

RESTRICTING CREDIT CHECKS FOR EMPLOYMENT
DECISIONS ACT

NOVEMBER 21, 2019.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3614]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3614) to amend the Fair Credit Reporting Act to ban the use of credit information for most employment decisions, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Restricting Credit Checks for Employment Decisions Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The use of credit reports as a factor in making hiring decisions has been found to be prevalent in a diverse array of occupations, and is not limited to certain high-level management or executive positions.

(2) According to the California Labor Federation, only 25 percent of employers researched the credit history of job applicants in 1998. However, this practice had increased to 43 percent by 2006 and to 60 percent by 2011.

(3) A study titled “Do Job Applicant Credit Histories Predict Job Performance Appraisal Ratings or Termination Decisions?”, published in 2012, found that, while credit history might conceptually measure a person’s level of responsibility, ability to meet deadlines, dependability, or integrity, it does not, in practice, actually predict an employee’s performance or likelihood to quit. Credit reports contain many inaccuracies and credit history can be contaminated by events that are sometimes outside a person’s control, such as a sudden medical expense after an accident or the loss of a job during an economic downturn. The study found that there is no benefit from using credit history to predict job performance or turnover.

(4) Despite the absence of data showing a correlation between job performance and credit-worthiness, employers continue to use credit checks as a proxy for assessing character and integrity. According to a 2012 Society for Human Resource Management survey, organizations indicated that they used credit checks on job candidates primarily to reduce or prevent theft and embezzlement and to minimize legal liability for negligent hiring.

(5) The use of credit checks for employment purposes creates a true “catch-22” for unemployed people with impaired credit. For example, the financial hardship caused by losing a job may cause some unemployed individuals to make late or partial payments on their bills, but their poor credit standing caused by this negative information on their consumer report can also impede their chances of obtaining a new job to end their financial distress.

(6) A September 2014 report by the New York City Council’s Committee on Civil Rights noted that, for those who have been unemployed for an extended period of time and whose credit has suffered as they fell behind on bills, the use of credit reports in the hiring process can exacerbate and perpetuate an already precarious situation.

(7) In a March 2013 Demos report titled “Discredited: How Employment Credit Checks Keep Out Qualified Workers Out of a Job”, one in four survey participants who were unemployed said that a potential employer had requested to check their credit report as part of a job application. Among job applicants with blemished credit histories in the survey, one in seven had been told that they were not being hired because of their credit history.

(8) While job applicants must give prior approval for a prospective employer to pull their credit reports under the FCRA, this authorization, as a practical matter, does not constitute an effective consumer protection because an employer may reject any job applicant who refuses a credit check.

(9) Some negative information on a report may stem from uncontrollable circumstances, or significant life events in a consumer’s life, such as a medical crisis or a divorce. Demos found that poor credit is associated with household unemployment, lack of health coverage, and medical debt, which are factors that reflect economic conditions in the country and personal misfortune that have little relationship with how well a job applicant would perform at work.

(10) In October 2011, FICO noted that from 2008 to 2009 approximately 50 million people experienced a 20-point drop in their credit scores and about 21 million saw their scores decline by more than 50 points. While the Great Recession reduced many consumers’ credit scores due to foreclosures and other financial hardships, the financial crisis had a particularly harsh impact on African Americans and Latinos, as racial and ethnic minorities and communities of color were frequently targeted by predatory mortgage lenders who steered borrowers into high-cost subprime loans, even when these borrowers would have qualified for less costly prime credit.

(11) A May 2006 Brookings Institution report titled “Credit Scores, Reports, and Getting Ahead in America” found that counties with a relatively higher pro-

portion of racial and ethnic minorities in the United States tended to have lower credit scores compared with counties that had a lower concentration of communities of color.

(12) Studies have consistently found that African American and Latino households tend, on average, to have lower credit scores than White households. The growing use of credit checks, therefore, may disproportionately screen otherwise qualified racial and ethnic minorities out of jobs, leading to discriminatory hiring practices, and further exacerbating the trend where unemployment for African American and Latino communities is elevated well above the rate of Whites.

(13) A 2012 Demos survey found that 65 percent of White respondents reported having good or excellent credit scores while over half of African American households reported only having fair or bad credit.

SEC. 3. PROHIBITION ON THE USE OF CREDIT INFORMATION FOR MOST EMPLOYMENT DECISIONS.

