirely on the furnisher to investigate the dispute."[27] Despite this CFPB pronouncement, the credit bureaus continue to engage in the practice.

Indeed, the credit bureaus' failure to conduct any meaningful investigation of disputes has only gotten worse as they have pushed, often successfully, their argument that they are not required to resolve "legal" disputes. Starting in 2010 with the case *Carvalho v. Equifax Info. Servs., LLC*,[28] the credit bureaus as well as furnishers have aggressively pushed this theory with success, much to the detriment of consumers. The scope of what credit bureaus and furnishers claim to be a legal dispute has broadened to include issue such as forgery,[29] mixed files,[30] and identity theft.[31] The credit bureaus and furnishers are using the "legal dispute" argument to gut the investigation requirements of the FCRA, and avoid any legal responsibility for their failures. Recently, the CFPB has finally pushed back against this issue, decrying in an amicus brief the "formalistic

---

[27] CFPB, Supervisory Highlights Consumer Reporting Special Edition, Winter 2017, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf, at 10-11.
[28] 629 F.3d 876 (9th Cir. 2010).
[29] Uppal v. Wells Fargo Bank, N, 2020 WL 6150923 (M.D. Fla. Oct. 20, 2020)(dismissing claim where plaintiff alleged forgery of documents as a legal dispute).
[30] Thompson v. Trans Union Data Sol., 2021 WL 1923409, at *3 (N.D. Ill. May 13, 2021)(denying dismissal; Chase argued it was a legal dispute where the consumer "states that he did not authorize the credit card and did not know anything about it.)
[31] Perez Ramones v. Experian Info. Sols., LLC, 2021 WL 1839535, at *5 (S.D. Fla. May 7, 2021)("the Court finds unavailing the Defendant's argument that it was not required to determine whether the Plaintiff "legally owed the debts" being reported.… the Plaintiff's thirty disputes that the debts at issue were not his is not akin to a legal challenge.").

distinction between factual and legal questions" because "[s]uch a distinction is inconsistent with the text and purpose of FCRA."[32]

To addressing the bias and dysfunction by the credit bureaus in addressing disputes, Congress or the CFPB should establish a right for consumers to appeal when they disagree about the results of a dispute. The appeal could either be to an independent unit in the credit bureau or to a regulator, such as the CFPB or FTC. If the unit is housed within a credit bureau, the unit must have direct and unfettered authority to make independent decisions and not be subject to any restrictions or incentives to process disputes quickly or in favor of furnishers. Indeed, the House of Representatives passed two bills in the last Congressional session establishing such a right, only to see the Senate fail to act on them.[33]

D. Credit Repair is a Red Herring

The credit bureaus' response to the massive increase in CFPB complaints is to claim the problem is not about errors, but due to credit repair organizations. CDIA President Francis Creighton asserted in an American Banker article that "[t]hey are using the legal structure of filing disputes as a tactic to remove accurate but negative information from credit reports…. The problem here is credit repair."[34]

Yet there is no evidence for this proposition. A quick scan of credit reporting complaints from just this year (Jan-April 2021) finds numerous complaints with individualized narratives that do not appear to be from credit repair organizations. Some are reproduced in Section B above and others are included in Appendix A to this testimony.

Furthermore, the CFPB itself has refuted the notion that the explosion in credit reporting complaints is the result of credit repair organizations or that such complaints are illegitimate or fraudulent. In a New York Times article, the CFPB noted that:

> companies can flag suspicious complaints for further review through an 'administrative response' process and that those complaints are not published in the database. In 2020, the bureau said, companies used the administrative response option for 3 percent of credit or consumer reporting complaints sent to them for response.[35]

---

[32] Brief of Amicus Curiae Consumer Financial Protection Bureau, Gross v. CitiMortgage, Inc., 9th Circuit No. 2017160, https://files.consumerfinance.gov/f/documents/cfpb_amicus-brief_gross-v-citimortgage_2021-14.pdf. Gross v. CitiMortgage involved furnisher dispute investigations the rationale would apply to credit bureaus as well.
[33] H.R. 3621, the Comprehensive CREDIT Act, 116th Congr. (2020) and H.R. 5332, the Protect Your Credit Score Act, 116th Congr. (2020).
[34] Kate Berry, Why are complaints about credit bureaus soaring?, American Banker, April 30, 2021, https://www.americanbanker.com/news/why-are-complaints-about-credit-bureaus-soaring.
[35] Ann Carrns, More Consumers Complain About Errors on Their Credit Reports, N.Y. Times, Feb. 19, 2021, https://www.nytimes.com/2021/02/19/your-money/credit-report-errors.html.

The CFPB also told the American Banker that the credit bureaus "have provided no credible evidence that the increase is the result of unauthorized submissions by credit repair organizations."[36]

Indeed, without more evidence, there are a number of other just as logical, if not more so, reasons for the increase in credit reporting complaints. The increase could have been caused by factors such as:

- The heightened importance of credit reporting during the COVID-19 pandemic given its devastating economic impact. After all, the credit bureaus provided free weekly credit reports because of this impact, which is laudable. With more consumers checking their credit reports, there are bound to be more complaints.
- The boom in new uses for credit reports and scores, especially for rental housing. With millions of consumers seeking apartments, and credit reports or scores used to deny rental housing for many of them, that is bound to increase the number of consumers reviewing their credit reports.

Also remember that while 300,000 complaints is a big number, the really huge number is the 10 million consumers with serious errors in their credit reports as the FTC 2012 study found.

Furthermore, while the credit bureaus often and vociferously complain about credit repair, their own actions might be facilitating the industry. For example, Lexington Law is the second largest credit repair firm in the nation and has been sued by CFPB for deceptive marketing practices.[37] Yet according to a court case filed against it by a debt collector:

> Lexington Law has contracts with the [credit] Bureaus which contain provisions requiring the Bureaus to treat the electronic disputes as if they were submitted directly by the consumers. (Doc. 318 at 26 (citing to the agreements); 340 at 7.) The credit bureaus then send the ACDVs or e-disputes to the debt collector, such as Plaintiff, without identifying the source of the dispute.
>
> AD Astra Recovery Servs., Inc. v. John Clifford Heath, Esq., 2021 WL 764565, at *4 (D. Kan. Feb. 26, 2021)(ruling on summary judgment; emphasis added)

Another important point - and rather an astounding fact - about credit reporting disputes is this: it does not dramatically increase costs to the credit bureaus, and in fact may help their bottom line, to have an increase in disputes, whether filed by credit repair organizations or not. This is due to two reasons:

> 1. As described in Section C above, the credit bureaus reduced their costs to process disputes by automating the processing to the point where they need to do very little. In

[36] Kate Berry, Why are complaints about credit bureaus soaring?, American Banker, April 30, 2021, https://www.americanbanker.com/news/why-are-complaints-about-credit-bureaus-soaring.
[37] CFPB Press Release, Consumer Financial Protection Bureau Files Suit Against Lexington Law, PGX Holdings, and Related Entities, May 2, 2019, https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-lexington-law-pgx-holdings-and-related-entities/.

fact, if a consumer files a dispute online, it is automatically sent to the furnisher with no intervention by the credit bureau and thus results in very little marginal per dispute costs to the credit bureau.

2. The e-OSCAR system used by credit bureaus *charges furnishers $0.30 for each dispute*.[38] For online disputes, given their low marginal costs, this $0.30 could conceivably represent a profit. Even for paper-based disputes, NCLC's *Automated Injustice* report from 2009 found that one of the credit bureaus spent only 57 cents processing each dispute letter.[39] If a consumer dispute letter challenges the accuracy of multiple accounts, even paper disputes could represent a profit.

Thus, for all their bemoaning of the evils of credit repair, the credit bureaus have actively abetted their submission of disputes and could even possibly be making a profit on some of those disputes.

E. New products, old abuses

As if worrying about the accuracy and reliability of the credit reporting system wasn't bad enough, the credit bureaus have been selling an array of new products to creditors and other users. These include:

- Products that tell a creditor whether a person is a fraud risk, such as Equifax's SAFESCAN,[40] Experian's Fraud Shield,[41] and Trans Union's TrueValidate.[42]
- Marketing products, some of which incorporate financial and creditworthiness information for marketing, such as Experian's Mosaic and ConsumerView products.[43]

The credit bureaus claim that some of these products are not consumer reports under the FCRA, which is terribly problematic. Without the protections of the FCRA, consumers are not entitled to file disclosures (*i.e.*, the ability to get their own reports) or adverse action notices when the information is used against them to deny credit or other important products. The lack of transparency means consumers are unable to correct errors in these products when the errors cause them harm. And without adverse action notices, many consumers don't know the existence of these products, making them invisible.

Another product that is shutting consumers out of important necessities is LexisNexis's Accurint product. Accurint is used by the Social Security Administration to screen for non-home real estate, and then to deny or terminate recipients' Supplemental Security Income (SSI) benefits. Unfortunately, Accurint has wrongfully tagged potentially thousands of SSI recipients as owning

---

[38] See https://www.e-oscar.org/billing-finance/program-costs.
[39] National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports (2009), https://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf. at 32
[40] https://www.consumer.equifax.ca/business/safescan/.
[41] https://www.experian.com/content/dam/marketing/na/assets/im/decision-analytics/product-sheets/fraud-shield.pdf.
[42] https://www.transunion.com/solution/truvalidate
[43] https://www.experian.com/content/dam/marketing/na/assets/ems/marketing-services/documents/brochures/mosaic-brochure.pdf

real estate that they do not, because LexisNexis matches information based on only the individual's name, resulting in recipients being wrongfully terminated from their benefits. This problem is documented in a recent NCLC/Justice in Aging report *Mismatched and Mistaken: How the Use of an Inaccurate Private Database Results In SSI Recipients Unjustly Losing Benefits* (April 14, 2021).

In many ways, the newer products being offered by the credit bureaus and other consumer reporting agencies (CRAs) are similar to the OFAC Alerts that are the subject of *Ramirez v TransUnion*,[44] which resulted in a $60 million jury verdict for falsely tagging consumers as potential terrorists or drug dealers. For many years, TransUnion refused to treat OFAC Alerts as part of a consumer report or regulated by the FCRA. Unfortunately, unlike with OFAC Alerts, some courts are siding with the credit bureaus and holding products like Mosaic scores are not consumer reports.[45]

Even if products like Mosaic score are FCRA-covered, another problem is that the Act exempts from its disclosure requirements "credit scores or any other risk scores or predictors relating to the consumer." 15 USC 1681g(a)(1)(B). While another provision allows consumers to purchase credit scores, that requirement is narrower and does not cover a score unless it is "a numerical value … used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default." *Id.* at § 1681g(f)(2)(A)(i). The credit bureaus and other CRAs are selling more and more other types of risk scores beyond credit-based scores; examples include healthcare scores, tenant screening scores, and employment background check scores. These scores may not be considered "credit scores" required to be disclosed under the FCRA.

With these new products, there is also a question of whether the credit bureaus are illegitimately using information from credit reporting files for marketing purposes. Experian claims its ConsumerView product uses "[a]ggregated credit information includ[ing] Experian's Premier Aggregated Summarized Credit Statistics" and that it includes "[f]inancial data segments [that] go beyond income and estimate the way your customers spend their money."[46] Yet marketing is not a permissible purpose under the FCRA except for the limited use of prescreened lists.

Indeed, the credit bureaus were the original Big Data. They are attempting to keep up that status and to keep up with other data purveyors such as Acxiom and Oracle. They have been on a buying spree in recent years, purchasing other data companies such as TruSignal (TransUnion)[47] and Tapad (Experian).[48] They have also purchased companies that specialize in subprime credit

---

[44] 951 F.3d 1008 (9th Cir.), *cert. granted*, 141 S. Ct. 972, 208 L. Ed. 2d 504 (2020). This case is currently being decided at the Supreme Court on an issue of Article III standing. *See* Chi Chi Wu, Class Action Access At Stake In High Court TransUnion Case, Law360.com, Apr. 22, 2021, https://www.law360.com/classaction/articles/1377862/class-action-access-at-stake-in-high-court-transunion-case.
[45] Skiles v. Tesla, Inc., 440 F. Supp. 3d 1012, 1015 (N.D. Cal. 2020).
[46] https://www.experian.com/assets/marketing-services/product-sheets/consumerview.pdf.
[47] Press Release, TransUnion Strengthens Digital Marketing Solutions with Agreement to Acquire TruSignal, May 15, 2019, https://newsroom.transunion.com/transunion-strengthens-digital-marketing-solutions-with-agreement-to-acquire-trusignal/ ("TruSignal uses its custom audience-building platform to deliver predictive scoring powered by artificial intelligence, making big data available and actionable in almost real time for one-to-one addressable marketing.")
[48] Press Release, Experian acquires Tapad, a leading digital identity resolution provider, Nov. 19, 2020, https://www.experianplc.com/media/news/2020/experian-acquires-tapad/ ("Experian, the global information

information, which is then used as a prescreening tool to send offers from high-cost lenders – Clarity (Experian) and FactorTrust (TransUnion).

Fifty years, the FCRA was passed to ensure critical rights for consumers – the right to obtain information about themselves held by the credit bureaus (files disclosures), the right to know when that information was used against them (adverse action notices), the right to correct errors, and a requirement that credit bureaus ensure the accuracy of the information. With new products that the credit bureaus claim are not covered by the FCRA, we've taken a 50 year step back to the bad old days when these companies used their troves of information to make important decisions about our financial lives without any obligation for transparency and accuracy. The credit bureaus cannot be permitted to get away with this. These products need to be brought within the purview of the FCRA either through enforcement, regulation, or legislation.

F. Conclusion

For 50 years, Congress, the FTC and now the CFPB, state legislatures and regulators, consumer advocates, private attorneys, and everyday Americans have battled a credit reporting industry that continues to abuse consumers with too many errors and a biased and dysfunctional dispute system; which points the finger at another industry (credit repair) while denying any responsibility for its failures; which instead of investing in fixing its mistakes goes on a buying spree to acquire new sources of data regardless of accuracy and then claims it need not comply with the FCRA for this data. And which is shamelessly shilling its products for inappropriate and destructive uses such as rental housing and employment, contributing to one of the most appalling problems in this country – the massive economic and racial equality that threatens to tear this country apart.

Fifty years of abuse and dysfunction is enough.

It's time for a new paradigm for credit reporting, one that is responsive to consumers, to the American people and to the good of our country. It's time for a public credit registry.

Short of a public credit registry, Congress should:

1. Reintroduce and pass a bill similar to the Comprehensive CREDIT Act, as well as a bill similar to the Protect Your Credit Score Act. Both bills were passed by the House of Representatives in the last Congress but not by the Senate. The bills included provisions such as:

- providing consumers with a right of appeal for credit reporting disputes;
- requiring stricter matching criteria to prevent mixed files;
- clarifying that the credit bureaus must devote sufficient resources and conduct independent analyses in disputes;
- providing consumers with a right to seek injunctive relief compelling credit bureaus to fix a credit report;

---

services company, today announces that it has completed the acquisition of Tapad – a leading provider in digital identity resolution for marketers that helps to connect brands to consumers, primarily in the United States.")

- shortening the time that negative information can remain on a consumer report to four years (seven years for bankruptcies)

2. Establish a moratorium on negative credit and consumer reporting for events that occurred during the COVID-19 pandemic period, similar to Section 110401 of the HEROES Act, H.R. 6800, passed by the House of Representatives during the 116^{th} Congress.

3. Clarify that the scope of the Fair Credit Reporting Act includes reports and scores sold by the credit bureaus related to the purposes specified in the Act, and expand the scope to include all other products sold by those companies as well as other consumer reporting agencies.

Appendix A: Examples of Recent (2021) Complaints from the CFPB Consumer Complaint database

CARES Act Violations

Georgia complaint
Mortgage company XXXX XXXX has reported me delinquent on 2 separate occasions despite being on Covid forbearance both times. This has severely and negatively affected my credit. Once reported the the [sic] me through a long cumbersome process despite it being their fault (twice). They also insist that I have to make a lump sum payments on the 2 payments that I misses during forbearance despite informing them that I want the payments added to the end of the loan as the CARES Allows. They refuse to do this. I need assistance in dealing with this unresponsive and unhelpful mortgage company.
CFPB Complaint No. 4324700, filed April 23, 2021

Colorado complaint
Because of Covid 19 natural disaster, I had to go into a forbearance agreement with Colorado Housing Financial Authority (CHFA) in XX/XX/XXXX until XX/XX/XXXX. During this time, I talked to representatives several times about my mortgage and the forbearance agreement, and in those conversations, I brought up the fact that CHFA had reported to all 3 credit bureaus that my account was late XXXX, XXXX and XXXX in XXXX. The representative would say that they had noted this in my account and they would look into it. I have continued to look at my credit reports and the XXXX, XXXX and XXXX months continue to show as late payments. I started making monthly mortgage payments beginning XX/XX/XXXX and also signed a modification agreement with CHFA in XX/XX/XXXX. The XXXX, XXXX and XXXX in XXXX continue to show as late payments. Under the CARES Act, there should be no negative impact to a borrowers credit score for payments missed during an approved forbearance period. This has affected my credit scores.
CFPB Complaint No. 4319423, filed April 22, 2021

Illinois complaint
Called XXXX XXXX to correct the payment history as Ive [sic] been marked 90 days past due on my credit report. I asked them for relief due to Corona virus to defer one or more payments or to make a partial payment, they gave me ok for partial payment and then they reported me as delinquent 90 days. I had a severe illness and then COVID. I was struggling to make the minimum payment. I kept calling them continuously to address the issue. Their answer is making partial payment is not going to affect your credit rating. Then I got hit by 90 days past due. I got promised from Rep. to solve the issue but unfortunately, no improvement.!
CFPB Complaint No. 4229874, filed March 19, 2021

Tennessee complaint
I was sick with covid in XXXX and tried to contact the Barclay to let them know I needed to be in a hardship plan or cares act and could not get enrolled [sic]. I would like this late payment

removed. I have a Visa Black hard and XXXX rewards card. they reported them both as 30 days late.
CFPB Complaint No. 4325266, filed April 24, 2021

California complaint
I have written to chase about this and they have asked me to contact credit reporting agencies / bureaus directly. The information reported on my credit report for missed payments in the year 2020 for chase freedom card ending in XXXX was inaccurately reported. I enrolled into chase 's covid-19 protection plan with the understanding that the account will not be reported. However, upon communication with them, it seems like the account was reported for late payments....I have verified with the state that my credit score would be protected and remain unchanged. Their website clearly states that credit scores would not be impacted due to the impact of Covid-19. I request you restore my credit score back to XXXX or XX/XX/2020, before the pandemic was declared.
CFPB Complaint No. 4335892, filed April 28, 2021