(a) IN GENERAL.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting “, subject to the requirements of subsection (b)” after “purposes”; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by amending the paragraph heading to read as follows: “USE OF CONSUMER REPORTS FOR EMPLOYMENT PURPOSES”;

(ii) in subparagraph (A), by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively (and conforming the margins accordingly);

(iii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively (and conforming the margins accordingly);

(iv) by striking the period at the end of clause (ii) (as so redesignated) and inserting “; and”;

(v) by striking “agency may furnish” and inserting “agency—“(A) may furnish”;

(vi) by adding at the end the following new subparagraph:

“(B) except as provided in paragraph (5), may not furnish a consumer report with respect to any consumer in which any information contained in the report bears on the consumer’s creditworthiness, credit standing, or credit capacity.”; and

(B) by adding at the end the following new paragraphs:

“(5) REQUIREMENTS FOR CONSUMER REPORTS BEARING ON THE CONSUMER’S CREDITWORTHINESS, CREDIT STANDING, OR CREDIT CAPACITY.—

“(A) IN GENERAL.—A person may use a consumer report with respect to any consumer in which any information contained in the report bears on the consumer’s creditworthiness, credit standing, or credit capacity only if—

“(i) either—

“(I) the person is required to obtain the report by a Federal, State, or local law or regulation; or

“(II) the information contained in the report is being used with respect to a national security investigation (as defined in paragraph (4)(D));

“(ii) none of the cost associated with obtaining the consumer report will be passed on to the consumer to whom the report relates; and

“(iii) the information contained in the consumer report will not be disclosed to any other person other than—

“(I) in an aggregate format that protects a consumer’s personally identifiable information; or

“(II) as may be necessary to comply with any applicable Federal, State, or local equal employment opportunity law or regulation.

“(B) DISCLOSURES.—A person who procures, or causes to be procured, a consumer report described in subparagraph (A) for employment purposes shall, in the disclosure made pursuant to paragraph (2), include—

“(i) an explanation that a consumer report is being obtained for employment purposes;

“(ii) the reasons for obtaining such a report; and

“(iii) the citation to the applicable Federal, State, or local law or regulation described in subparagraph (A)(i)(I).

“(C) ADVERSE ACTIONS.—In using a consumer report described in subparagraph (A) for employment purposes and before taking an adverse action based in whole or in part on the report, the person intending to take such adverse action shall, in addition to the information described in paragraph (3), provide to the consumer to whom the report relates—

“(i) the name, address, and telephone number of the consumer reporting agency that furnished the report (including, for a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by such agency);

“(ii) the date on which the report was furnished; and

“(iii) the specific factors from the report upon which the adverse action (as defined in section 603(k)(1)(B)(ii)) was based.

“(D) NATIONAL SECURITY INVESTIGATIONS.—The requirements of paragraph (4) shall apply to a consumer report described under subparagraph (A).

“(E) NON-CIRCUMVENTION.—With respect to a consumer report in which any information contained in the report bears on the consumer’s creditworthiness, credit standing, or credit capacity, if a person is prohibited from using the consumer report pursuant to subparagraph (A), such person may not, directly or indirectly, either orally or in writing, require, request, suggest, or cause any employee or prospective employee to submit such information to the person as a condition of employment.

“(F) NON-WAIVER.—A consumer may not waive the requirements of this paragraph with respect to a consumer report.

“(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing information in a consumer report to which the law enforcement agency could otherwise obtain access.”.

(b) TECHNICAL AMENDMENT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by striking “section 604(b)(4)(E)(i)” each place such term appears and inserting “section 604(b)(4)(D)(i)”.

(c) RULE OF CONSTRUCTION.—The amendments made by this Act may not be construed as limiting the ability of a person to use non-financial or non-credit related consumer report information.

(d) RULEMAKING.—Not later than the end of the 2-year period beginning on the date of the enactment of this Act, the Bureau of Consumer Financial Protection shall issue final rules to implement the amendments made by this Act.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of the enactment of this Act.

PURPOSE AND SUMMARY

On July 2, 2019, Representative Al Lawson introduced H.R.3614, “Restricting Credit Checks for Employment Decisions Act,” which would prohibit current and prospective employers from using credit reports for employment decisions, except when a credit report is required by local, state, or Federal law or for a national security clearance.

BACKGROUND AND NEED FOR LEGISLATION

Our nation’s credit reporting system impacts almost every American. Credit scores and credit reports are increasingly relied upon by creditors, employers, insurers, and even law enforcement. Yet it has been more than 15 years since Congress enacted comprehensive reform of the consumer reporting system,¹ and numerous shortcomings with the current system have been identified during that time that need to be addressed. For example, a 2012 Federal Trade Commission (FTC) study found that one out of every five consumers have a verified error on their consumer reports and 5 percent had errors serious enough to result in them being denied credit or paying more for mortgages, auto loans, insurance policies, and other financial obligations.² An analysis of the Consumer Fi-

¹The Fair and Accurate Credit Transactions Act of 2003 (FACT Act; P.L. 108-159), among other things, allows consumers to request and obtain a free credit report once a year from each of the three nationwide consumer reporting agencies.

²<https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factreport.pdf>

financial Protection Bureau’s (CFPB) consumer complaint database in 2018 revealed that credit reports were the most complained about financial product, and the three major credit bureaus—Equifax, Experian and TransUnion—were the financial companies with the most complaints.³ These critical flaws must be addressed and the Fair Credit Reporting Act must be modernized to ensure the credit reporting system works better for all Americans.

With respect to H.R. 3614, an individual’s credit history has been shown to inadequately predict their job performance.⁴ Nevertheless, credit information is increasingly used by employers for hiring, promotion, and retention. Those who have been unemployed for an extended period of time, and whose credit standing has been damaged because they were unable to pay their bills, cannot secure a new job to end their financial distress because prospective employers conduct credit checks as part of an application process. A 2013 Demos survey of low- to middle-income households with credit card debt found that one in seven respondents who were unemployed had been told by a prospective employer that their credit history contributed to an adverse employment decision.⁵

This practice creates obstacles for upward mobility and can be an invasion of consumer privacy. A 2016 report found that the use of credit reports unnecessarily exposes consumers’ financial information and potentially puts existing employees and job applicants in an uncomfortable position of having to discuss private matters, such as divorce, domestic abuse, or health/genetic conditions, in explaining their impaired credit history.⁶

This legislation is supported by more than 80 consumer, civil rights, labor, and community organizations from across the United states.⁷

³ <https://uspirg.org/news/usp/youre-not-alone-cfpb-complaints-rise>

⁴ Andrew Weaver, Is Credit Status a Good Signal of Productivity? (2014), available at <https://pdfs.semanticscholar.org/9e01/a6a4343604f7b80bbeb4ad5e56e2336a6df4.pdf>.

⁵ Amy Traub, Discredited, How Employment Credit Check Keep Qualified Workers Out of a Job, Demos 3 (2013), available at <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>.

⁶ Amy Traub, Bad Credit Shouldn’t Block Employment: How to Make State Bans on Employment Credit Checks More Effective, Demos (2016), available at <https://www.demos.org/research/bad-credit-shouldnt-block-employment-how-make-state-bans-employment-credit-checks-more>.

⁷ Supporting organizations include Americans for Financial Reform, A2Z Real Estate Consultants, African American Health Alliance, Alaska Public Interest Research Group, Allied Progress, Arkansas Community Organizations, BREAD Organization, CAFE Montgomery MD, Center for Digital Democracy, Cleveland Jobs with Justice, Community Action Human Resources Agency (CAHRA), Congregation of Our Lady of the Good Shepherd, US Provinces, Connecticut, Fair Housing Center, Consumer Action, Consumer Federation of America, Consumer Federation of California, Consumer Reports, CWA Local 1081, Delaware Community Reinvestment Action Council, Inc., Demos, Denver Area Labor Federation, East Bay Community Law Center, FAITH IN TEXAS, Famicos Foundation, FLARA, Florida Alliance for Consumer Protection, Greater Longview United Way, Groundcover News, Habitat for Humanity of Camp Co, TX, Hawaiian Community Assets, Housing Action Illinois, Housing and Family Services of Greater New York, Inc., Mary House, Inc., Maryland Consumer Rights Coalition, Miami Valley Fair Housing Center, Inc., Mobilization for Justice Inc., Montana Organizing Project, Multi-Cultural Real Estate Alliance For Urban Change, National Advocacy Center of the Sisters of the Good Shepherd, National Association of Consumer Advocates, National Association of Social Workers, National Association of Social Workers West Virginia Chapter, National Center for Law and Economic Justice, National Consumer Law Center (on behalf of its low-income clients), National Fair Housing Alliance, National Housing Law Project, National Housing Resource Center, National Rural Social Work Caucus, New Economics for Women, New Jersey Citizen Action, New Jersey Tenants Organization, New York Legal Assistance Group, North Carolina Council of Churches, Partners In Community Building, Inc., PathWays PA, Pennsylvania Council of Churches, People Demanding Action, Progressive Leadership Alliance of Nevada, Project IRENE, Prosperity Now, Public Citizen, Public Justice Center, Public Law Center, Public Utility Law Project of New York, Rocky Mountain Peace and Justice Center, SC Applesseed Legal Justice Center, Sisters of Mercy South Central Community, Society of St. Vincent de Paul, St. Paul UMC, Tennessee Citizen Action, The Center for Survivor Agency and Justice, The Disaster Law Project, The Greenlining