<u>Deceased complaints</u>

Texas complaint
I purchased a XXXX treadmill on a promotional 12-months 0 interest through TD Bank. I paid the card on time and within the12 months. In addition of TD Bank posting the account as paid in full, they reported me as DECEASED. I wouldn't have known this except I was trying to get a mortgage and my bank told me that Experian and Equifax showed me DECEASED based on TD Bank 's report. I called TD Bank and they told me that they even had a death certificate on file for me! I called multiple times for them to remedy this. I called XXXX and XXXX also but I could not prove to them, to their satisfaction, despite answering all their questions to my identity, that I am in fact ALIVE! I was unable to get the mortgage due to these errors on my credit report and the inability or unwillingness of these companies to correct their errors.
CFPB Complaint No. 4183837 & 4183236, filed March 4, 2021

Pennsylvania complaint #1
XXXX did not read my previous complaint correctly AT ALL. XXXX XXXX declared me dead and then reopened my account months later. They added fees past due payments (which they wouldnt let me pay because they said I was dead). Then when I refused to pay interest and late fees and the past due of {$600.00} (only past due because they wouldnt let me pay because they had it marked deceased). I REPEAT THEY REOPENED THE ACCOUNT AFTER WITH NO APOLOGY OR EXPLANATION AND REFUSED TO REMOVE LATE FEES AND ACCEPT A REGULAR MONTHLY PAYMENT AFTER THEY HAD MY CREDIT FROZEN. SO NOW THEY KEEP CHARGING IT OFF!!! I offered to pay what was due before they closed and reopened my account!
CFPB Complaint No. 4264573, filed April 1, 2021

Pennsylvania complaint #2
*L*et me state this I am a XXXX combat veteran who was marked XXXX by XXXX XXXX. XXXX XXXX in XXXX of XXXX or XXXX I believe marked me deceased. I tried to pay my bill online it said closed. I called to pay and they wouldnt let me pay. They said they didnt know why I couldnt pay. This went on for a month .... They made no effort to fix it or give me suggestions on how to fix it. Finally after numerous calls and wasted time someone told me they marked me XXXX. I told them obviously this was untrue. They had no idea why I was marked as deceased. I asked her to fix it they told me they didnt know. They told me they had no idea why or how it happened or how to fix it. I watched my credit report get frozen from all bureaus. My credit report showed me is XXXX for a period of time. I am a XXXX veteran and seeing myself marked as XXXX was very traumatic. We feared my XXXX and mortgage would be frozen due to my social being marked as deceased. Everything I researched said I was XXXX. Eventually XXXX XXXX with no warning and no apology decided I was alive again. They sent my cards back, reopened the account. Before the account was marked deceased it had a balance of around {$800.00} and was current. When they reopened it, they added on interest, fees, and missed payments. NEW BALANCE SHOWS AS {$1600.00} with our entire balance from before as past due. They refused to remove these fees, interest, and past due payments unless we PAID a past due of {$600.00}. This was only past due and accumulated because of their error. I tried multiple supervisors. Most couldnt comprehend the situation or even tell me why. I am unable

to purchase a home now as a result. Ive experienced an extreme amount of distress over this. I had to take off of work when it happened because they reported me XXXX. This is the worst display I have ever seen by a credit agency. I could have lost my current home, my VA XXXX that pays for my home, and had my bank accounts frozen. My other credit cards were frozen. My credit score is ruined. I can not buy a new home now as a result of their actions and neglect.
CFPB Complaint No. 4240776, filed March 24, 2021

Identity theft

Texas complaint #1
Attached is latest proof of my claim of fraud. Previously, I have disputed items on my credit report due to identity theft for over 4 years. I had sent arrest and felony conviction information on the person listed in my XXXX Sheriffs report. Today, I am sending my supplement to the sheriff 's report I made in XX/XX/XXXX. I am sending previously sent documents but sending again for your convenience. I hope I am doing all that is right since I have never been in anything like this. I am sending the supplement to XX/XX/XXXX Sheriffs report, The XX/XX/XXXX Sheriffs Report, XX/XX/XXXX Judgement of Conviction on XXXX XXXX XXXX, Mississippi charges on XXXX XXXX XXXX (Notice she also listed her name as XXXX XXXX), Alabama Charges on XXXX XXXX XXXX. Please remove XXXX XXXX from my credit report :
CFPB Complaint No. 4338328, filed April 29, 2021

Texas complaint #2 (Servicemember)
I am a victim of Identity Theft. After discovering it on a credit report I followed the guidance found on Identitytheft.gov and submitted a packet via certified mail containing a notarized Identity theft affidavit as well as a police report and the required documents for Identity verification. Transunion sent a letter back declining to block the information from my report which is a clear violation of Section 605B of the FCRA.
CFPB Complaint No. 4330848, filed April 27, 2021

Texas complaint #3
Someone comprised my personal information in XXXX and opened a XXXX XXXX credit card. At the time I was ignorant about credit so I didn't really monitor my credit score. The imposer ran up a balance. The account hit collections I started receiving letters in the mail and that is what caught my attention. Since XXXX of XXXX I have been sending dispute letters through the mail. I sent an identity theft affidavit, filed an Federal Trade Commission (FTC) report and the account keep coming back verified. On XX/XX/XXXX I called XXXX XXXX and they could not verify me from my date of birth or my residency and confirmed to me that the account was abnormal and was most likely fraud. They then told me I would have to call the credit bureaus so they could handle it. I am tired of them make me go in circles. This situation is really affecting my life. According to 15 USC 1681a (k) (iii) adverse action that doesn't benefit you should not be on your consumer report.
CFPB Complaint No. 4256932, filed March 30, 2021

Kentucky complaint #1
Someone has opened up a card at XXXX XXXX on XX/XX/2021. When I noticed the card on my credit report on XX/XX/2021 I reported it as fraud on both TransUnion and XXXX. I even opened up a fraud alert on identitytheft.org. When I filed the claim on identitytheft.org XXXX took it off immediately. I have filed approx 6 different disputes through TransUnion they keep stating that XXXXXX/XX/XXXX verified information and said it was me. When it wasnt. I have been trying to get in contact with XXXX XX/XX/XXXX since XXXX but the numbers I called would not transfer me to anyone unless I had the card number. I do not have the card number as to I NEVER

opened up the account with them. I have finally was able to contact XXXX IXX/XX/XXXX on XX/XX/2021. I spoke with a XXXX from XXXX XX/XX/XXXXwho couldnt help me and transferred me to XXXX. XXXX advised he had opened up a fraud alert for me and that I should get an affidavit sent to me in the mail within 7-10 days. I called XXXXXX/XX/XXXXback on XX/XX/2021 I spoke to XXXX. I told XXXX what was going on an how I have not received the affidavit, he stated that the account was closed and alerted as Fraud and it was an error on their end and stated AGAIN I should be getting the affidavit in the mail. I STILL have NOT received the affidavit. I called XXXXXX/XX/XXXX again today on XX/XX/2021 spoke to XXXX she could not help me and told me to call back within 1-2 minutes. I call XXXXXX/XX/XXXXAGAIN still XX/XX/2021 spoke to XXXX she stated there never was an alert on the account as fraud and she opened up another fraud alert and stated that there will be an affidavit sent to me in the mail within 7-30 days. I call TransUnion to see if there is something they can do on XX/XX/2021 he advised that there was nothing they can do at this point because XXXX XXXX is still stating that I was the one to open the account when I didnt open the account. He said there was nothing he can do and he will open another dispute but it will most likely get closed again since I had already opened up 5.
CFPB Complaint No. 4330251, filed April 27, 2021

Kentucky complaint #2
Can someone please help me! I am being taken advantage of and it is extremely unfair! My consumer rights are being violated! I noticed some inaccurate/fraudulent items that are reporting to my credit file. I have notified the credit bureaus and have sent them dispute letters over 90 days ago. I have yet to get a response to resolve my problem. I know that the items must be investigated within 30 days of them receiving my dispute letters according to the Fair Credit Reporting Act. I need the disputed items deleted from my credit file immediately. The credit bureaus are also using stall tactics to not respond to me, giving me responses like " they need authorization from me to proceed ''. I have attached my drivers license and a utility bill to verify my identity, can you please see that they delete all accounts that are disputed immediately please.
CFPB Complaint No. 4302189, filed April 15,2021

Pennsylvania complaint
XXXX XXXX XXXX XXXX there is a credit card reporting derogatory info that has my family homeless this is really effecting my livelihood please They open XX/XX/2014 it is a close charge off account that was open without my knowledge i have 75 late payments as a result of experian Not removing this negative fraudulent information I called them directly XXXX XXXX XXXX XXXX they stated I owe them {$700.00} over top of the limit {$400.00} I stated to them I never opened up a account I found a police report I thought the incident report I filed a identity theft report this is hurting me and my family housing situation
CFPB Complaint No. 4332345, filed April 27, 2021

Georgia complaint
On XX/XX/2020 I sent documentation that I had been a victim of identity theft and noticed some unauthorized inquiries and accounts on my report. I was told by the Rep to mail a FTC

report with a copy of my identification and ss card with a list of the inquiries. I has been 60 days with no reponse from the bureau but according to the FTC website it states identity theft should be processed within 5 business days from receipt of documentation. I have the tracking number from where I sent documentation tracking number XXXX and I have heard nothing from the bureaus. This is a violation and these items must be deleted.
CFPB Complaint No. 4330617, filed April 27, 2021

Florida complaint
This is my second message already and I still can not get rid of fake accounts in my profile. Why do I have them still if I filed Identity theft and proved that these accounts are not mine and that somebody just used my personal information? These fraud accounts are killing my report! What else do I need to do in order to make you remove them from my profile. Why Do I have to have this misleading information in my credit report for so long????? Please get my point and take appropriate actions ASAP
CFPB Complaint No. 4330983, filed April 27, 2021

<u>Mixed file</u>

Georgia complaint
XXXX XXXX is reporting on my credit file and I have never had an account with them. My name is very common and I often have issues with Mixed files. I called XXXX XXXX and was on the phone for over an hour and they can not find me in their system under any of my information. They also agreed that maybe it is another XXXX XXXX that is accidentally reporting on my credit or this is fraud. I need this removed as there is nothing you have on file with my information.
CFPB Complaint No. 4239075, filed March 23, 2021

Florida complaint
I am requesting that you immediately delete information off of my credit report that isnt mine. I have filed an Identity Report and I have attached this document below. Also, I do not recognize these accounts and have never incurred debt with these creditors. Thus, I am requesting that you please verify the validity of these accounts, and remove them once its confirmed that they are not mine. It could also be possible you are mixing up these accounts with someone that has a similar name as me.
CFPB Complaint No. 4094395, filed January 26, 2021

Texas complaint
I've contacted this company, I haven't been able to get ahold of anyone. I've never been to this Radiology company. You can compare my social security number to the social on file with this company as well as my date of birth. Nothing will match, I believe this file may be mixed up with someone else. I've done done business or had any services from this business.
CFPB Complaint No. 4160271, filed February 23, 2021

CONSUMER FIRST COALITION

May 26, 2021

The Honorable Al Green
Chairman
Subcommittee on Oversight and Investigations
House Committee on Financial Services
Washington, DC 20515

The Honorable Andy Barr
Ranking Member
Subcommittee on Oversight and Investigations
House Committee on Financial Services
Washington, DC 20515

Dear Chairman Green and Ranking Member Barr:

On behalf of the members of the Consumer First Coalition (CFC), I am pleased to submit this statement for the record for your hearing titled "Consumer Credit Reporting: Assessing Accuracy and Compliance." CFC represents a group of leading financial institutions and service providers committed to combating all forms of fraud, protecting identities, and upholding the privacy protections that are a hallmark of the financial services industry. CFC members are often users of credit reports, and also furnishers of data into the credit reporting system. Therefore, we appreciate the opportunity this hearing provides to highlight a growing scam called "credit washing" that negatively impacts the credit reporting system and, more importantly, makes it harder for victims of identity theft to exercise their rights under federal law.

A credit score is an important barometer of a consumer's financial health. These three-digit numbers provide lenders, employers, landlords and others a comprehensive view of a person's history managing credit. As such, they are also used as predictors of the likelihood that a person will repay a financial obligation, such as a car loan or credit card balance, and factor heavily into the rates and terms for which a consumer may qualify.

Thus, it should come as no surprise that for some consumers who fall behind on credit bills, seeking a quick fix can be preferable to taking the steps necessary to properly repair one's credit or meet credit obligations. This has manifested itself in the form of "credit washing" – a scam that exploits protections under the Fair Credit Reporting Act (FCRA) designed to aid victims of identity theft. Under that law, if a consumer is a victim of alleged identity theft, they can alert their financial institution or any of the nationwide credit bureaus, which are required by law to block the reporting of the disputed account — called a "tradeline" — within four days. Granted, such a request from a consumer can be refused or later revoked if the institution can prove a misrepresentation, but that is not always possible in the narrow window of time granted by the law and the institution's likely inability to determine malfeasance. When a delinquent trade line is not factored into a credit score calculation, that score can rise.

Sophisticated scammers will take advantage of the newly washed and improved credit score and quickly apply for new credit, beginning the cycle anew: Go delinquent, falsely claim identity theft, get new credit at a different bank, max that out, falsely claim identity theft – drawing out the scam for as long as desired.

CONSUMER **FIRST**
COALITION

Over the past few years, financial institutions have seen a spike in the number of disputes on delinquent trade lines, with some reporting more than 1,000 per month – of which an estimated 95% are fraudulent and *not* the result of real identity theft. Looking back, this trend appears to correlate directly with a change made by the Federal Trade Commission (FTC), which provides the "identity theft report" a consumer can submit to exercise their previously mentioned rights under the FCRA. In 2017, the FTC made it easier for victims of identity theft to exercise their rights by removing the requirement that a police report had to accompany their claim of identity theft to a bank or credit bureau. While removing this extra friction was a good change for legitimate victims, it also removed a significant disincentive for would-be credit washers, enabling them to take advantage of the system.

This creates two significant issues that should be of concern for members of the Subcommittee: First, for an actual victim of identity theft, becoming one of 1,000 or more similar monthly reports a bank is required to investigate makes getting the high level of focused attention and assistance they deserve much more difficult. While the immediate credit score protection afforded by the start of the FCRA process is a necessary benefit, a victim likely has more significant issues to resolve – like determining the full extent of the damage, both financial and emotionally, the identity theft has caused to their life. This work takes the collective effort of financial institutions, credit bureaus, law enforcement, victim assistance nonprofits and others. When resources are stretched thin dealing with credit washers, that puts real victims at a distinct disadvantage.

Second, a successfully "washed" credit score can lead to loans being made and credit extended in an unsafe and unsound manner. A loan made to a consumer who engaged in credit washing but who otherwise would not have qualified due to their actual credit risk effectively evades the lender's risk controls and tolerances, undermining the effectiveness of their underwriting processes.

CFC is engaged in efforts to better quantify the impact of credit washing. We look forward to engaging with you and your colleagues to find innovative ways to stem the flood of credit washing cases, making it harder to abuse the system and rights under the FCRA, while ensuring legitimate victims are afforded the protections and resources they need.

Sincerely,

/s/

Jason Kratovil
Executive Director

STUDENT BORROWER PROTECTION CENTER

BIG DATA & BIG ERRORS

Why Giving Furnishers a Free Pass Undermines the Credit Reporting System and Denies Consumers Access to Justice

May 2021

Prepared by:

John Albanese

BERGER MONTAGUE

About the Author

John Albanese is an Associate at Berger Montague. Mr. Albanese concentrates his practice on consumer protection with a focus on Fair Credit Reporting Act violations related to criminal background checks. Mr. Albanese has also prosecuted class actions related to illegal online lending, unfair debt collection, privacy breaches, and other consumer law issues.

Mr. Albanese is a graduate of Columbia Law School and Georgetown University. At Columbia, he was a managing editor of the Columbia Law Review and was elected to speak at graduation by his classmates. Mr. Albanese clerked for Magistrate Judge Geraldine Brown in the Northern District of Illinois.

The views expressed in this article are the author's alone.

Protect Borrowers

Table of Contents

Introduction

In March 2020, Congress passed the CARES Act which automatically suspended all payment obligations and halted all interest accrual on loans held by the Department of Education.[1] The CARES Act further required that for the purpose of reporting information about the loan to a credit bureau, each suspended payment was to be "treated as if it were a regularly scheduled payment made by a borrower."[2]

Instead of complying with the CARES Act, consumer reporting agencies and creditors have violated the credit reporting requirements in the statute. The most notorious example occurred in May 2020 when student loan servicer Great Lakes Educational Loan Services, Inc.[3] provided inaccurate information to the credit bureaus for millions of borrowers, incorrectly indicating that these borrowers had chosen to stop paying on their loans (an arrangement known as a "deferment"), rather than indicating these borrowers were current.[4] The Chief Operating Officer of the Department of Education's Office of Federal Student Aid characterized this reporting as an "error."[5] As a consequence of the misreporting, as many as five million consumers immediately saw an alarming and unexplained drop in their credit scores during a very vulnerable and trying time. These issues are not limited to Great Lakes. Other student loan servicers have violated the CARES Act.[6] And more generally, the misreporting is emblematic of the widespread and persistent problems of inaccurate furnishing and reporting of credit information that have plagued the credit reporting industry for decades.[7]

The Origins of Consumer Credit Information

People and entities that provide information to credit bureaus are generally known as "furnishers" and include a wide range of entities, from large banks reporting on mortgages and credit cards to landlords reporting on rent payments to hospitals and doctors reporting on medical debt.[8] The Consumer Financial Protection Bureau's ("CFPB") "Furnisher Rule" defines furnishers as "an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report."[9] Despite the presence of systemic credit reporting errors, however, it is difficult under current Fair Credit Reporting Act ("the FCRA")[10] jurisprudence to hold accountable furnishers of inaccurate credit information like Great Lakes even for widespread errors.

Under the courts' current interpretation of the FCRA, furnishers get a free pass to fix any erroneous information they provide to a credit bureau. As long as such fixes are made within 30 days of a dispute, a furnisher generally cannot be sued by a private party regardless of the harm caused by the misreporting.[11] Thus, furnishers have little incentive to get reporting right in the first instance. In other words, a consumer has no private right of action under the FCRA against a furnisher for misreporting, no matter how egregious or widespread it may be, as long as the furnisher corrects the reporting within 30 days.[12]

Even when credit reporting issues are corrected, these corrections are often made in a one-off manner with no investigation into the root causes of the misreporting or evaluation of whether any misreporting is systemic.[13] There are some court decisions that also find the FCRA does not permit private parties from obtaining injunctive relief, limiting the systemic remedies that may be available to consumers.[14]

Under the courts' current interpretation of the FCRA, furnishers get a free pass to fix erroneous information.