This legislation is substantially similar to Title II of the discussion draft of Chairwoman Maxine Waters’ legislation, the “Comprehensive Consumer Credit Reporting Reform Act of 2019,” which was considered at a full committee hearing on February 26, 2019 and was introduced in previous congresses.⁸

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that H.R. 3614 may be cited as the “Restricting Credit Checks for Employment Decisions Act”.

Section 2. Findings

This section highlights the most recent data on the challenges that consumers with thin or poor credit profiles have when finding employment. This section cites studies showing that credit history is not generally dispositive of job performance, and how employer requested credit checks can violate consumer privacy. This section also highlights the negative impact that unnecessary employer requested credit checks have on African-American and Latino households, who on average have lower credit scores than whites.

Section 3. Prohibition on the use of credit information for most employment decisions

This section adds a new subtitle to and redesignates certain sections of Section 604 of the Fair Credit Reporting Act.

The amendments made by this section prohibit employers from furnishing a consumer report with respect to any consumer unless they are required to obtain the report by local, state, or federal law or with respect to a national security investigation. This section also prevents employers from using such reports as a condition of employment and ensures that any of the costs associated with obtaining the consumer report will not be passed on to the consumer to whom the report relates.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress—

(1) The Committee on Financial Services held a hearing, entitled “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System” to consider the “Comprehensive Consumer Credit Reporting Reform Act of 2019” (Title II of the discussion draft is substantially similar to H.R. 3614) on February 26, 2019. The two-panel hearing consisted of first the three CEOs of the three largest Credit Reporting Agencies: Equifax, TransUnion,

Institute, The Leadership Conference on Civil and Human Rights, THE ONE LESS FOUNDATION, Tzedek DC, U.S. PIRG, Urban Asset Builders, Inc., Virginia Citizens Consumer Council, Virginia Poverty Law Center, West Virginia Center on Budget and Policy, Wildfire, Woodstock Institute, and WV Citizen Action Group. See <http://ourfinancialsecurity.org/2019/07/news-release-afr-statement-financial-services-committee-markup-credit-reporting/>.

⁸Financial Services Committee Hearing: Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System (2019). Hearing information available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402343>. Also see H.R. 5282 (114th Congress), the Comprehensive Consumer Credit Reporting Reform Act of 2016, introduced by Rep. Waters on May 19, 2016, and H.R.3755 (115th Congress), the Comprehensive Consumer Credit Reporting Reform Act of 2017, introduced by Rep. Waters on September 13, 2017, available with additional materials at <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400788>.

and Experian. Witnesses on the second panel included representatives from the National Fair Housing Alliance, the National Consumer Law Center, UnidosUS, U.S. Public Interest Research Group (PIRG), and a Paul Hastings partner and attorney. The hearing allowed Members of the Financial Services Committee to hear from witnesses about the continuing challenges modernizing the Fair Credit Reporting Act to better protect consumers and their data, as well as other legislation to help overcome those challenges.

(2) The Committee on Financial Services' taskforce on Financial Technology held a hearing, entitled "Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit" on July 25, 2019 to discuss emerging technologies and how they impact access to credit, and their impact across communities. The panel consisted of representatives from the National Consumer Law Center, Tulane University Law School, The Government Accountability Office (GAO), Upstart, and Upturn.