To make matters worse, through the FCRA's broad preemption provisions, the FCRA limits the abilities of state legislatures to provide more robust protections and remedies for consumers harmed by problems with furnishers.[15] In short, the FCRA and current case law make it very difficult to obtain relief for consumers against furnishers of credit information. As it currently stands, the FCRA fails to create the necessary incentives for both the credit bureaus or furnishers to identify, evaluate, or address widespread credit reporting and furnishing issues that harm consumers.

Student loans make up a major portion of the credit market and are the third most-prevalent tradeline on credit reports.[16] Student loans servicers frequently are accused of inaccurate credit reporting and are sued by individuals frequently.[17] But systematic or programmatic relief has not been obtained, and there are few, if any, signs that student loan servicers have made any efforts to improve their practices.[18]

This report discusses issues preventing furnishers of credit information from being held accountable for harmful errors with a focus on student loan servicers who report information to the major credit bureaus. Inaccurate credit reporting can severely damage a consumer's credit and corresponding credit scores, resulting in loan denials, increased interest rates, lower credit limits, higher insurance premiums, and even a loss of employment or rental opportunities.

Errors in credit reporting harm consumers and undermine the functioning of the credit system, and such errors have been ubiquitous for decades with no sign of abating under the current legal landscape.[19] Despite the obligations of the credit bureaus to ensure accuracy in credit reports, the bureaus have not been willing to adequately ensure that furnishers provide accurate information. This has been especially true during the COVID-19 pandemic; the Consumer Financial Protection Bureau reported in early 2021 that it had received over 279,000 consumer complaints in 2020 regarding credit reporting issues, making credit reporting the single most complained-about area of consumer finance that year (having accounted for 58 percent of all consumer complaints the Bureau received in 2020).[20] Moreover, the monthly rate of consumer complaints submitted regarding credit reporting issues in 2020 marked a 129 percent increase in the monthly volume of these complaints relative to the prior two years.[21]

As discussed in detail below, the FCRA was designed to be privately enforced and class actions against the credit bureaus have led to significant changes in credit reporting practices by the credit bureaus and improved protections for consumers. But the FCRA's limitations on private actions against furnishers, combined with its restrictions on how states may regulate furnishers through legislations have left furnishers largely unaccountable for even large-scale widespread reporting errors. Public enforcement simply has not been enough to ensure accuracy and fairness in credit reporting, especially when it comes to furnishers.

This report concludes with some recommendations to improve private and public remedies against credit furnishers, and student loan servicers, in particular.

Big Data & Big Errors

Background on the Credit Reporting Industry

The credit reporting industry is a multi-billion-dollar industry and growing.[22] The industry is largely dominated by the national consumer reporting agencies ("NCRAs"), Experian, Equifax, TransUnion. In the United States, nearly 200 million people have credit files with one of the NCRAs.[23]

The NCRAs receive information from creditors that generally report the status of credit accounts every month through electronic updates that are transmitted to the credit bureaus using a format called the Metro 2 Format. The Metro 2 format was created by the credit industry's trade association, the Consumer Data Industry Association ("CDIA:).[24] The Metro 2 format provides creditors with numerous fields and codes to use to report trade lines.[25] The CDIA has published the Credit Reporting Resource Guide to Metro 2 reporting for creditors to use.[26]

Student loans make up a significant portion of the consumer credit market. They are the third most reported loan product with 112 million tradelines reported representing 11 percent of total tradelines behind only credit cards and retail revolving accounts (store-branded credit cards) and ahead of mortgages and auto loans.[27] Moreover, research from the Consumer Financial Protection Bureau in 2017 indicated that the proportion of consumers who became "credit visible" (meaning that they began to be reported on) due to student loans more than doubled in the preceding ten years,[28] making student loans the second most common entry point into credit visibility for consumers under the age of 25.[29] Student loan debt reached a high of $1.7 trillion last year.[30]

A credit report is often reduced to a credit score. The most common credit scores are those created by the Fair Isaac Corporation or "FICO."[31] The NCRAs have also entered into a joint venture and developed their own credit scoring model called "VantageScore."[32] Although similar, FICO scores and VantageScore scores can differ significantly.[33] VantageScore is used by some prominent credit monitoring services including Credit Karma.[34]

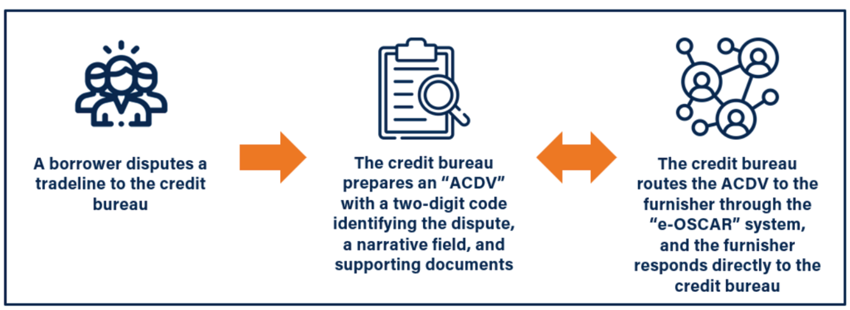
Even a single late payment on a loan or a line of credit can make a significant impact on a credit score and can remain on a credit report for up to seven years.[35] Per FICO, payment history makes up 35 percent of a credit score.[36] Other factors used in credit scoring include amounts owed, percentage of credit limit used, total balances and debt, length of credit history, and credit mix.[37] An inaccurate credit report and a lower credit score can lead to denial of credit applications, lower credit limits, higher interest rates, higher insurance premiums, and a denial of employment and housing opportunities.

Credit Reports are Error Prone and Difficult to Correct

Errors in credit reporting are widespread and persistent. In 2012, a Federal Trade Commission (FTC) study found that 20 percent of consumers had a verified error in their credit reports.[38] In 2020, the CFPB received 319,300 complaints from consumers regarding credit or consumer reporting, an increase of 107 percent from 2019 and representing 59 percent of the total complaints received by the CFPB.[39] The CFPB noted that many complaints involved the drop in credit scores after Great Lakes reported the student loans it services as in deferment.[40]

To assist consumers in combatting the widespread misreporting, the FCRA provides consumers with a right to dispute inaccurate items on credit reports but the system is flawed.[41] If a consumer disputes a tradeline to the NCRAs, the dispute is routed through the "e-OSCAR" which is a system developed by the credit bureaus to transmit consumer disputes to creditors.[42] The credit bureau will transmit an Automated Consumer Dispute Verification form ("ACDV") that distills the consumer's dispute into a two-digit code, along with a narrative field.[43] Beginning in 2013, the e-OSCAR system allowed for the inclusion of any supporting documents the consumer submitted with their dispute.[44]

Figure 1. The FCRA Does not Create a Direct Path to Hold Furnishers Accountable



It is well-documented that the credit dispute system does not function well. The credit bureau merely serves as a conduit to pass along the dispute, and their agents are not empowered to exercise discretion with respect to a consumer's dispute.[45] No further investigation is conducted into the consumer's dispute and the consumer reporting agencies simply "parrot" what the furnisher provides them. [46] For instance, in 2017, the CFPB found that one or more consumer reporting companies "failed to review and consider the attached documentation and relied entirely on the furnisher to investigate the dispute."[47]

Furnishers are no better. Instead of doing an actual investigation, the furnisher often times engages in a circular "data conformity" review simply assuring that what is in furnisher's system is what is being reported on the credit report.[48] In July 2010, the CFPB's regulations governing furnishers (the "Furnisher Rule") became effective which required furnishers to consider "all relevant information provided by the consumer" with a dispute.[49] In 2013, the CFPB reiterated this obligation, releasing a bulletin stating that it "expects every furnisher to review and consider 'all relevant information' relating to the dispute, including documents that the [consumer reporting agency] includes with the notice of dispute or transmits during the investigation, and the furnisher's own information with respect to the dispute."[50] The CFPB has also brought numerous action against credit furnishers for failing to report correctly and respond appropriately to disputes.[51]

Student loan servicers, in particular, have come under scrutiny for their credit reporting practices.

In 2015, the NCRAs and 31 states entered into a settlement that resolved claims brought by the states that the NCRAs were violating the FCRA in various ways, including by failing to adequately monitor furnishers. Under the terms of that settlement, the NCRAs are required to monitor furnishers and create a working group to "further actionable data quality and accuracy initiatives."[52] The settlement further requires that the NCRA provide to the states information and statistics concerning furnisher dispute metrics, and a description of any actions taken by the NCRAs in response to those metrics. Per the NCRAs, upon request the NCRAs are required to provide the states a list of problematic furnishers.

Student loan servicers, in particular, have come under scrutiny for their credit reporting practices. In a supervisory report, the CFPB's examiners found that some student loan servicers lack rudimentary guardrails to ensure that the information they put into the credit reporting system accurately reflects the circumstances of their borrowers, including:

- Policies and procedures that do not reference one another so that it is difficult to determine which policy or procedure applies;
- Policies and procedures that do not contemplate record retention, internal controls, audits, testing, third party vendor oversight, or the technology used to furnish information to NCRAs;

- Policies and procedures that lack sufficient detail on employee training.[53]

In 2017, the CFPB sued Navient alleging that, among nearly a dozen violations of law pled in its complaint, Navient violated the FCRA and the CFPB's Furnisher Rule. In particular the CFPB alleged that Navient "misreported information to consumer reporting agencies about thousands of borrowers who were totally and permanently disabled, including veterans whose total and permanent disability was connected to their military service, by making it appear as if those borrowers had defaulted on their student loans when they had not, damaging their credit."[54] The lawsuit remains ongoing. California, Illinois, Washington, and Pennsylvania authorities have brought similar lawsuits against Navient.[55] The California action in particular alleges that Navient improperly reported loan discharges due to total and permanent disability of the borrower as defaults.[56]

As noted above, the very large furnishing error committed by student loan servicer Great Lakes was not the only large-scale misreporting that occurred following the enactment of the CARES Act. According to newly released government records, several other Education Department contractors mishandled the implementation of the CARES Act's credit protections, damaging the credit of student loan borrowers in tens of thousands of previously undisclosed cases.[57] No federal or state regulators appear to have brought enforcement actions in response to these widespread errors and it remains unclear whether the Department of Education took any action to direct restitution to affected consumers.

There have also been hundreds of individual FCRA lawsuits filed by consumers in the past few years alleging inaccurate reporting of student loans.[58] Despite these enforcement efforts, inaccurate credit reporting remains a persistent and all-too-common issue and credit furnishers remain a significant part of the problem.[59] To understand why inaccurate reporting persists requires a discussion of the Fair Credit Reporting Act and its limitations.

The FCRA's Regulation of Furnishers

Since it originally passed the FCRA, Congress sporadically and infrequently has attempted to strengthen the FCRA to address ongoing and persistent issues in credit reporting. But these efforts have fallen short of what is required, and some changes, especially with respect to preemption, have harmed consumers. There is still an unacceptable level of inaccuracies in credit reporting and little accountability for those entities that violate the FCRA. The FCRA, at present, is inadequate to hold the credit reporting industry accountable for violations of the FCRA, especially as it comes to furnishers. To fully appreciate the issue requires a brief summary of the FCRA and its regulation of furnishers.

The FCRA did not Regulate Furnishers When Passed in 1970

The Fair Credit Reporting Act was originally enacted in 1970. Congress found that "[i]naccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system."[60]

As enacted in 1970, the entities regulated by the statute were the consumer reporting agencies and users of credit reports. Furnishers were not affirmatively regulated by the statute, except to bar certain common law claims against furnishers for credit reporting as preempted ("Specific Preemption Provision"). Specifically, the statute provided:

> [N]o consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information furnished with malice or willful intent to injure such consumer.[61]

In addition to the above limitation on common law claims, the FCRA as passed in 1970 contained a limited general preemption provision ("General Preemption Provision") setting forth that the FCRA "does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency."[62] Thus, Congress, when originally enacting the FCRA, contemplated that states would be able to pass laws regulating credit reporting.

Congress Amends the FCRA to Strengthen Remedies and Regulate Furnishers but Also Severely Restricts Private Enforcement and Limits States' Ability to Regulate

Under the remedies provided by the statute as passed in 1970, a consumer could bring a lawsuit for their actual damages, and attorneys' fees and costs for violations of the FCRA.[63] Indeed, Congress intended that private enforcement be the primary method of policing the credit reporting industry's compliance with the FCRA.[64] But the Act did not work as well as intended. A major reason for the Act's ineffectiveness was due to difficulties in providing redress to harmed consumers. Damages due to inaccurate credit reports were hard to prove in litigation and the awards in FCRA cases many times consisted only of nominal damages.[65] Twenty years after the passage of the FCRA, studies showed that forty-eight percent of consumer credit reports contained errors, and twenty percent contained errors serious enough to cause denials of credit.[66]

Congress thus significantly amended the FCRA in 1996. The amendments included providing that for willful violations of the FCRA, a plaintiff could seek statutory damages of $100 to $1000 in lieu of seeking actual damages.[67] The statutory damages remedy also facilitated private class action cases as individual issues of damages no longer precluded class certification.[68]

The 1996 amendments also for the first time regulated furnishers.[69] Among other things, furnishers are prohibited from furnishing "any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate."[70] Further, furnishers could not provide any information about a consumer if "the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and the information is, in fact, inaccurate."[71]

Additionally, the 1996 amendments specified that if a CRA receives a dispute about a tradeline, the CRA is required to relay that dispute information the furnisher.[72] Furnishers are then required to "conduct an investigation of disputed information," "review all relevant information provided by the consumer reporting agency," and correct the information if it is inaccurate or cannot be verified.[73]

Congress, however, also imposed significant restrictions on enforcement of these provisions. Importantly, a consumer cannot sue a furnisher for duties set forth in § 1681s-2(a), that is, knowingly reporting inaccurate information.[74] The consumer must first make a dispute with the consumer reporting agency, and then can sue the furnisher if the furnisher fails to conduct a reasonable investigation of the disputed information, i.e., the duties set forth in § 1681s-2(b). Moreover, the statute provides a further "limitation on enforcement" that provides that the duties under § 1681s-2(a) "shall be enforced exclusively as provided under section 1681s of this title by the Federal agencies and officials and the State officials identified in section 1681s of this title."[75]

Congress also revised the FCRA's General Preemption Provision to temporarily preempt all state laws relating to "responsibilities of persons who furnish information," while saving two states' laws (California and Massachusetts) that were already in effect at the time the amendments were passed.[76] As relevant here, the statute now provides:

> No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under . . . section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply--
>
> **(i)** with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or
>
> **(ii)** with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996).[77]

Congress, however, anticipated that states would eventually have a role again in regulating furnishers. The 1996 amendments included a sunset provision for the General Preemption Provision, stating that preemption would not apply "any provision of State law (including any provision of a state constitution) that (A) is enacted after January 1, 2004; (B) states explicitly that the provision is intended to supplement this title; and (C) gives greater protection to consumers than is provided under this title."[78]

Unfortunately for consumers, nearly a decade later Congress stripped out this sunset in 2003 amendments to the FCRA due to fears from industry that absent preemption, states would "enact differing additional requirements" than the national standards set forth in the FCRA.[79]

In the Wake of the 1996 Amendments to the FCRA, the Courts have Further Narrowed Borrowers' Access to Justice Under State Law

After the 1996 amendments, the scope of the FCRA's preemption for furnishers has been the subject of many judicial decisions. First, the interaction between the Specific and General Preemption Provision has caused some divided opinions among courts with courts taking various approaches regarding how to reconcile the two provisions. Some courts have held that the timing of when the furnisher knew of the inaccuracy mattered and other have held that the FCRA's General Preemption Provision only preempts statutory claims.[80] The view among the Courts of Appeal, however, is one of total preemption. In other words, "[§] 1681h(e) [the Specific Preemption Provision] preempts some state claims that could arise out of reports to credit agencies; § 1681t(b)(1)(F) [the General Preemption Provision] preempts more of these claims."[81] Based on these appellate decisions, any attempts to bring common law claims, such as defamation, against furnishers for providing information to the credit bureaus are unlikely to be successful.

Further, even though the FCRA explicitly saves from preemption enumerated California and Massachusetts statutes regulating furnishers, federal courts in both Massachusetts and California interpreted § 1681t(b)(1)(F) as preempting the separate statutory sections of California and Massachusetts law that provided consumers with private rights of action to enforce the provisions saved from preemption.[82] In effect, in the years after the 1996 amendments, there were many judicial decisions that found the FCRA created an absolute bar to private enforcement against furnishers, even where a plain language reading of the statute appeared to leave the door open for California and Massachusetts consumers.

The court elaborated that private rights of action "do not impose any additional standards designed to be potent methods of governing conduct and controlling policy, nor do these sections require furnishers to obey any additional rules of law."

In *Gorman v. Wolpoff & Abramson, LLP*, however, the Ninth Circuit rejected this line of reasoning, and found that the FCRA did not preempt California's private right of action to enforce the California Consumer Reporting Agency Act (CCRAA).[83] The *Gorman* court noted that § 1681t(b) only forbids "requirement[s]" or "prohibition[s]" imposed by states.."[84] The court found that the statutory provision providing a right of action did not impose separate requirements or prohibitions but "merely provide a vehicle for private parties to enforce other sections, which *do* impose requirements and prohibitions."[85] The court elaborated that private rights of action "do not impose any additional standards designed to be potent methods of governing conduct and controlling policy, nor do these sections require furnishers to obey any *additional* rules of law. The rules that must be obeyed already exist in the reporting obligations specified by section 1785.25(a) of the CCRAA and saved in the FCRA."[86] In addressing the defendant's concerns regarding the need for national standards, the court stated "the enforcement provisions do not add to a patchwork of confusing obligations with which a furnisher must struggle to comply. They instead allow for additional avenues through which consumers can ensure that furnishers are complying with the obligations Congress specifically meant to impose."[87] The court concluded "because the plain language of the preemption provision does not apply to private rights of action, and because the likely purpose of the express exclusion was precisely to permit private enforcement of these provisions, we hold that the private right of action to enforce California Civil Code section 1785.25(a) is not preempted by the FCRA."[88]

While *Gorman* makes clear that California law can be enforced against furnishers, despite *Gorman*, Massachusetts courts continue to find claims under Massachusetts law to be preempted because the private right of action provision was not explicitly enumerated in § 1681t(b)(1)(F).[89] Further, the overwhelming majority of

Americans lack any meaningful remedies against furnishers for providing inaccurate credit information to the credit bureaus in the first instance.

The FCRA Does not Provide Adequate Remedies Against Furnishers

The limitations of the FCRA have not escaped criticism. As noted by one federal judge, the FCRA's restrictions on pursuing claims against furnishers limit the value of the statute:

> [The FCRA] is of little value to ordinary consumers, in part due to the fact that it is hopelessly complex—the statute is drafted in hyper-technical language and includes a sufficient number of internal cross-references to make even the most dedicated legal practitioner consider a change in career. But the FCRA's substance is even more troubling than its complex form. The statute includes numerous provisions that limit consumers' ability to enforce its mandates either by explicitly barring private actions or by imposing such burdensome procedural requirements that no layperson could possibly be expected to comply.[90]

The FCRA's limitations are especially acute when attempting to hold furnishers accountable for misreporting.

The FCRA Provides a Free Pass to Furnishers

The FCRA provides furnishers with a free pass if they misreport a tradeline. Thus, furnishers have little incentive to ensure that their reporting is accurate in the first instance. As discussed above, furnishers can only be sued under the FCRA by a consumer only after the consumer has disputed the relevant error with the credit bureau, the credit bureau has passed the dispute to the furnisher, and the furnisher has failed to conduct a reasonable investigation to correct the inaccurate reporting. The understandable instinct of many consumers is to dispute the error directly with the furnisher. But notices sent directly to the furnishers are insufficient to be able to bring a claim under the FCRA.[91] Thus, a consumer could dispute inaccurate reporting for years directly with the furnisher, but if the furnisher fixes the report after receiving notice from the credit bureau or if the consumer fails to dispute the error with the credit bureau, the consumer is often left with no redress, even if there has been substantial and lasting harm.

The requirement that a consumer must dispute with the credit bureau before bringing a claim arguably also limits the ability of a consumer to initiate a class action on behalf of a class of similarly situated consumers. Even if a furnisher has systemically misreported credit information on thousands of consumers, the furnisher can argue that only those consumers that disputed the information to the credit bureau are entitled to recovery and that the furnisher's investigation as to each dispute would have to be reviewed in order to determine liability.

These limitations are detrimental, particularly given that class actions have been effective drivers of consumer-friendly reforms across the market. Private class actions against credit bureaus have led to significant changes in credit reporting practices. For example, one class action led to a fundamental overhaul of how the NCRAs report debts that are included in consumer bankruptcies.[92] Most recently, private class action lawsuits lead to the NCRAs agreeing to completely cease reporting tax lien and civil judgment reporting.[93] FCRA class actions have also led to substantial reforms in criminal background screening and provided relief to millions of consumers.[94] The perceived inability to bring class actions against furnishers is a substantial enforcement gap.

These limitations are detrimental, particularly given that class actions have been effective drivers of consumer-friendly reforms across the market.

Private litigants are further hampered because injunctive relief for private litigants may be unavailable under the FCRA, despite seemingly contrary interpretations from the Supreme Court and Congress. The Supreme Court has held that "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction."[95] Nevertheless, various courts opinions have found that the FCRA does not provide private litigants with ability to seek injunctive relief.

The FCRA explicitly provides that injunctions are available when the government (either state or federal) brings suit, 15 U.S.C. § 1681s, but the statute does not mention the availability of injunctive relief in §§ 1681o or 1681n which provide remedies for private lawsuits. Based on the inclusion of injunctive relief for public enforcers and the absence of any mention of injunctive relief for private parties, courts, including the Fifth Circuit Court of Appeals, have held that Congress intended not to permit private litigants to obtain injunctive relief.[96] However, in the alternative, the Sixth Circuit, in declining to reach the question, noted that whether injunctive relief is available to private litigants under the FCRA is "is not free from doubt."[97] Contradicting the Fifth Circuit's holding, there is also some legislative history to indicate that in 1970, Congress understood the FCRA to be authorizing injunctive relief.[98] However, at present, the lack of access to injunctive relief as a remedy prevents a consumer from obtaining a court order requiring inaccurate reporting to cease and further hinders the ability for a consumer to obtain any systemic relief.

These restrictions, combined with preemption, have largely limited private enforcement of furnishers of credit information to individual lawsuits for damages. This has left the federal and state governments as the only enforcers with the ability to obtain any programmatic or widespread relief against furnishers. These agencies have limited resources and public enforcement actions are largely limited to those most egregious actors. Further, state actions for violations of certain furnishing requirements are limited. A state can bring an action for damages only after the furnisher has violated an injunction.[99] While the CFPB has brought various actions against credit furnishers, there are thousands of companies that furnish credit information, and there is little indication individual private lawsuits under the FCRA and the CFPB's or FTC's actions alone are sufficient to meaningfully ensure that credit furnishers comply with their obligations.

The FCRA Limits the Ability of States to Protect Their Citizens from Harms Caused by Credit Reporting Problems

In the face of widespread credit reporting and furnishing problems, state lawmakers have tried to protect their citizens and fill in some of these enforcement gaps.

For instance, in recent years, states have enacted sweeping laws in an attempt to regulate student loan servicers, including with regard to credit reporting. For example, Washington prohibits student education loan servicers from "[p]roviding inaccurate information to a credit bureau, thereby harming a student education loan borrower's creditworthiness, including failing to report both the favorable and unfavorable payment history of the student education loan."[100] California requires student loan servicers to apply "a partial payment in a manner that minimizes late fees and negative credit reporting."[101] Under Illinois law, when a borrower has a dispute the student loan servicer, the "servicer shall take reasonable steps to prevent negative credit reporting with respect to the borrower's or cosigner's account while the dispute is under review" among other requirements."[102] Other states have passed laws with similar requirements.[103] As discussed in the recommendations below, state efforts to narrowly tailor credit protections under state law, particularly where servicers' conduct is affirmatively regulated and changes to furnishing practices are merely a byproduct of this regulation, can succeed despite the preemption provisions of the FCRA.

State efforts to narrowly tailor credit protections under state law, particularly where servicers' conduct is affirmatively regulated and changes to furnishing practices are merely a byproduct of this regulation, can succeed despite the preemption provisions of the FCRA.

The preemption issue is not limited to student loan legislation. For instance, the 1996 FCRA amendments also modified the provisions of the FCRA about how long certain criminal record information could appear on consumer reports, with the amended provisions allowing criminal convictions to be reported in perpetuity.[104] In response, various states passed laws after the amendments, including Colorado and Texas, limiting the temporal scope for which convictions can be reported.[105] These laws are most likely preempted.

Similarly, other states, including Maine and Texas have recently passed laws to protect their citizens limit the reporting of medical debt. Maine's statute provides in part "[a] consumer reporting agency may not report debt from medical expenses on a consumer's consumer report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported." [106] Texas law provided that consumer reporting agencies could not report "a collection account with a medical industry code, if the consumer was covered by a health benefit plan at the time of the event giving rise to the collection and the collection is for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim[.]"[107] Courts, however, have found these laws to be preempted by the FCRA as well.[108]

In short, the FCRA's preemption provisions are severely limiting the ability of states to protect their citizens, and rendering null state laws that were passed to alleviate the harms caused by credit reporting.

Recommendations

The most straightforward way to fix the issues with the FCRA is through a congressional amendment to scale back preemption, allow private enforcement of § 1681s-2(a), explicitly provide for injunctive relief, and strengthen other aspects of the FCRA. But even short of amendment, there are other potential avenues for greater regulation of credit furnishers, and student loan servicers in particular.

- **The CFPB or the FTC should clarify that a consumer may submit a dispute not only on their behalf, but for systemic issues, on behalf of all similarly situated consumers.** If the consumer has reason to believe that there is a systemic issue and provides the basis for that belief in his dispute to the consumer reporting agency, the furnisher should be required to determine as part of its investigation whether there is a systemic issue and conduct the appropriate investigation and correct any inaccurate reporting on behalf of all affected consumers. Such representative disputes are fairly common in consumer law. For example, state consumer fraud statutes that require a consumer to send a notice prior to suit generally allow a consumer to the send a pre-suit notice on behalf of a putative class.[109] If the furnisher fails to correct the issue, the consumer should be able to sue the furnisher under the FCRA for violations of 15 U.S.C. 1681s-2(b) on behalf of the consumer and the putative class of similarly situated individuals subject to the same misreporting.

- **The CFPB should issue guidance or engage rulemaking regarding the consequences of a furnisher's failure to investigate systemic problems with credit furnishing.** Under § 1681s-2(b)(1), a furnisher is required to "conduct an investigation with respect to the disputed information" when it receives notice from a consumer reporting agency. Similarly, the FCRA and the CFPB's Furnisher Rule similarly require that a furnisher who receives a direct dispute from a consumer must "conduct a reasonable investigation with respect to the disputed information."[110] As part of such an investigation, the CFPB could make clear that if an inaccuracy is found, the furnisher must also to take steps to do a root cause analysis to ensure that the furnishing issue is not systemic or adversely affecting other consumers who may not have disputed. A failure of a furnisher to investigate and correct systemic issues underlying an individual dispute should be strong evidence of a willful violation of the statute, and serve as the basis for punitive damages or civil penalties in subsequent lawsuits or enforcement actions.

- **The CFPB or FTC should make clear that consumers may seek injunctive relief under the FCRA.** The decisions holding that consumers are unable to seek injunctive relief under the FCRA rely merely on negative inferences in the statutory language of the FCRA. Such reasoning conflicts with the Supreme Court's holding in *Califano*, that the Court retains the ability to issue injunctions unless Congress makes the "clearest command" to prohibit such relief. There is no such command in the FCRA. To restore consumers' access to injunctive relief as a remedy, the CFPB or the FTC should issue guidance or engage in rulemaking to clarify that Injunctive relief is available to private litigants under the FCRA.

- **The CFPB should make clear that a consumer complaint about the accuracy of information appearing on a credit report whether submitted to the Bureau or any other federal or state regulator constitutes a dispute under the FCRA.** Since 2012, the CFPB has accepted complaints from individual consumers related to credit reporting and, as described above, these complaints represent the largest category of consumer complaints in any consumer financial market covered by the CFPB. The terms of participation in the CFPB's consumer complaint system require firms, including furnishers and NCRAs, to determine and address the root cause of complaints submitted by consumers—a practice that may also be required by other regulators. Given the increasing reliance by consumers on the Bureau's Consumer Response system and the potential for consumer complaints to drive systemic changes to furnishers' or NCRAs' business practices, the CFPB should ensure that any credit reporting dispute is relayed to the NCRA's regardless of whether the consumer specifies a NCRA In the dispute. The CFPB should also update Regulation V to clarify that these complaints when submitted to the NCRAs trigger the NCRAs requirement under § 1681i(a)(2) to alert the furnisher, and thus would constitute a dispute under the FCRA, § 1681s-2(b). If a furnisher fails to correct inaccurate information identified in a consumer complaint, the consumer should be able to sue the furnisher under the FCRA for violations of 15 U.S.C. 1681s-2(b) on behalf of the consumer and the putative class of similarly situated individuals subject to the same misreporting.

- **States can enact statutes that seek to touch on credit furnishing, but advocates and policymakers must carefully consider preemption.** As seen above, many states have passed laws that involve credit reporting, in particular student loan servicing. It is likely that attempts to enforce those laws will face a preemption challenge. But simply because a statute mentions credit reporting does not mean that it is preempted under the FCRA. For example, California's requirement student loan servicers apply "a partial payment in a manner that minimizes late fees and negative credit reporting" does not impose any "requirements or prohibitions" on subject matters regulated by § 1681s-2 of the FCRA. The statute regulates how student loan servicers are to apply partial payments. It does not prescribe what credit bureaus must report, rather it offers credit protection to borrowers that flow from the affirmative regulation of specific servicing practice. The CFPB and FTC should consider amicus practice regarding the limited reach of FCRA preemption if these laws are challenged.

- **State enforcement authorities should look to enforce the FCRA.** FCRA violations are persistent and widespread. The FCRA empowers state officials to enforce the FCRA, including for violations unavailable to be enforced by private consumers, such as the duties on furnishers set forth § 1681s-2(a). 15 U.S.C. § 1681s(c). While there are limitations on bringing damages actions, injunctive relief is valuable and can provide relief for consumers beyond the borders of one state. Under the 2015 multi-state settlement, the NCRAs are required to provide the states with information regarding problematic furnishers, and the FCRA specifically states are allowed to use any authorized investigatory powers to determine whether FCRA violations are occurring.[111]

- **The Department of Education should vest borrowers with private enforcement rights via its contracts with student loan servicers.** The Department of Education's contracts with student loan servicers should restate current law, specifying that the loan servicer will comply with the FCRA's furnishing requirements and the CFPB's Furnisher rule.[112] These contracts should also establish that consumers are third party beneficiaries to this contractual provision. Any violation of these provisions with respect to a consumer's account would be a breach of contract enforceable by the consumer. Breach of contract claims should not subject to preemption because a contract is a voluntary undertaking and the duty imposed is not by state law but by the contract.[113]

Endnotes

[1] *See* Pub. L. No. 116–136 (2020) Section 3513(b).

[2] *See* Pub. L. No. 116–136 (2020) Section 3513(d).

[3] Readers should note that Great Lakes Educational Loan Services, Inc. (Great Lakes) is a subsidiary of Nelnet Inc., the parent company of both Great Lakes and Nelnet Servicing, LLC. Taken together, these businesses make Nelnet, Inc. the largest servicer of student loans and the largest furnisher of student loan credit information in the nation. See Nelnet, Our Businesses (accessed May 20, 2021), https://nelnetinc.com/businesses/.

[4] *Sass v. Great Lakes Educational Loan Services, Inc.*, Case No. 3:20-cv-3424-EMC, Declaration of Jill Leitl ¶¶6-9 (N.D. Cal. July 17, 2020)(ECF No. 48-1.); Michael Stratford, Emergency Relief Screw-Up Hits 5 Million Student Loan Borrowers, Politico (May 21, 2020) https://www.politico.com/news/2020/05/20/emergency-releif-student-loan-272334.

[5] U.S. Department of Education, Statement from the Chief Operating Officer of the Office of Federal Student Aid (May 21, 2020), https://twitter.com/FSACOO/status/1263614517759692801?s=20.

[6] Student Borrower Protection Center, Adding Insult to Injury (April 2021) (describing widespread noncompliance with CARES Act by various student loan servicers).

[7] *See generally* 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) ("Automated Injustice").

[8] *See generally* CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System (Dec. 2012), Section 3.1.1, p. 15, https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[9] 12 C.F.R. § 1022.41.

[10] 15 U.S.C. §§ 1681-1681x.

[11] *Id.*

[12] *Id.*

[13] *See generally* 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) ("Automated Injustice").

[14] *See, e.g., Washington v. CSC Credit Servs. Inc.*, 199 F.3d 263, 268 (5th Cir. 2000).

[15] 15 U.S.C. § 1681t.

[16] Consumer Financial Protection Bureau, Payment Amount Furnishing & Consumer Reporting at 5 https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_report_2020-11.pdf.

[17] *See infra*, p. 8.

[18] For further discussion *see infra*, p. 15.

[19] *See* CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System, *supra* n. 8.

[20] CFPB, Consumer Response Annual Report: January 1 – December 31, 2020 at 23 (March 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[21] *Id.*

[22] IBIS*World*, Credit Bureaus & Rating Agencies Industry in the US- Market Research Report (Mar. 9, 2021), https://www.ibisworld.com/united-states/market-research-reports/credit-bureaus-rating-agencies-industry/ (noting industry has grown at annual rate of 6.8% and industry revenues are $14.4 billion.)

[23] CFPB, *Data Point: Credit Invisibles* 9, 12 (2015), https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[24] National Consumer Law Center, "The Latest on Metro 2: A Key Determinant as to What Goes Into Consumer Reports (Oct. 17, 2018), https://library.nclc.org/latest-metro-2-key-determinant-what-goes-consumer-reports.

[25] *Id.*

[26]CDIA, Metro 2 Format for Credit Reporting (Accessed May 25, 2021, https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/.

[27] CFPB, Payment Amount Furnishing & Consumer Reporting at 5 https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_report_2020-11.pdf.

[28] CFPB, CFPB Data Point: Becoming Credit Visible (June 2017), https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf.

[29] *Id.*

[30] CFPB, Consumer Response Annual Report at 73 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[31] CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System,* supra note 8.

[32] VantageScore, About VantageScore (Accessed May 25, 2021), https://vantagescore.com/company/about-vantagescore.

[33] CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System,* supra note 8.

[34] Credit Karma, VantageScore vs. FICO: What's the difference? (Accessed May 24, 2021), https://www.creditkarma.com/advice/i/vantagescore-vs-fico#:~:text=Credit%20Karma%20provides%20VantageScore%C2%AE,your%20scores%20are%20based%20on.

[35] 15 U.S.C. § 1681c(a).

[36] Fair Isaac Corporation, What is a Payment History (accessed May 25, 2021). https://www.myfico.com/credit-education/credit-scores/payment-history.

[37] VantageScore vs. FICO, supra note 34.

[38]Fed. Trade Comm'n, Report to Congress under Section 319 of the Fair and Accurate Transactions Act of 2003, at 25 (2012), available at https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

[39] CFPB, Consumer Response Annual Report at 8 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[40] CFPB, Consumer Response Annual Report at 26 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[41] 15 U.S.C. § 1681i.

[42] Chi Chi Wu National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports at 14-16 (Jan. 2009).

[43] *Id.*

[44] Chi Chi Wu, Michael Best, & Sarah Bolling Mancini, National Consumer Law Center, Automated Injustice Redux at 9 (Feb. 2019).

[45] Automated Injustice at 17-20.

[46] Automated Injustice at 17-24.

[47] CFPB, Supervisory Highlights: Consumer Reporting Special Edition (Winter 2017), https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

[48] Automated Injustice Redux at 14-15; *Myers v. Am. Educ. Servs.*, No. 1:18-CV-144, 2021 WL 859538, at *7 (S.D. Ohio Mar. 8, 2021) (finding that furnisher violated the FCRA when all it did to investigate "was compare the requested data on the ACDV form to its own internal records".)

[49] 12 C.F.R. § 1022.43(e)(2).

[50] CFPB Bulletin 2013-09 (Sept. 4, 2013).