(3) In addition, during the 115th Congress, the Financial Services Committee held a two-part hearing on the Equifax data breach and related credit reporting and consumer data protection issues. The first part of the hearing entitled "Examining the Equifax Data Breach" took place on October 5, 2017 and featured the former Chairman and CEO of Equifax. The Committee also held a Minority Day hearing, which was a continuation of the hearing entitled, "Examining the Equifax Data Breach" and took place on October 25, 2017. Witnesses included representatives from the Consumer Financial Protection Bureau, the National Consumer Law Center, Georgetown University Law Center, and the Office of the New York State Attorney General.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 11, 2019, and ordered H.R. 3614 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 32 yeas and 26 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 3614:

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter		
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas	X	
	Ms. Thair	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard		
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
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	Mr. McHenry, <i>Ranking Member</i>	X	
	Ms. Wagner	X	
	Mr. King		X
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 7/11/2019

Measure H.R. 3614 (Final Passage)

Amendment No.

Offered by: Mr. Lawson

Agreed To	Yes	No	Prsnt	Wdrn
Voice Vote	Ayes		Nays	

Record Vote	FC
	32 Ayes - 26 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 3614 are to increase opportunities for employment for consumers across the United States.

NEW BUDGET AUTHORITY AND CBO ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 3614 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 2019.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3614, the Restricting Credit Checks for Employment Decisions Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 3614, Restricting Credit Checks for Employment Decisions Act			
As ordered reported by the House Committee on Financial Services on July 11, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	1	1
Revenues	0	0	0
Deficit Effect	0	1	1
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold

H.R. 3614 would allow consumer reporting agencies (CRAs) to provide consumer credit reports to employers for use in making employment decisions about current or prospective employees, only if such a report is required by a federal, state, or local law or regulation. Reports used in connection with a national security investigation also would be allowed. The bill also would prohibit employers from directly or indirectly requiring a current or prospective employee to submit credit information as a condition of employment. The Consumer Financial Protection Bureau (CFPB) would issue rules to implement the bill's requirements.

Using information from the CFPB, CBO estimates that the agency would need four additional employees at an annual cost of \$200,000 per employee to issue rules in the first year after enactment. Thus, CBO estimates that enacting H.R. 3614 would cost \$1 million over the 2019–2029 period. The CFPB is permanently authorized to receive whatever amounts it needs from the Federal Reserve to carry out its operations; it may spend those amounts without appropriation.

H.R. 3614 contains private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandates would be below the threshold established in UMRA (\$164 million in 2019, adjusted annually for inflation).

The bill would impose a mandate on CRAs by prohibiting them from issuing consumer credit reports for employees or job candidates to current or prospective employers. The cost of the mandate would include the value of forgone income from the sale of consumer reports to employers. Using information from industry sources, CBO expects the loss in revenue would be roughly \$40 million annually.

H.R. 3614 also would impose a mandate on employers by limiting the circumstances when job candidates and employees could be asked for their credit history as a condition of employment. The bill would allow employers to request an employee's (or potential employee's) consumer report only for national security clearances or when otherwise required by state, local, or federal law. The bill would require employers in those circumstances to disclose to the affected employee information about the request and the outcome of the consumer report. That disclosure requirement would be a mandate as defined in UMRA. The incremental cost of the mandate would be small because the mandated entities already collect or possess the information required to be disclosed under the bill.

The bill contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3614. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Con-

gressional Budget Office under section 402 of the Congressional Budget Act.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 3614, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

H.R. 3614 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3614 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 3614 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 3614, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FAIR CREDIT REPORTING ACT

* * * * *

TITLE VI—CONSUMER CREDIT REPORTING

* * * * *

§ 604. Permissible purposes of reports

(a) IN GENERAL.—Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes, *subject to the requirements of subsection (b)*; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information—

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(G) executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that—

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments, determining the appropriate level of such payments, or enforcing a child support order, award, agreement, or judgment;

(B) the parentage of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws

under which the obligation arises (if required by those laws); and

(C) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 454 of the Social Security Act (42 U.S.C. 654) for use to set an initial or modified child support award.