[51] *See, e.g.*, Consent Order, *In the Matter of DriveTime Automotive Group, Inc. and DT Acceptance Corp.*, File No. 2014-CFPB-0017 (CFPB Nov. 19, 2014) Consent Order, *In Re State Farm Bank*, FSB File No. 2018-BCFP-0009 (B.C.F.P. Dec 6, 2018), Consent Order, *In re. Santander Consumer USA Inc.*, FSB File No. 2020-BCFP-0027 (B.C.F.P. Dec. 22, 2020), https://files.consumerfinance.gov/f/documents/cfpb_santander-consumer-usa-inc_consent-order_2020-12.pdf.

[52] Assurance of Voluntary Compliance § IV.H. A copy of the Assurance of Voluntary Compliance can be found on the Ohio Attorney General's website, https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx.

[53] CFPB, Supervisory Highlights at 18 (winter 2016).

[54] CFPB v. Navient Corp., 3:17-cv-00101-RDM (M.D. Pa. January 18, 2017).

[55] *Washington v. Navient Corp.,* (King. Cty. Sup. Ct.); *Illinois v. Navient Corp.*, 2017-cg-761 (Cook. Cty.); *Pennsylvania v. Navient Corp.* 3-17-cv-01814 (M.D. Pa.); *California v. Navient Corp.*, Case No. CGC-18-567732 (San. Fran. Cty. Sup. Ct.)

[56] California v. Navient Corp., Case No. CGC-18-567732, First Am. Comp. ¶¶ 93-99 (San. Fran. Cty. Sup. Ct. Oct. 16, 2018).

[57] Student Borrower Protection Center, Adding Insult to Injury (April 2021) (describing widespread noncompliance with CARES Act by various student loan servicers).

[58] Since 2017, a Westlaw search of federal court docket filings and "Fair Credit" returns 184 results for Navient, 68 results for Great Lakes, 165 results for Pennsylvania Higher Education Assistance Agency (d/b/a American Education Services or Fedloan Servicing), 87 results Nelnet (d/b/a Nelnet Servicing or Firstmark Servicing), 34 results for Sallie Mae and 16 results Conduent (formerly Affiliated Computer Services or ACS, and for a period, Xerox Education Services or XES). These results, while not exact, suggest that student loan servicers have been sued hundreds of times over the past five years for alleged violations of the Fair Credit Reporting Act. The search results are most likely both overinclusive and underinclusive. The Westlaw docket search can miss some lawsuits especially those removed from state court. The same case can also return more than one result if the case number changed throughout the litigation such as due to a transfer or a change in presiding judge.

[59] Automated Injustice at 2 ("Part of the problem is that some furnishers (creditors or other companies that supply information to the credit bureaus) still conduct pro forma, perfunctory investigations into credit reporting disputes and ignore CFPB guidance to consider critical documents and information.").

[60] 15 U.S.C. § 1681(a)(1).

[61] 15 U.S.C. § 1681h(e).

[62] Public Law 91-509 (OCT. 26, 1970) 84 Stat. 1136, codified at 15 U.S.C. § 1681t.

[63] 15 U.S.C. § 1681o; 15 U.S.C. § 1681n.

[64] Alexandra P. Everhart Sickler, (Un)Fair Credit Reporting Act, 28 Loy. Consumer L. Rev. 238, 261 (2016); S. REP. 103-209, at 6. (quoting testimony of FTC's Director of Credit Practices "because the statute was designed to be largely self-enforcing, the capacity of consumers to bring private actions to enforce their rights under the statute is at least equally important").

[65] Lawrence D. Frenzel, Fair Credit Reporting Act: The Case for Revision, 10 Loy. L.A. L. Rev. 409, 429-30 (1977)

[66] Hearing before the Subcomm. on Consumer Affairs and Coinage of the H. Comm. on Banking, Finance, and Urban Affairs, 102d Cong. 12 (1991) (Serial No. 102-45).

[67] 15 U.S.C. § 1681n; Consumer Credit Reporting Reform Act of 1996 (Public Law 104- 208, the Omnibus Consolidated Appropriations Act, for Fiscal Year 1997, Title II, Subtitle D, Chapter 1).

[68] *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006) (noting that statutory damages remedies allow for easier certification of classes).

[69] Federal Trade Commission, 40 Years of Experience with the Fair Credit Reporting Act at 2-3 (2011)

[70] 15 U.S.C. § 1681s-2(a)(1)(A)

[71] 15 U.S.C. § 1681s-2(a)(1)(B)

[72] 15 U.S.C. § 1681i(a).

[73] 15 U.S.C. § 1681s-2(b).

[74] 15 U.S.C. § 1681s-2(c).

[75] 15 U.S.C. § 1681s-2(d).

[76] 15 U.S.C. § 1681t

[77] 15 U.S.C. § 1681t(b)(1)(F). The Massachusetts and California statutory sections exempted from preemption are very similar to § 1681s-2(a). Mass. Gen. Laws Ann. ch. 93, § 54A ("Every person who furnishes information to a consumer reporting agency shall follow reasonable procedures to ensure that the information reported to a consumer reporting agency is accurate and complete. No person may provide information to a consumer reporting agency if such person knows or has reasonable cause to believe such information is not accurate or complete."); Cal. Civ. Code § 1785.25(a) ("A person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate.")

[78] Omnibus Consolidated Appropriations Act, 1997, PL 104–208, September 30, 1996, 110 Stat 3009.

[79] H.R. Rep. No. 108-263, at 24 (2003).

[80] Jill A. Conrad, Preemption Under the Fair Credit Reporting Act, 25 Annual Review of Banking & Financial Law 579, 588-98 (2006) (describing different approaches).

[81] *Purcell v. Bank of Am.*, 659 F.3d 622, 625 (7th Cir. 2011); *see also Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45, 48 (2d Cir. 2011) (following *Purcell*); *Scott v. First S. Nat'l Bank*, 936 F.3d 509 (6th Cir. 2019) (same).

[82] *See, e.g.*, *Quigley v. Pennsylvania Higher Educ. Assistance Agency*, No. C00-1661CRB, 2000 WL 1721069, at *3 (N.D. Cal. Nov. 8, 2000) ("Civil Code section 1785.31 provides a private right of action for any person who suffers damages from a violation of the California Consumer Credit Act. Cal. Civ. Code § 1785.31(a). Subsection (g) and section 1785.31, however, are not included in the FCRA's exception to its preemption provision. That provision only exempts California Civil Code section 1785.25(a). Thus, based on a plain reading of the FCRA, any private right of action under the California Civil Code based on the wrongful acts of a "furnisher of information" is preempted by the FCRA."); *Leet v. Cellco P'ship*, 480 F. Supp. 2d 422, 433 (D. Mass. 2007) ("While the FCRA expressly exempts § 54A(a) from its preemptive reach, it includes no such exemption for § 54A(g)—the provision that creates a private cause of action for violations of § 54A(a).[6] In the Court's view, the absence of express language exempting § 54A(g) from the FCRA's preemption provision is fatal.")

[83] *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147 (9th Cir. 2009); See also Cal. Civ. Code § 1785.25.

[84] *Id.* at 1171.

[85] *Id.*

[86] *Id.*

[87] *Id.* at 1172.

[88] *Id.* at 1172-73.

[89] *Logan v. Bank of Am., N.A.*, No. 19-CV-11483, 2020 WL 1245124, at *5 (D. Mass. Mar. 16, 2020) (where the FCRA exempts Section 54A(a), but not Section 54A(g), preemption applies to private rights of action under the [Massachusetts credit reporting law].")

[90] *Burrell v. DFS Servs., LLC*, 753 F. Supp. 2d 438, 444 (D.N.J. 2010).

[91] *Id. at* 448-89.

[92] *White v. Experian Info. Sols., Inc.*, Case No. 05-cv-10170, ECF No. 338 (C.D. Cal. Aug. 8, 2019).

[93] *See Clark v. Trans Union, LLC,* Case No. 3:15-cv-00391 (E.D. Va.); *Clark v. Experian Info. Sols., Inc.*, No. 3:16-cv-00032 (E.D. Va.); *Thomas. v. Equifax Info. Servs., LLC*, Case No. 3:18-cv-00684-MHL (E.D. Va.).

[94] *See, e.g., Roe v. IntelliCorp Records, Inc.*, No. 12-cv-2288 (N.D. Ohio Nov. 12, 2013) (ECF No. 124) (providing $18 million dollars for consumers subjected to inaccurate reports and prohibiting defendant from selling "instant" background checks); *Thomas v. Backgroundchecks.com*, No. 3:13-cv-029 (E.D. Va. Feb. 20, 2015) (ECF No. 78) (providing $18 million dollars for consumers subjected to inaccurate reports and mandating improvement to defendant's processes); *Ernst v. Sterling Infosystems, Inc.*, No. 1:12-cv-8794 (S.D.N.Y. Jan. 9, 2015) (ECF No. 139) (providing $4.75 million for consumers with obsolete information on their background checks and requiring changes to processes for filtering out old information).

[95] *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979).

[96] *See, e.g., Washington v. CSC Credit Servs. Inc.*, 199 F.3d 263, 268 (5th Cir. 2000) ("We hold that the affirmative grant of power to the FTC to pursue injunctive relief, coupled with the absence of a similar grant to private litigants when they are expressly granted the right to obtain damages and other relief, persuasively demonstrates that Congress vested the power to obtain injunctive relief solely with the FTC.").

[97] *Beaudry v. TeleCheck Servs., Inc.*, 579 F.3d 702, 709 (6th Cir. 2009).

[98] This legislative history is set out in response to a dismiss in a case filed by a consumer seeking to get his background report corrected. *Cleary v. CoreLogic Rental Property Solutions, LLC*, Case No. 2:170cv014158 (E.D. Mich. Apr. 13, 2018)(ECF No. 15 at 15-19) (discussing legislative history).

[99] Although this report focuses on lowering procedural barriers to relief for private litigants, the FCRA also imposes procedural barriers to public enforcement by states. 15 U.S.C. 1681s(c)(5).

[100] Wash. Rev. Code Ann. § 31.04.027.

[101] Cal. Civ. Code § 1788.102.

[102] 110 Ill. Comp. Stat. Ann. 992/5-65.

[103] Va. Code Ann. § 6.2-2610; Conn. Gen. Stat. Ann. § 36a-850; 19 R.I. Gen. Laws Ann. § 19-33-12; Me. Rev. Stat. tit. 9-A, § 14-108.

[104] 15 U.S.C. § 1681c(a)(5).

[105] *Simon v. Directv, Inc.*, No. 09CV00852PABKLM, 2010 WL 1452853, at *3 (D. Colo. Mar. 19, 2010) (finding Coloardo law limiting reporting of convictions to be preempted by FCRA); Tex. Bus. & Comm. Code § 20.05(4) (limiting reporting of conviction information).

[106] 10 Me. Rev. Stat. Ann. § 1310-H(4).

[107] Tex. Bus. & Comm. Code 20.05(a)(5).

[108] *Consumer Data Indus. Ass'n v. Frey*, 495 F. Supp. 3d 10 (D. Me. 2020); *Consumer Data Indus. Ass'n v. Texas Through Paxton*, No. 1:19-CV-00876-RP, 2020 WL 4208248 (W.D. Tex. July 22, 2020).

[109] *See, e.g., McLellan v. Fitbit, Inc.*, No. 3:16-CV-00036-JD, 2018 WL 2688781, at *3 (N.D. Cal. June 5, 2018) (describing pre-suit demand letter sent on behalf of a class).

[110] 15 U.S.C. § 1681s-2(a)(8)(E)(i); 12 C.F.R. 1022.43(e)(1).

[111] 15 U.S.C. § 1681s(c)(3).

[112] Readers should note that this is not an exhaustive list of steps the Department of Education can take to use its contracting authority to preserve access to justice for student loan borrowers and restrict contractors' ability to raise defenses in private litigation and public enforcement actions. For further discussion, see Student Borrower Protection Center, Protect Student Borrowers: How Washington Can End Trump-Era Obstruction and Demand Justice in 2021 and Beyond (2020), https://protectborrowers.org/wp-content/uploads/2021/01/Trump_Obstruction.pdf.

[113] There is a split among courts whether the FCRA preempts breach of contract claims. *See Spencer v. Nat'l City Mortg.*, 831 F. Supp. 2d 1353, 1364 (N.D. Ga. 2011) (discussing authority before concluding the FCRA does not preempt breach of contract claims).

Complaint Bulletin

County-level demographic overview of consumer complaints

Consumer Financial Protection Bureau

Table of contents

1. Introduction

In July 2011, the Consumer Financial Protection Bureau (CFPB) began accepting consumer complaints. Since then consumers have submitted approximately 2.9 million complaints to the CFPB about a variety of consumer financial products and services, including more than 700,000 complaints since the declaration of the coronavirus (COVID-19) national emergency on March 13, 2020.[1]

Consumer complaints are integral to the CFPB's work. By collecting, investigating, and responding to consumer complaints, the CFPB hears directly from consumers and can better understand the types of challenges they are experiencing in the marketplace.[2] The CFPB also has insight into how companies are responding to their customers' concerns. This information supports the CFPB's work to supervise companies, enforce federal consumer financial laws, propose rules, identify and assess emerging issues, and develop tools that help empower consumers to make informed financial decisions.

In this *Complaint Bulletin*, the CFPB analyzes complaints submitted by consumers by county.[3] Using race and ethnicity estimates from the U.S. Census 2019 American Community Survey, each of the more than 3,000 counties in the United States have been grouped based on the white, non-Hispanic percentage of the population.[4] Counties where the non-white or Hispanic populations make up 61% or more of the total population are referred to as "predominantly minority counties"; whereas, counties where the non-white or Hispanic populations make up

---

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (Dodd-Frank Act), Section 1002(4) ("The term 'consumer' means an individual or an agent, trustee, or representative acting on behalf of an individual.").

[2] *Id.* § 1021(c)(2).

[3] This report is based on dynamic data and may differ from other public reports.

[4] *See* U.S. Census 2019 American Community Survey ("2019 American Community Survey"), *available at* https://www.census.gov/programs-surveys/acs (The American Community Survey provides a wide range of important statistics (e.g., race, ethnicity, education, language, employment, etc.) for every community in the nation.).

40% or less of the total population are referred to as "predominantly white, non-Hispanic counties" for the purposes of this *Complaint Bulletin.*[5]

Key findings of this bulletin include:

- In 2020, the CFPB received more complaints per capita from consumers living in predominantly minority counties.
- In 2020, consumers living in predominately minority counties submitted more complaints on a per capita basis in nearly every product category about which the CFPB accepts complaints.
- From 2019 to 2020, complaints increased at a greater rate in predominantly minority counties compared to predominantly white, non-Hispanic counties.

This *Complaint Bulletin* is organized as follows. Section 2 provides an overview of the complaint data used in this report, as well as important considerations for this analysis. Section 3 summarizes complaints submitted by consumers at the county level. Section 4 describes the CFPB's ongoing work to better understand the communities who are submitting complaints to the CFPB and how the problems they experience vary. Finally, Section 5 highlights consumer resources the CFPB published during the pandemic.

[5] The 2019 American Community Survey reports on the percentage of the population identifying as *Hispanic, Black or African American, Asian Native Hawaiian and Other Pacific Islander, Some other race* and *Two or more races*.

2. Complaint data

This *Complaint Bulletin* relies primarily on data provided during the consumer complaint process (Section 2.1). Information collected during that process provides a rich dataset to study consumer problems in the marketplace; however, these data should be considered in the context in which they are collected and analyzed (Section 2.2).

2.1 Complaint process

Congress directed the CFPB to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.[6] The CFPB's Office of Consumer Response (Consumer Response) performs this statutorily-mandated function, analyzing and sharing complaint data to inform the marketplace and to empower consumers to take more control over their financial lives.

The CFPB receives consumer complaints through its website, by referral from the White House, congressional offices, and other federal and state agencies, and by telephone, mail, email, and fax.[7] When consumers submit complaints online or over the phone, the CFPB asks them to identify the consumer financial product or service with which they have a problem, as well as the type of problem they are having with that product or service.[8]

The CFPB routes consumers' complaints about financial products and services—and any documents they provide—directly to financial companies, and works to get consumers a timely response, generally within 15 days. The CFPB expects companies to provide complete, accurate, and timely responses tailored to the issues described in each consumer's complaint. When a company cannot take action on a complaint—because it was submitted by unauthorized third parties; was the result of fraud, scams or business identity theft; or the company cannot confirm

[6] *See* Dodd-Frank Act § 1013(b)(3).

[7] *Id.*

[8] In 2020, consumers submitted complaints about a variety of consumer financial products and services: credit or consumer reporting; debt collection; mortgages; credit cards; checking or savings accounts; student loans; money transfers, money services, and virtual currencies; vehicle loans or leases; personal loans; payday loans; prepaid cards; credit repair; and, title loans.

a commercial relationship with the consumer—the company can provide an administrative response that includes a statement or other evidence supporting this response.

As part of its commitment to transparency, the CFPB publishes consumer financial product and service complaints that the CFPB sent to companies for response in the Consumer Complaint Database. Complaints are published after the company responds, confirming a commercial relationship with the consumer, or after 15 days, whichever comes first. Complaints referred to other regulators, such as complaints about depository institutions with less than $10 billion in assets, are not published in the Consumer Complaint Database. Narratives from complaints are published if the consumer opts to share their narrative publicly and after the CFPB takes steps to remove personal information.

For information about complaints and how the complaint process works, visit consumerfinance.gov or read the 2020 Consumer Response Annual Report.

2.2 Considerations

This *Complaint Bulletin* provides a high-level overview of the communities from which the CFPB received complaints in 2020, based on county-level demographic information.[9] There are certain limitations to this analysis, including:

- The CFPB does not collect race and ethnicity information during the complaint process. Consumers provide their mailing address and have the option to provide their age and servicemember status.[10] This information can be used, along with other public information, to approximate which communities are submitting complaints to the CFPB,

[9] Researchers have used the public Consumer Complaint Database to better understand experiences across different communities. *See e.g.*, Raval, Devesh, Which Communities Complain to Policymakers? Evidence from Consumer Sentinel (Oct. 2020), Economic Inquiry, Vol. 58, Issue 4, pp. 1628-1642, *available at* http://dx.doi.org/10.1111/ecin.12838; Begley, Taylor A. and Purnanandam, Amiyatosh, Color and Credit: Race, Regulation, and the Quality of Financial Services (Aug. 2020), *available at* http://dx.doi.org/10.2139/ssrn.2939923. Some researchers have also attempted to uncover differences in company responses across different communities. *See e.g.*, Haendler, Charlotte and Heimer, Rawley, The Financial Restitution Gap in Consumer Finance: Insights from Complaints Filed with the CFPB (Jan. 2021), *available at* http://dx.doi.org/10.2139/ssrn.3766485. This complaint bulletin will not look at outcomes, such as relief provided to consumers; instead, it will focus on complaint submission rates, changes to those rates over time, and the types of products consumers about which consumers complain. Future work will analyze complaint information at a more granular level than what is published in the public Consumer Complaint Database (Section 4).

[10] "Older consumers" and "servicemembers" are both self-identified. Servicemembers refers to servicemembers, veterans, and military families. "Older consumers" refers to consumers who voluntarily reported their age as 62 or older.

and to identify variations or patterns in problems and issues that different communities experience in the consumer financial marketplace.

- For this analysis, the CFPB relies on county-level race and ethnicity information. Ongoing and future work will explore ZIP code- and census tract-level information to analyze complaint demographics at a more granular level. The results of this Complaint Bulletin are consistent with other studies examining communities that submit complaints to policymakers.[11]
- In Section 3, complaint counts are sometimes expressed on a per capita basis, based on the population of the county, not the number of consumers of the product in the county. True per capita value would consider only the number of participants in a given market. (For example, credit card complaints would be expressed as a count per credit card holders.)

[11] *See e.g.*, Raval, Devesh, *supra* note 9 (study examined data from the Consumer Sentinel Network and found higher complaint rates in more heavily Black, more educated, higher income, older, and more urban communities, and higher rates of complaints from Black and college educated communities for complaints submitted to the CFPB compared to the Federal Trade Commission or the Better Business Bureaus).

3. Complaint analysis

This *Complaint Bulletin* relies on demographic estimates from the U.S. Census 2019 American Community Survey to divide counties into one of five groups based on minority percentage.[12] Minority percentage was calculated for each county by dividing the non-white or Hispanic population by the total population.[13] Counties where the total percentage of these values was 61% or more are considered predominantly minority counties. Counties where the total percentage was less than or equal to 40% are considered predominantly white, non-Hispanic communities.

Each complaint was mapped to a county, using the mailing address provided by the consumer in their complaint submission, which was then assigned to one of five groups: 1-20%, 21-40%, 41-60%, 61-80%, and 81-100% minority. For example, a complaint submitted by a consumer who reported a mailing address in Chicago, Illinois (Cook County) was assigned to the 41%-60% group. Complaints where the address could not be mapped were excluded from this analysis.[14]

COUNTIES BY MINORITY PERCENTAGE

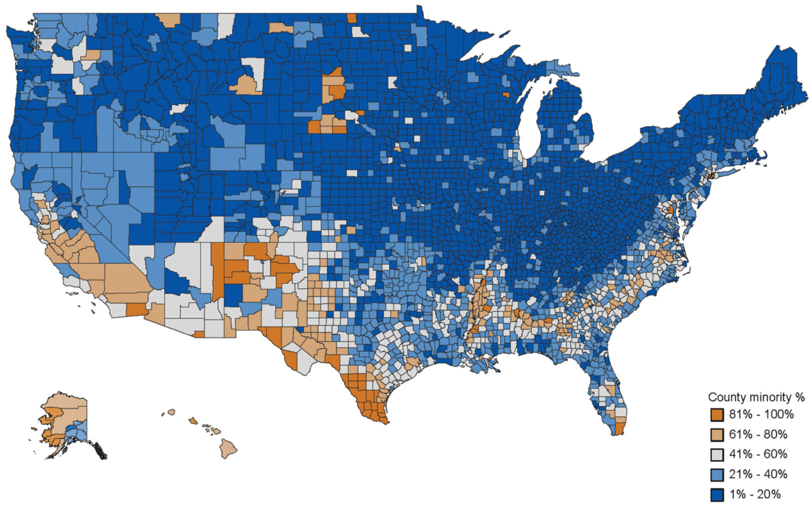
Figure 1 shows the county breakdown based on information provided in the American Community Survey. In this figure, orange denotes predominantly minority counties and blue denotes predominantly white, non-Hispanic counties.

[12] *See* 2019 American Community Survey, *supra* note 4.

[13] *Id.*

[14] Approximately 5% of complaints received during 2020 are excluded from this analysis.

FIGURE 1: COUNTIES BY MINORITY PERCENTAGE



The largest group, based on total population, is comprised of counties where 21%-40% of the population is estimated to be a member of a minority group (see Table 1).

COMPLAINTS SUBMITTED BY CONSUMERS BY COUNTY

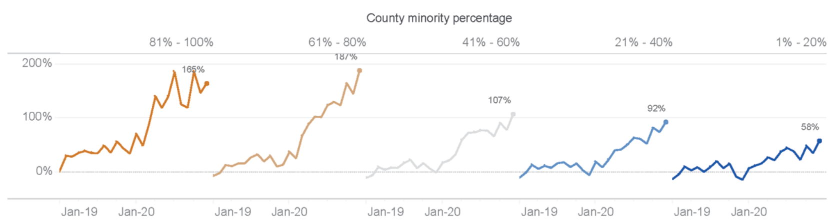
The CFPB received more complaints per capita from consumers living in predominantly minority counties. The largest per capita volume (see Table 1) and rate of increase in complaints from 2019 to 2020 (see Figure 2) were in 61%-80% minority counties. Predominately white counties with a minority population less than 21%, had the fewest complaints per capita and the smallest rate of increase.

TABLE 1: COUNTY GROUPS

County groups (% minority)	Number of counties	2020 complaints	Total Population	Complaints per 100k population
81% - 100%	54	25,502	9,715,906	262.5
61% - 80%	178	153,318	55,617,136	275.7
41% - 60%	401	163,863	84,547,548	193.8
21% - 40%	748	122,826	97,566,911	125.9
1% - 20%	1,761	48,593	77,250,294	62.9
US Total	**3,142**	**514,102**	**324,697,795**	**158.3**

Figure 2 plots the percentage increase in complaints by share of minority population (indexed to January 2018 complaints).

FIGURE 2: COMPLAINT VOLUME PERCENTAGE INCREASE BY MINORITY SHARE, INDEXED TO 2018 COMPLAINT AVERAGE



COMPLAINTS SUBMITTED PER CAPITA BY PRODUCT AND COUNTY

Figure 3 shows the types of products consumers complained about across the five groups. Consumers living in predominantly minority counties submitted more complaints on a per capita basis in nearly every product category. The exceptions were complaints about prepaid cards, student loans, credit repair, and title loans.

FIGURE 3: 2020 COMPLAINT VOLUME PER 100K POPULATION BY PRODUCT AND COUNTY GROUPS

Credit or consumer reporting appears to cause significantly more issues for consumers in predominantly minority counties than in predominately white, non-Hispanic counties. Indeed, credit or consumer reporting complaints are one of only two product categories where the per capita rate of complaints is higher for counties above 81% minority population than counties 61%-80% minority. These consumers complained about credit or consumer reporting at approximately twice the U.S. average. In its 2020 Consumer Response Annual Report, the CFPB noted that a significant portion of credit or consumer reporting complaints are about attempts to address identity theft-related issues. Complaints related to the accuracy and completeness of information on a consumer's reports, as well as complaints about problems that a consumer encountered in a previous investigation, are also common.[15]

Debt collection also appears to cause more issues for consumers in predominantly minority counties than in predominately white communities. The most common debt collection complaint is about attempts to collect a debt that the consumer reports is not owed. In these complaints, consumers described a range of topics, such as being called about debts they do not recognize, attempts to collect a debt that belongs to someone else, and being in collections for services or products they did not receive. Additionally, similar to credit or consumer reporting complaints, consumers often report that a debt in collection was the result of identity theft. Complaints about debt resulting from identity theft have been increasing for several years. In these complaints, consumers often reported that they first learn of the existence of the debt after reviewing their credit reports. Many of these consumers described completing an identity theft report and contacting the collectors listed on their credit report in an attempt to remove the debt.

The CFPB is studying these issues, among others, as it seeks to understand the experiences of diverse communities in the consumer financial marketplace (see Section 4).

[15] *See* Consumer Fin. Prot. Bureau, Consumer Response Annual Report (Mar. 2021), *available at* https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

4. Future work

Consumer Response is tasked with operating the CFPB's consumer complaint function and its primary focus is to ensure that the CFPB meets its statutory objective to collect, monitor, and respond to consumer complaints. If current 2021 complaint volume trends continue, Consumer Response expects to handle more than 1 million complaints this year—more than twice the number of complaints handled in 2020, and more than in any previous year.

Consumer Response plans to enhance the complaint form to create a new demographic section that gives consumers the option to provide household size and household income information in addition to age and servicemember information. The CFPB will also explore what additional demographic information may be appropriate to collect via the complaint process, such as race and ethnicity. These enhancements will help the CFPB to better understand who submits complaints today and how that changes over time. Moreover, they may decrease reliance on proxies to understand the range of experiences across different products and across different communities.

Consumer Response is currently exploring how to best understand and highlight the experiences of diverse communities who submit complaints to the CFPB. This work will look at the life cycle of consumer credit—from origination through collections and credit reporting—to understand consumers' diverse experiences in the marketplace. This work will use census tract-level information to analyze complaint demographics at a more granular level.

5. Consumer resources

In order to ensure consumers have timely and understandable information to make responsible decisions about financial transactions, the CFPB released a variety of resources to help consumers manage their finances during the COVID-19 pandemic. This includes information on new programs aimed at helping struggling consumers during this time. These programs include:

- Student loan payment suspension: Principal and interest payments on federally held student loans are automatically suspended through September 30, 2021
- Mortgage forbearance: Most homeowners can temporarily pause or reduce their mortgage payments if they're struggling financially.
- Help for renters: Federal, state, and local governments are offering help with housing expenses and avoiding eviction.
- Stimulus payments: Congress passed legislation providing financial relief through Economic Impact Payments issued by the Internal Revenue Service.
- Paycheck Protection Program: Congress passed legislation authorizing the Paycheck Protection Program (PPP) designed to provide small businesses with support to continue to keep their workers on the payroll.

The CFPB also has a centralized webpage with information on how consumers can navigate their finances during the pandemic.

POVERTY SOLUTIONS
UNIVERSITY OF MICHIGAN

AUTO INSURANCE AND ECONOMIC MOBILITY IN MICHIGAN: A CYCLE OF POVERTY

MARCH 2019

By Patrick Cooney, Elizabeth Phillips, and Joshua Rivera

Michigan has the most expensive automobile insurance in the United States, with an estimated annual premium of $2,610, almost double the national average.[1] This burden, however, does not fall equally. With an average annual premium of $5,414, Detroiters face the most expensive car insurance rates in the country,[2] and other low-income Michigan communities are subject to extreme rates as well. In turn, a large proportion of Michigan residents drive uninsured, leaving themselves and others open to financial risk, especially in lower-income communities.[3] Altogether, this means that the cost of auto insurance has become a major barrier to mobility from poverty in Detroit and across the state.

This brief discusses the link between economic mobility and transportation, and examines the disproportionate impact of extreme car insurance prices on low-income Michiganders. It explores why coverage is so expensive here, and offers two goals for reform: 1) to reduce the cost of auto insurance across the state, and 2) to narrow the gap between what Michigan's wealthiest and poorest residents pay. Both goals are critical for the state to end a cycle of poverty that puts Michigan as a whole, and particularly low-income residents, at a competitive disadvantage.

TRANSPORTATION AND ECONOMIC MOBILITY

Transportation is vitally important to economic mobility.[4] Whether to get to a new job, go back to school, or make it to a doctor's appointment, reliable and affordable transportation can make the difference in moving up the economic ladder. In Detroit, public transportation is under-resourced,[5] and many entry-level job opportunities are located in the surrounding suburbs,[6] which are largely inaccessible by public transportation. Thus, reliable access to transportation in Detroit often means reliable access to a car.

Yet, the price of auto insurance creates a huge barrier to automobile ownership in Michigan, and in Detroit in particular. The U.S. Treasury Department's Federal Insurance Office deems auto insurance "unaffordable" in areas where premiums exceed 2 percent of a ZIP code's median household income.[7] This standard can be applied to recent data from The Zebra, a premiere auto insurance comparison marketplace. The Zebra collects rate information from public rate filings and insurance rating platforms. In total, the data provides an average rate per ZIP code for a "base profile" insured driver.[8] This exercise yields car insurance rates that represent more than 2 percent of median household income in 97 percent of all Michigan ZIP

1 The State of Auto Insurance 2019 | The Zebra. (2018). Retrieved from http://www.thezebra.com/state-of-insurance/auto/2018/

2 Livengood, C. (2017, October 22). How Michigan's auto insurance premiums became the highest in the country. Retrieved from http://www.crainsdetroit.com/article/20171022/news/642726/how-michigans-auto-insurance-premiums-became-the-highest-in-the-country; Coffey, M. (2017, September 28). What's Wrong with Michigan's No-Fault Automobile Insurance. Retrieved from https://www.mackinac.org/archives/2017/s2017-07.pdf

3 U.S. Treasury Federal Insurance Office. (2017, January). Study on the Affordability of Personal Automobile Insurance. Retrieved from https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/FINAL Auto Affordability Study_web.pdf

4 Bouchard, M. (2015, May 07). Transportation Emerges as Crucial to Escaping Poverty. Retrieved from https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html

5 Kiertzner, J. (2018, January 18). Amazon cut Detroit over regional transportation. Retrieved from https://www.wxyz.com/news/region/detroit/detroit-leaders-told-by-amazon-regional-transportation-is-why-we-didnt-make-the-cut

6 Coxen, T., Falby, J., La Prad, J., MacFarlane, T., & Sherard-Freeman, N. (2016). DETROIT'S UNTAPPED TALENT: JOBS AND ON-RAMPS NEEDED. Retrieved from http://skilledwork.org/wp-content/uploads/2016/01/CSW-Detroit-Mapping-FINAL-APPROVED.pdf

7 U.S. Treasury Federal Insurance Office. (2017, January). Study on the Affordability of Personal Automobile Insurance. Retrieved from https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/FINAL Auto Affordability Study_web.pdf

8 The Zebra's method involves using a base profile for an insured driver to collect information on rates. According to the Zebra, that profile is, "...a 30-year-old single male driving a 2013 Honda Accord EX with a good driving history and coverage limits of $50,000 bodily injury liability per person/$100,000 bodily injury liability per accident/$50,000 property damage liability per accident with a $500 deductible for comprehensive and collision".

codes. In Detroit, average rates represent between 12 and 36 percent of residents' pre-tax income in nearly every ZIP code. By comparison, the Department of Housing and Urban Development considers housing costs to be unaffordable if they surpass 30 percent of income.

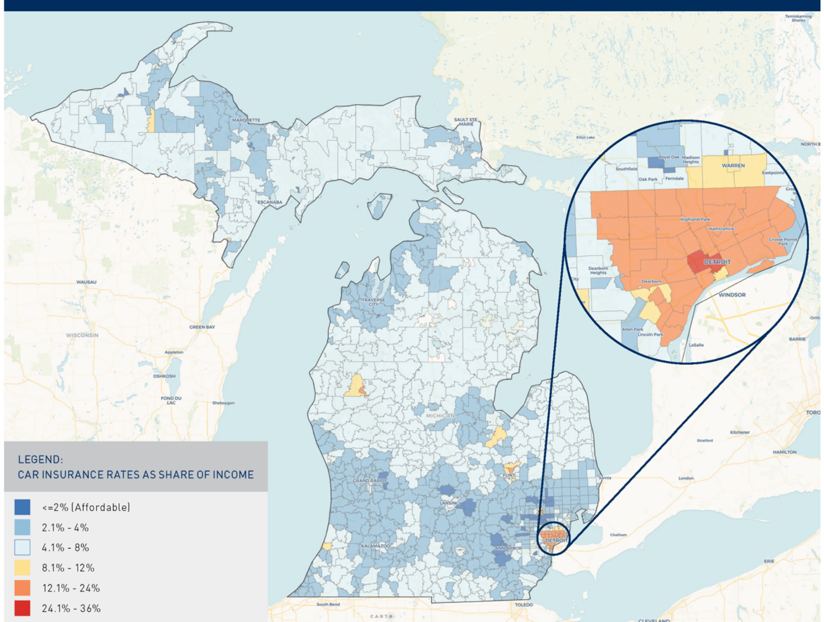
As shown in Figure 1, the vast majority of Michigan communities are also above the 2 percent affordability threshold, yet the burden is substantially greater for low-income communities:

- Royal Oak, Farmington Hills, and Livonia face rates above the affordability threshold, but these range from 2.1 to 4 percent of area median household income.
- In Pontiac and Flint, in contrast, rates vary between 8 and 24 percent of median income.
- Saginaw and Ypsilanti's rates are 4 to 12 percent of the area's median household income.

The only affordable ZIP Codes in Michigan are in more affluent communities:

- In Southeast Michigan, Dexter, Birmingham, Bloomfield Hills, and parts of Ann Arbor face affordable rates, in part, due to higher household incomes in those area.
- Williamston and DeWitt, two cities outside of Lansing, meet the affordability threshold.

FIGURE 1: CAR INSURANCE AS PERCENT OF PRE-TAX INCOME BY ZIP CODE



Source: The Zebra, the State of Auto Insurance 2018; U.S. Census Bureau, 2016-2012 American Community Survey 5-Year Estimates

Another lens by which to view affordability is to compare the cost of auto insurance in Detroit to what is experienced in other cities. A shown in Table 1, for the typical Detroit household making $30,344 a year, car insurance can eat up 18 percent of annual income. For the 34.5 percent of Detroiters at or below the poverty level, the picture is even starker. A family of four with an income right at the poverty level ($24,600 in 2017) would pay an estimated 22 percent of their total annual income toward car insurance. In contrast, car insurance accounts for between just 2 to 4 percent of pre-tax income in peer cities[9] such as Cleveland, St. Louis, and Chicago, as well as higher income cities such as Seattle and Boston.

Unaffordable insurance may force low-and moderate-income individuals to forgo driving, limiting their ability to get to school, health care appointments, or jobs that are often outside the city limits. Recent findings from a representative survey of Detroiters finds that 34 percent don't own a car, and nearly a quarter report having recently missed work or an appointment due to lack of transportation.[10]

Others may respond to extreme insurance rates by driving uninsured, for instance thinking that getting to a job merits the risk. Nationally, an estimated 13 percent of drivers are uninsured. In Michigan, the corresponding rate is 20 percent, 4th highest in the country. In Detroit, the estimate is closer to 60 percent, more than four times higher than the national average.[11] Those caught driving without insurance risk a misdemeanor charge punishable by up to one year in jail and a fine of $200-$500.[12] Even further, until recently Michigan had strict "driver responsibility fees," through which 317,000 Michiganders and 70,000 Detroiters had their driver's licenses suspended, often as result of driving uninsured.

TABLE 1: AVERAGE ANNUAL PREMIUMS AS A PERCENT OF MEDIAN HOUSEHOLD INCOME

PLACE	AVERAGE CAR INSURANCE PREMIUM	MEDIAN HOUSEHOLD INCOME	CAR INSURANCE AS PERCENT OF PRE-TAX INCOME
Detroit	$5,414	$30,344	18%
Cleveland	$1,277	$28,974	4%
Dallas	$2,123	$50,627	4%
St. Louis	$1,390	$41,441	3%
Pittsburgh	$1,440	$45,851	3%
Atlanta	$1,616	$57,597	3%
Chicago	$1,472	$55,295	3%
Minneapolis	$1,613	$60,789	3%
National	$1,427	$60,336	2%
Boston	$1,497	$66,758	2%
Seattle	$1,345	$86,822	2%

Source: The Zebra, the State of Auto Insurance 2018; U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates

WHY IS AUTO INSURANCE SO EXPENSIVE IN MICHIGAN?

Michigan's particular mix of insurance policies, together with lax regulations, combine to drive up the cost of auto insurance for Michiganders, with low-income residents hit the hardest. The most frequently cited reason for Michigan's high rates is the state's unique form of no-fault insurance, with unlimited Personal Injury Protection (PIP).[13] Michigan is one of 12 states with a no-fault insurance system, whereby a driver's own insurance company pays for damages from an accident, no matter who is at fault. Importantly, though, Michigan is the only state that requires drivers to purchase unlimited PIP coverage (Table 2). This means that in the event of an accident, automobile insurers are on the hook for unlimited medical damages, which drives up the costs of insurance for everyone. While the cost of these benefits only made up 6 percent of premiums in 1972, they currently account for 42 percent of average premiums.[14]

9 Peer cities selected for comparison are borrowed from the Detroit Regional Chamber's list of national peer cities used in the State of the Region 2018-2019 report; Detroit Regional Chamber. (2018). State of the Region 2018-2019. Retrieved from www.detroitchamber.com

10 Detroit Metro area Communities Study (2017) Detroiter's Views on Transportation and Mobility. Retrieved from https://poverty.umich.edu/files/2018/05/W2-Transportation-F.pdf

11 Insurance Information Institute (n.d). Facts Statistics: Uninsured motorists. Retrieved from https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists; Reindl, J. (2017, May 08). How aggressive lawyers, costly lawsuits and runaway medical bills make Detroit car insurance unaffordable. Retrieved from http://www.freep.com/story/news/local/michigan/detroit/2017/05/06/no-fault-auto-insurance-detroit-michigan/100326640/

12 Waterman, C. (2015, April 03). Driving without insurance? Police in Michigan can now tell just by running your plate. Retrieved from https://www.mlive.com/news/bay-city/index.ssf/2015/03/driving_without_insurance_poli.html

13 Ibid.; Heaton, P. (2010, January 01). Auto Insurance Reform in Michigan: What Can the Data Tell Us? Retrieved from http://www.rand.org/pubs/occasional_papers/OP293.html

14 Oosting, J. (2019, February 14). Duggan to lawmakers: Michigan auto insurance system 'morally indefensible'. Retrieved from https://www.detroitnews.com/story/news/local/michigan/2019/02/13/duggan-lawmakers-michigan-auto-insurance-law-morally-indefensible/2858343002/

In addition, Michigan does not impose medical fee schedules,[15] meaning that hospitals can charge auto insurers more than they can charge health insurers. This leads no-fault insurers in Michigan to be charged significantly more than Medicare, Workers Comp, or private insurers for the exact same medical procedures.[16]

Together, this means that the average cost per claim is dramatically higher in Michigan than in other states. In 2013, the average cost per auto accident claim in Michigan was over $75,000—more than *five times the figure in the next highest state*. New Jersey, also a no-fault state, was the next highest with an average cost of $13,600.[17] As one might expect, with unlimited protection and no regulations on medical fees, the system is a prime target for personal injury attorneys, with PIP-related first-party lawsuits now making up two thirds of all lawsuits in the state.[18] Large settlements resulting from these suits contribute to Michigan's high auto insurance rates.[19]

TABLE 2: MINIMUM CAR INSURANCE COVERAGE REQUIREMENTS IN NO-FAULT STATES[20]

STATE	PERSONAL INJURY PROTECTION (PIP)	PROPERTY DAMAGE (PD)	BODILY INJURY (BI)	UNINSURED MOTORIST (UM)	FRAUD AUTHORITY?	MEDICAL FEE SCHEDULE?	PROHIBITED RATING FACTORS?	AVERAGE PREMIUM
MI	Unlimited, Lifetime	$10K	$20K/40K	Optional	Yes	No	No	$2,610
FL	$10K	$10K	Optional	Optional	Yes	Yes	No	$1,878
NY	$50K	$10K	$25K/50K	$25K/$50K	Yes	Yes	Yes	$1,582
HI	$10K	$10K	$20K/40K	Optional	Yes	Yes	Yes	$1,079
KS	$4,500/person	$25K	$25K/50K	$25K/$50K	Yes	No	No	$1,427
KY	$10K*	$25K	$25K/50K	Optional	Yes	Yes	No	$2,050
MA	$8K/	$5K	$20K/40K	$20K/$40K	Yes	No	Yes	$1,201
MN	$40K/	$10K	$30K/60K	$25K/$50K	Yes	No	Yes	$1,258
NJ	$15K, $250K	$5K	$15K/30K	Optional	Yes	Yes	No	$1,679
PA	$5K*	$5K	$15K/30K	Optional	Yes	Yes	No	$1,433
UT	$3K	$15K	$25K/65K	Optional	Yes	Yes	No	$1,112
ND	$30K	$25K	$25K/50K	$25K/$50K	Yes	No	No	$1,230

* In addition, the Zebra report notes the following, "*Kansas requires $4,500 each for medical and rehabilitation. *Kentucky and Pennsylvania are "no-fault choice" states, where drivers can opt for full-tort car insurance. *New Jersey's $250,000 medical minimum applies only to specific serious injuries. PIP "Add-on" States: Arkansas, Delaware, Washington D.C., Maryland, Oregon, South Dakota, Texas, Wisconsin, South Carolina, Washington".

Source: reprinted from Why Michigan Is in the Middle of a Car Insurance Crisis—and What Can Be Done by The Zebra retrieved from www.thezebra.com

15 Insurance Information Institute, February 3, 2014. "Background on: No-fault auto insurance"

16 Mosley, R. C., Jr. (2015, June 8). D-Insurance: City of Detroit Insurance Company Feasibility Study. Retrieved from www.detroitmi.gov

17 Ibid.

18 Reindl, J. (2017, May 07). No-fault car insurance in Michigan: Here's how it works. Retrieved from https://www.freep.com/story/news/local/michigan/detroit/2017/05/06/no-fault-car-insurance-michigan-heres-how-works/100668458/; Reindl, J. (2017, May 08). How Michigan got - and kept - no-fault auto insurance. Retrieved from https://www.freep.com/story/news/local/michigan/2017/05/06/michigan-nofault-insurance-history-detroit/100301828; Reindl, J. (2017, May 07). Detroit car insurance: 6 other factors behind the cost of auto insurance. Retrieved from https://www.freep.com/story/news/local/michigan/2017/05/06/detroit-car-insurance-cost/100992680/

19 Casazza, C. (2017, July 07). Is It Time to Do Away with No-Fault Laws? Retrieved from http://www.forbes.com/sites/ccasazza/2017/07/07/is-it-time-to-do-away-with-no-fault-laws/#5d8df30dbb66

20 Why Michigan Is in the Middle of a Car Insurance Crisis - and What Can Be Done. (2018, October). Retrieved from https://www.thezebra.com/research/michigan-car-insurance-crisis/#unlimited-medical-coverage

WHY ARE RATES SO HIGH IN DETROIT?

As started earlier, the average price of an auto policy in Detroit is $5,414, eating up 18 percent of the median household income of Detroiters.[21] One reason Detroit rates are higher as compared with the rest of the state is the volume and size of PIP claims in the city. These high levels of PIP claims are driven in part by the relative lack of private health insurance in Detroit. No-fault benefits are tapped before Medicare or Medicaid by law, so PIP benefits are called upon more frequently in places where public insurance coverage is more common, and private coverage is less so. This means that PIP is more likely to be called on to address damages than in other parts of the state. Not only are there far more PIP claims in Detroit than in the surrounding suburbs, but PIP claims are for almost double the amount ($59,000 on average, compared to $30,000).[22] This then drives up insurance premiums in the city.

Another reason for Detroit's highest-in-the-nation rates is that insurance companies use non-driving characteristics to set premiums for customers.

This includes factors such as marital status, educational attainment, home ownership status, and credit scores. Because these factors are not directly related to one's driving record—yet are highly correlated with income—critics have argued that their use in setting premiums amounts to insurance "redlining", with the same policy costing thousands of dollars more in the city limits of Detroit than it does just a few miles outside it. Of these factors, credit scores are by far the biggest cost driver, with rates more than doubling for those with poor versus excellent credit.[23] This is a big problem for Detroit residents, who collectively have some of the lowest credit scores in the country.[24] Thus, a single mother in Detroit with a perfect driving record but bad credit could be charged one of the highest auto insurance premiums of any person in the entire country, despite never having been cited for a traffic violation or having been a part of a traffic accident.

WHAT CAN WE DO?

Addressing the extreme costs of auto insurance—and removing a major barrier to mobility from poverty for low-income residents in Detroit and across the state—will require compromise, sacrifice, and collective action by numerous stakeholders. Hundreds of bills have been introduced in the State Legislature over the past ten to fifteen years to address the issue, but so far, little agreement has been reached. Some proposals focus on redlining, targeting the way in which insurers use non-driving factors in setting premiums. These proposals would reduce the extent to which premiums vary within the state, but would not necessarily lower premiums across the state. Others focus on reining in PIP payouts, and in doing so reducing premiums statewide, but perhaps leaving in place significant geographical variation. In order to control rates and achieve buy-in from all stakeholders, both factors must be addressed.

REINING IN PIP PAYOUTS

A clear way to reduce rates would be to rein in PIP payouts. This could be done by:

- **REPLACING MANDATORY UNLIMITED LIFETIME PIP COVERAGE WITH A BROADER MENU OF COVERAGE OPTIONS.** Michigan is the only state in the U.S. that requires drivers to purchase unlimited PIP coverage.[25 26] Doing away with mandatory unlimited lifetime coverage—and allowing consumers to select the coverage that best fits their needs as is done in other insurance markets—is the clearest way to reduce rates across the state, including in Detroit. Doing so is critical to reducing costs, but is likely to face significant opposition from interest groups that would be hurt financially by this change.
- **IMPOSE FEE SCHEDULES.** Michigan does not use fee schedules for medical care, creating numerous perverse incentives for stakeholders in the system. Several recent bills have included proposals to variously cap PIP fees at

21 Ibid.

22 Ibid.

23 THE SECRET SCORE BEHIND YOUR RATES. (n.d.). Retrieved from http://www.consumerreports.org/cro/car-insurance/credit-scores-affect-auto-insurance-rates/index.htm#creditmap; Study: Poor Credit Can Double Auto Insurance Rates. (n.d.). Retrieved from http://www.insurancequotes.com/auto/study-how-poor-credit-double-auto-insurance-rates-82218;

24 Dudley, D. (2016, October 17). Detroit Is America's Capital of Bad Credit. Retrieved from https://www.citylab.com/life/2016/10/detroit-is-americas-capital-of-bad-credit/504137/; Ludwig, S. (2015, October 13). Credit scores in America perpetuate racial injustice. Here's how | Sarah Ludwig. Retrieved from https://www.theguardian.com/commentisfree/2015/oct/13/your-credit-score-is-racist-heres-why; Darity, W., Jr., Hamilton, D., Paul, M., Aja, A., Price, A., Moore, A., & Chiopris, C. (2018). What We Get Wrong About Closing the Racial Wealth Gap. Retrieved from socialequity.duke.edu

25 Reindl, J. (2017, May 09). No-fault fixes? How other states reined in auto insurance costs. Retrieved from http://www.freep.com/story/news/local/michigan/2017/05/08/how-can-auto-insurance-detroit-affordable/100018602/

26 Other no-fault states have mandatory minimum PIP purchase requirements ranging from $3,000 in Utah to $50,000 in New York.

anywhere from 100% to 160% of the Medicare rate (130% is the standard Michigan uses for Workers Compensation).[27] Doing so would immediately reduce costs associated with the system.

- **LIMIT CLAIM TIME.** Under current law, accident victims in Michigan can initiate treatment during a one-year window. Reducing this window (as other states have done) could reduce fraud and the number of lawsuits associated with PIP claims.

REFORM RATE SETTING PRACTICES

A few states explicitly restrict the use of credit scores or other non-driving factors in setting rates. Their use is commonly raised as a concern by consumer advocates and residents of low-income neighborhoods who argue that racism and redlining contribute to unreasonably high rates that are not justified by the cost of insuring.

Prohibiting the use of all factors unrelated to a purchaser's driving record is difficult: insurance companies must be able to develop actuarially sound models. But other states have struck compromises on this. California, for example, has established reasonable rate-setting guidelines, where insurance companies are required to prioritize three factors: driving record, annual miles driven, and years of driving experience. After these have been taken into account, several other (optional) factors may be added, such as marital status, frequency of claims, age, and address. However together these cannot carry more weight than the first three.[28] The use of credit score is not permitted.[29] Based on a study by the Consumer Federation of America, low-income drivers in U.S. cities pay 59 percent more for auto insurance than those with higher incomes. In Los Angeles, this gap is just 9 percent, likely due to the regulations that California places on insurers.[30]

MOVING FORWARD

The sides of this debate are well drawn. Medical providers, trial lawyers, and patient advocates have fought all efforts to reduce PIP payouts. Those representing high-poverty areas of the state have resisted reforms that fail to address the use of non-driving related factors in setting insurance rates. Insurers push back against efforts to restrict the use of non-driving factors, arguing that they need this information to create actuarially sound models.

Important to this conversation is the fact that not all Michigan residents are impacted by this problem equally. To the extent that higher income residents feel pinched by the cost of auto insurance, the challenges faced by low-income Michiganders and residents of Detroit in particular are much worse. Given this, any solution to the car insurance quagmire should seek to both: 1) reduce rates and 2) narrow the gap between what Michigan's wealthiest and poorest residents pay for auto insurance. Only in doing so can Michigan end a cycle of poverty that puts Michiganders and our state, as a whole, at a competitive disadvantage.

27 Oosting, J. (2018, June 13). El-Sayed: To cut auto insurance rates, end 'exploitation'. Retrieved from http://www.detroitnews.com/story/news/local/michigan/2018/06/13/elsayed-auto-insurance-reforms/697353002/; Reindl, J. (2018, August 24). Detroit mayor sues Michigan over high no-fault auto insurance rates. Retrieved from https://www.freep.com/story/money/2018/08/23/no-fault-auto-insurance-lawsuit-mike-duggan/1071905002/

28 Some States Take Aim at 'Discriminatory' Auto Insurance Pricing. (n.d.). Retrieved from http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/08/28/some-states-take-aim-at-discriminatory-auto-insurance-pricing; Feltner, T., & Heller, D. (2015). High Price of Mandatory Auto Insurance in Predominantly... Retrieved from https://consumerfed.org/wp-content/uploads/2015/11/151118_insuranceinpredominantlyafricanamericancommunities_CFA.pdf

29 California also requires "best price" guarantees for good drivers, has a state-run low-cost plan for safe low-income drivers, and requires insurance companies to provide documentation of their methods.

30 Bjorhus, J. (2016, June 28). If you're poor, you'll pay more for car insurance, study finds. Retrieved from http://www.startribune.com/report-low-income-drivers-pay-59-percent-more-for-car-insurance/384565011/

Equifax Response to Questions for the Record from May 26, 2021 Hearing

"Consumer Credit Reporting: Assessing Accuracy and Compliance"

July 30, 2021

Equifax has a legal obligation to maintain "reasonable procedures to assure maximum possible accuracy," and we recognize the value to consumers and to the market of maintaining the most accurate data possible. The bottom line is, accuracy is essential. Equifax takes its accuracy obligations seriously and operates teams of professionals who actively monitor data furnishers, conduct quality assurance on the data in our stewardship, and take action against furnishers who do not comply with Equifax's or industry standards. These efforts meet the Fair Credit Reporting Act's (FCRA) requirements for consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" (15 U.S.C. § 1681e(b)) and it is Equifax's goal to continuously innovate and improve those processes.

The role of consumer reporting agencies is a critical one in the financial system, serving consumers and financial institutions as they make important decisions. Financial institutions and others furnish information about consumers to consumer reporting agencies to facilitate prudent and efficient transactions, allowing consumers to benefit from near-instant credit and promoting sound decision making by lenders. Consumer reporting agencies do not alter information submitted by these institutions without sufficient evidence, but rather support the process contemplated by the FCRA of resolving disputes about information on consumer credit files. Serving as a trusted steward in this relationship fuels our efforts to maintain accurate information.

The answers provided are based on Equifax's understanding of the information sought. It is important to note that the information provided below cannot be directly compared to the responses provided by other consumer reporting agencies as there are inherent and proprietary differences in our data storage, data quality procedures, and data governance programs that require variations in the methodology used to measure accuracy thus resulting in slightly different error rates.

1. Please state the error rates in your consumer credit reporting products with regard to each of the following categories of information: (1) trade lines; (2) collections; (3) inquiries; (4) consumer identifying information; and (5) public records.

Equifax employs several measures to reach maximum possible accuracy rates. As demonstrated in the error rates shown below, we believe our procedures meet our statutory obligations and we will continue to strive for the highest possible levels of accuracy to benefit consumers and the lending institutions that rely on this information to offer fair and affordable financial products.

Equifax has a 0.03% error rate across all tradelines; 0.30% error rate for collections data; 0.00% error rate for inquiries; 0.09% error rate for consumer identifying information; and 0.23% error rate for public records. There is a 0.00% error rate for inquiries because Equifax internally generates notations on consumers' credit files to identify third parties who asked for and received information about a particular consumer. Unlike tradeline information, inquiries are not reported to consumer reporting agencies by third party data furnishers. Instead, the FCRA (15 U.S.C. § 1681g(a)(3)) requires consumer reporting agencies to maintain records of these inquiries to ensure that consumers can identify third parties that have accessed their files.

2. For each category and each line of your products that is based on consumer credit data, please indicate the rates of material errors, as well as the rates of errors that may not be deemed material from a credit assessment perspective.

Equifax considers material errors for the purpose of responding to this question to be disputes on the credit file that result in the deletion of a record or in the change of a record's payment status. Our material error rate, therefore, is the ratio of material errors relative to the total number of records reported on our credit reporting database, by record type. Given the broadly consistent use of credit file data across industries, and given our analysis of dispute activity managed within our systems, we do not believe the material error rate varies widely across our various product categories and lines. Furthermore, for the purposes of this calculation, we do not consider changes in consumer identifying information as leading to material errors in our consumer credit reporting products because they do not result in a change of payment status.

Equifax has a 0.01% material error rate across all tradelines; 0.20% material error rate for collections data; and 0.02% material error rate for public records. As mentioned in the previous question, Equifax has a 0.00% error rate for inquiries.

As the Committee may know, there is no standard definition for “material errors” used in the financial system because of the complexities involved with defining materiality. For example, each lender or other entity assessing creditworthiness establishes its own standards for determining credit worthiness based on that entity’s unique process, risk tolerance and consumer product. Further, a particular item may have a “material” impact on one person’s consumer credit profile, but may have very little impact on another person’s file.

3. Please identify the metrics and methods used to track accuracy and error rates in the consumer data used in your products and the frequency of such tracking.

Equifax calculates each rate stated in Question 1 as the ratio of disputes of data on the credit file that result in a credit report change relative to the total number of records reported on our credit reporting database, by record type. We update this reporting on a monthly basis, consistent with the average submission frequency of the data.

4. Please describe the method by which error rates are validated and indicate whether third-party auditors or entities are utilized to provide an independent measure of accuracy.

Equifax assesses data accuracy using a multi-pronged approach. Equifax has a robust data governance policy and quality assurance program. The data governance program covers the entirety of the data lifecycle, from the time the data is provided to Equifax through its disposition. Additionally, Equifax monitors data furnishers to ensure they are meeting Equifax’s and industry standards. If a data furnisher is not compliant, Equifax will implement a remediation plan and ultimately terminate the data furnisher if the issues are not corrected.

The error rates calculated in this letter have not been reviewed by a third party auditor or other entity. As a nationwide consumer reporting agency, Equifax is subject to the ongoing supervision and enforcement of the Consumer Financial Protection Bureau (CFPB), including their oversight of the dispute investigation process. Accordingly, Equifax's data quality practices are regularly evaluated by the CFPB.

5. Please describe your processes and procedures for resolving consumer complaints. *Note: The response below describes the consumer dispute investigation process.*

Equifax has an established procedure for responding to disputes from consumers about the information included in a consumer report. Equifax investigates and responds to consumer disputes within 30 days, as outlined by FCRA. (15 U.S.C. § 1681i.) When processing and investigating a dispute about a consumer report, Equifax communicates directly with the consumer -- either by telephone or in writing -- throughout the dispute process.

Consumers may submit disputes through mail, over the telephone, or through our online channel. In the event of disputed accuracy of an item on a credit file, Equifax conducts a reinvestigation with the identified data furnisher to determine whether the disputed information is inaccurate. Communications between Equifax and the data furnisher are conducted through an online web service called the Online Solution for Complete and Accurate Reporting (e-OSCAR). Once the data furnisher completes their investigation and returns those results, Equifax will make necessary updates to the credit file, if any, and communicate those results to the consumer. Equifax will also send notification back to the data furnisher confirming any credit file maintenance actions that have occurred.

For a non-credit dispute, such as a dispute related to a public record (i.e., bankruptcy), Equifax will research the item disputed by the consumer. Equifax will then seek to confirm, correct or modify the item within 30 days. When a resolution is reached (either removal or modification of the record or confirmation of the record), Equifax will follow up with the consumer to share information about the outcome of the dispute.

6. Please state the percentage of total complaints received in 2020 which were:
Note: The response below refers to consumer disputes received in 2020.

Equifax investigates disputes related to information on consumer credit files using the procedures described in the answer to Question 5. Timely dispute resolution is an important part of the accuracy process and Equifax strives to thoroughly and appropriately respond to consumer disputes.

a. Resolved within 30 days - 99.6%
b. Resolved within 31-45 days - 0.39%
c. Resolved after 45 days - 0.01%

P.O. Box 1240
Allen, TX 75013-1240
www.experian.com

Experian's Ongoing Accuracy Program

There are two primary elements of credit report accuracy: 1) furnisher provided information ("furnished data") and, 2) assembled information of the furnisher data into consumer credit reports ("assembled data"). Experian's consumer accuracy program focuses on both furnished data and assembled data. However, because furnishers maintain the system of record and are primarily responsible for the accuracy of furnished data, Experian's primary focus for accuracy is on assembled data.

Experian is not a party to the lending transaction between a lender and a consumer, and only the lender and the consumer ultimately have direct knowledge of the accuracy of that data. Experian assembles data from multiple furnishers into a credit report pertaining to an individual consumer. The assembled data in a credit report may reveal inconsistencies. For example, differences in identification information may become apparent although they reflect what the consumer actually provided in separate applications. And furnished data as well as assembled data may contain errors which Experian cannot detect, for example, the consumer was not late in payment, or an account is reported for the wrong consumer and added to a credit report.

In October 2015, Experian developed an accuracy technology platform to monitor every delivered credit report for potential material issues and created a monthly Accuracy Indicator Rate (AIR). These tracked issues in assembled data consist of those matters visible (on the delivered credit report) and consequential (i.e., they could have a material impact on the credit score). Every month, Experian tracks the percent of credit reports that are delivered without the monitored potential issues in assembled data. Since the inception of this program, Experian has improved the monthly accuracy indicator from 98.3% to 99.9% today. The remainder to an AIR of 100% represent issues that Experian cannot solve with the reported data. For instance, if furnisher A reports one SSN and furnisher B reports a second, different SSN for the same consumer, either could be accurate and further data points are necessary to resolve the conflict.

While furnishers are responsible for the accuracy of furnished data, Experian has programs in place to help furnishers with this task. Experian has data ingestion controls that include hundreds of rules to detect changes that may be inconsistent with reporting history. Experian provides data reject tracking reports to furnishers after every data submittal. Experian monitors furnisher dispute behavior to ensure furnishers conduct reasonable investigations. Experian has also made the task of monitoring credit reports easier for consumers, with a comprehensive redesign of Experian's credit report disclosure aimed at helping consumers focus on the most important data impacting their credit score.

P.O. Box 1240
Allen, TX 75013-1240
www.experian.com

1. Please state the error rates in your consumer credit reporting products with regard to each of the following categories of information: (1) tradelines; (2) collections; (3) inquiries; (4) consumer identifying information; and (5) public records.

To calculate the error rate, Experian considered the data on credit reports delivered to end users from July-December 2020. Experian then assessed consumer disputes against that population of credit reports, where the outcome of the dispute resulted in a delete or relevant update. Based on these criteria, the error rates for tradelines = < 0.1%; collection = 0.3%; inquiries = < 0.1%, consumer identifying information = 0.2%; and public records = 0.2%.

2. For each category and each line of your products that is based on consumer credit data, please indicate the rates of material errors, as well as the rates of errors that may not be deemed material from a credit assessment perspective.

Experian considers the impact of the dispute to be material if the disputed item typically has a negative impact on credit scores. By this definition, the tradeline category is nearly entirely material, as most tradeline disputes are on negative data. Collection and public record data disputes are all considered material. The rate of material errors for tradelines = <0.1%; collection = 0.3%; and public records = 0.2%. The impact on credit scores from inquiries and consumer identifying information disputes is typically negligible.

3. Please identify the metrics and methods used to track accuracy and error rates in the consumer data in your products and the frequency of such tracking.

Experian's Accuracy Indicator Rate (AIR) is 99.9%. As stated in the introduction above, Experian monitors every delivered credit report for potential material issues. The issues must be visible (on the delivered credit report) and consequential (could have material impact to credit scores). Every month, Experian tracks the percent of credit reports that go out without the monitored issues and have active remediation efforts in place to continue improving. Experian's performance of the accuracy indicator rate was: 2015 = 98.3%; 2016 = 99%; 2017 = 99.6%; 2018 = 99.9%; 2019 = 99.9%; 2020 = 99.9%; and 2021 YTD = 99.9%.

4. Please describe the method by which error rates are validated and indicate whether third-party auditors or entities are utilized to provide an independent measure of accuracy.

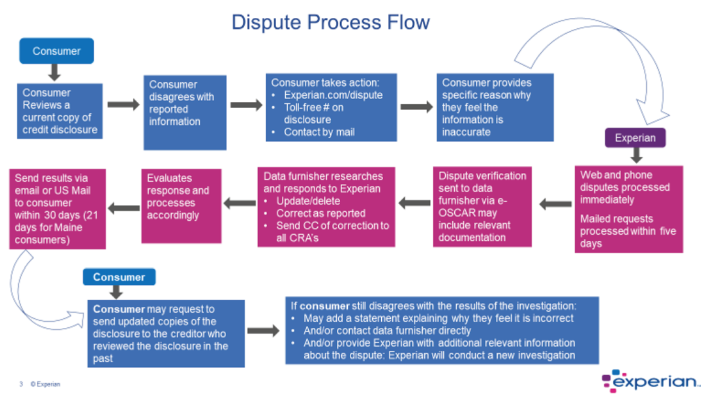
Experian's internal audit team validates error rate accuracy for material errors. This audit is performed independent of Experian's data accuracy team. Since that time, significant and material initiatives have been implemented as a result of our continuous examination by

P.O. Box 1240
Allen, TX 75013-1240
www.experian.com

CFPB, our agreement with 31 State Attorney Generals, and our internal initiatives, including our accuracy program described in the above.

5. Please describe your processes and procedures for resolving consumer complaints.

When a consumer contacts Experian to place a dispute by mail we will consider and review all content and supporting documents provided to determine if they can be used on their assertions to update or delete the disputed information. If no supporting documents are provided, or we are unable to accept them to make a change to the consumer's credit report, Experian conveys the consumer's dispute to the data furnisher to verify the accuracy of the disputed information. If supporting documents were provided and Experian was unable to use them to make the requested change or deletion, the entirety of the consumer's correspondence will be sent to the data furnisher with the consumer's dispute. The data furnisher cannot respond to the dispute without opening or downloading the attachments. If the contact is by telephone or internet, and the consumer uploads documents we will follow the same procedures outlined above. However, if there are no documents to pass along, we will use the Free Form text field on the ACDV to pass along any additional, relevant information provided by the consumer about the dispute.



P.O. Box 1240
Allen, TX 75013-1240
www.experian.com

6. **Please state the percentage of total complaints received in 2020 which were:**

a. Resolved within 30 days – 99.96%
b. Resolved within 45 days, if the consumer provided additional information relevant to the investigation during the initial 30 days – currently we measure disputes resolved within 30 days or resolved over thirty days; or
c. Resolved in a period of time greater than the statutorily mandated timeframe -- .04%

TransUnion

July 30, 2021

TransUnion Responses to Questions for the Record from Chairwoman Maxine Waters
House Committee on Financial Services Subcommittee on Oversight and Investigations
"Consumer Credit Reporting: Assessing Accuracy and Compliance"
May 26, 2021

1. **Please state the error rates in your consumer credit reporting products with regard to each of the following categories of information: (1) trade lines; (2) collections; (3) inquiries; (4) consumer identifying information; and (5) public records.**

   Data accuracy is the fundamental underpinning for the entire credit reporting system, and is a necessary precondition for TransUnion to carry out our Information for Good mission. We are proud to report a topline data accuracy rate of 99.82% in 2020.

   For the purposes of responding to the Committee's question, we believe it is important for lawmakers to have comparable data across the industry to assess data accuracy. We understand other respondents may be providing responses based on different parameters, and as such, our respective rates may not be directly comparable as they rely on unique numerators and denominators. To provide the Committee with the most directly analogous data, we have proactively modeled our answers using the different methodologies we believe are being employed by the other respondents to allow the Committee to compare statistics.

   - ***Model 1:*** Calculates "error rate" as the ratio of disputes leading to a credit report change (e.g. a file update or deletion of data) relative to the total number of records present on files with recent hard inquiry activity (dispute within 90 days of hard inquiry).
   - ***Model 2:*** Calculates "error rate" as the ratio of disputes leading to a credit report change relative to the total number of records reported on our database, by record type.

   It is important to note that any method that uses disputes and resulting account updates as a proxy for inaccuracy will be inherently flawed. The vast majority of disputes filed with TransUnion do not actually pertain to TransUnion. Rather, they are disputes that consumers have with their credit card, mortgage, or financial services provider but have been directed to TransUnion because we are the record keeper of that data. Data accuracy obligations established by the Fair Credit Reporting Act always begin with the source of the data – lenders and data furnishers – and we partner with them to assure maximum possible accuracy of the data contained in a consumer credit report. Disputes are also heavily influenced by credit repair activity, which we find accounts for approximately 70% of our dispute activity. Credit repair activity results in file updates and data deletion that often has nothing to do with underlying data accuracy. Additionally, it is important to note that using account updates as a marker of inaccuracy is also imperfect, as many data furnishers employ internal policies to automatically update account balances whenever they receive a dispute, regardless of the details of the dispute claim. Given this, it is likely that our actual error rates, as defined above, are lower than reported.

With the above considerations, we report the following error rates across the enumerated categories using both methodologies:

Model 1:	Model 2:
(1) Tradelines: 0.25%	(1) Tradelines: 0.03%
(2) Collections: 0.25%	(2) Collections: 0.11%
(3) Inquiries: 0.003%[1]	(3) Inquiries: 0.002%
(4) Consumer identifying information: 0.47%[2]	(4) Consumer identifying information: 0.10%
(5) Public records: 0.21%	(5) Public records: 0.06%

Note: Both models based on 2020 data.

2. **For each category and each line of your products that is based on consumer credit data, please indicate the rates of material errors, as well as the rates of errors that may not be deemed material from a credit assessment perspective.**

Our method for determining the materiality of errors is to consider disputes resulting in a change that would typically affect a credit score in a substantial way, including data being deleted from a file or a tradeline's delinquency status changing. We applied our analysis against Model 1 results, as described in Question 1.

(1) Trade lines: 0.03%
(2) Collections: 0.25%
(3) Inquiries: n/a
(4) Consumer identifying information: n/a[3]
(5) Public records: 0.18%

3. **Please identify the metrics and methods used to track accuracy and error rates in the consumer data used in your products and the frequency of such tracking.**

TransUnion believes the optimal method for calculating "error rates" is the ratio of disputes leading to a credit report change (e.g. a file update or deletion of data) relative to the total number of records present on files with recent hard inquiry activity (dispute within 90 days of hard inquiry). We track these numerous variables on a regular, rolling basis.

4. **Please describe the method by which error rates are validated and indicate whether third-party auditors or entities are utilized to provide an independent measure of accuracy.**

We have robust data governance programs within TransUnion, and regularly assess the quality of our data across several performance metrics that serve as potential indicators of inaccuracy. From time to time, we will engage third-party quantitative experts to validate our data quality assessments. Further, we regularly share information and best practices with our peers and regulators, and feedback from these exercises remain important to establishing and maintaining best-in-class data reporting, data quality, and consumer dispute handling processes. We regularly provide detailed information to the Consumer Financial Protection Bureau as requested as part of our ongoing supervisory activity on our data, dispute volumes and dispute outcomes.

[1] Inquiries on a consumer file are taken as fact referencing a data point that the file was delivered to a party with a permissible purpose.
[2] TransUnion does not track PII disputes separately from PII updates (i.e. additions/changes to the PII based on business policy) so this number is higher than would typically be considered an "error rate."
[3] Consumer identifying information is not material to credit scores.

5. **Please describe your processes and procedures for resolving consumer disputes.**

TransUnion is committed to building systems that assist consumers in quickly addressing any errors in their credit reports and to working with data furnishers to quickly resolve any inaccurately reported items. As previously noted, the vast majority of disputes filed with TransUnion pertain to data furnished to us by lenders, and do not stem from a TransUnion "error." Dispute activity is also heavily influenced by credit repair activity, which we believe accounts for approximately 70% of the activity in our dispute channels.

TransUnion adheres strictly to regulatory guidance and statutory requirements by maintaining a rigorous consumer dispute resolution process. Our dispute resolution procedures generally follow the below process:

(1) Consumer dispute received through online, mail or phone channels.
(2) Dispute is entered into our proprietary Consumer Relationship Management system.
(3) Where business rules permit, maintenance is performed to the file immediately as requested by the consumer.
(4) Where investigation is required, a dispute verification request is generated to the appropriate data furnisher including any relevant information provided by the consumer.
(5) Responses from data furnishers are checked against business rules to determine what maintenance is performed.
(6) For dispute verification requests that do not receive a response, maintenance is performed to suppress the item.
(7) Investigation results are generated and mailed to the consumer (for disputes received by mail or phone). For disputes received online, an email is sent advising the consumer their reinvestigation results can be viewed online.
(8) As appropriate, notices are sent to data furnishers regarding modified or deleted items.

6. **Please state the percentage of total disputes received in 2020 which were:**
   a. **Resolved within 30 days;**
   b. **Resolved within 45 days, if the consumer provided additional information relevant to the investigation during the initial 30 days; or**
   c. **Resolved in a period of time greater than the statutorily mandated timeframe.**

Under the Fair Credit Reporting Act, TransUnion generally has 30 days during which to complete a reasonable investigation of a dispute. The 30-day period may be extended to 45 days if the consumer provides additional information that is relevant to the investigation during the 30-day period. In April 2020, the Consumer Financial Protection Bureau issued a policy statement providing flexibility for lenders and credit bureaus on this timing due to unique operational challenges posed by the COVID-19 pandemic[4].

The vast majority of disputes in 2020 were resolved within a two-week period, and 99.54% were resolved within 30 days. As a general rule, disputes not resolved within 30 days are automatically resolved in favor of the consumer, and the disputed information is deleted from the file. Given this internal policy, we categorically do not have a 45-day number to report. The remaining 0.46% of

[4] cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf (consumerfinance.gov)

disputes were resolved in a period of time longer than the statutorily specified timeframe. Disputes in this category usually pertain to a highly technical issues or complex cases that require us to take extra steps to resolve.