(6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

(b) CONDITIONS FOR FURNISHING AND USING CONSUMER REPORTS FOR EMPLOYMENT PURPOSES.—

(1) **[CERTIFICATION FROM USER.—]** *USE OF CONSUMER REPORTS FOR EMPLOYMENT PURPOSES.*—A consumer reporting **[agency may furnish]** *agency*—

(A) *may furnish* a consumer report for employment purposes only if—

[(A)] (i) the person who obtains such report from the agency certifies to the agency that—

[(i)] (I) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

[(ii)] (II) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

[(B)] (ii) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by the Bureau under section 609(c)(3)**[.]**; and

(B) *except as provided in paragraph (5), may not furnish a consumer report with respect to any consumer in which any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity.*

(2) DISCLOSURE TO CONSUMER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a con-

sumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

(B) APPLICATION BY MAIL, TELEPHONE, COMPUTER, OR OTHER SIMILAR MEANS.—If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application—

(i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3); and

(ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.

(C) SCOPE.—Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) CONDITIONS ON USE FOR ADVERSE ACTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this title, as prescribed by the Bureau under section 609(c)(3).

(B) APPLICATION BY MAIL, TELEPHONE, COMPUTER, OR OTHER SIMILAR MEANS.—

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the

report relates, in lieu of the notices required under subparagraph (A) of this section and under section 615(a), within 3 business days of taking such action, an oral, written or electronic notification—

(I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Bureau under section 609(c)(3).

(C) SCOPE.—Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) EXCEPTION FOR NATIONAL SECURITY INVESTIGATIONS.—

(A) IN GENERAL.—In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will—

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) NOTIFICATION OF CONSUMER UPON CONCLUSION OF INVESTIGATION.—Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made—

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) DELEGATION BY HEAD OF AGENCY OR DEPARTMENT.—For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) CLASSIFIED INFORMATION.—The term “classified information” means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.

(ii) NATIONAL SECURITY INVESTIGATION.—The term “national security investigation” means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(5) *REQUIREMENTS FOR CONSUMER REPORTS BEARING ON THE CONSUMER'S CREDITWORTHINESS, CREDIT STANDING, OR CREDIT CAPACITY.*—

(A) *IN GENERAL.*—A person may use a consumer report with respect to any consumer in which any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity only if—

(i) either—

(I) the person is required to obtain the report by a Federal, State, or local law or regulation; or

(II) the information contained in the report is being used with respect to a national security investigation (as defined in paragraph (4)(D));

(ii) none of the cost associated with obtaining the consumer report will be passed on to the consumer to whom the report relates; and

(iii) the information contained in the consumer report will not be disclosed to any other person other than—

(I) in an aggregate format that protects a consumer's personally identifiable information; or

(II) as may be necessary to comply with any applicable Federal, State, or local equal employment opportunity law or regulation.

(B) *DISCLOSURES.*—A person who procures, or causes to be procured, a consumer report described in subparagraph (A) for employment purposes shall, in the disclosure made pursuant to paragraph (2), include—

(i) an explanation that a consumer report is being obtained for employment purposes;

(ii) the reasons for obtaining such a report; and

(iii) the citation to the applicable Federal, State, or local law or regulation described in subparagraph (A)(i)(I).

(C) *ADVERSE ACTIONS.*—In using a consumer report described in subparagraph (A) for employment purposes and before taking an adverse action based in whole or in part on the report, the person intending to take such adverse action shall, in addition to the information described in paragraph (3), provide to the consumer to whom the report relates—

(i) the name, address, and telephone number of the consumer reporting agency that furnished the report (including, for a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by such agency);

(ii) the date on which the report was furnished; and

(iii) the specific factors from the report upon which the adverse action (as defined in section 603(k)(1)(B)(ii)) was based.

(D) *NATIONAL SECURITY INVESTIGATIONS.*—The requirements of paragraph (4) shall apply to a consumer report described under subparagraph (A).

(E) NON-CIRCUMVENTION.—With respect to a consumer report in which any information contained in the report bears on the consumer’s creditworthiness, credit standing, or credit capacity, if a person is prohibited from using the consumer report pursuant to subparagraph (A), such person may not, directly or indirectly, either orally or in writing, require, request, suggest, or cause any employee or prospective employee to submit such information to the person as a condition of employment.

(F) NON-WAIVER.—A consumer may not waive the requirements of this paragraph with respect to a consumer report.

(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing information in a consumer report to which the law enforcement agency could otherwise obtain access.

(c) FURNISHING REPORTS IN CONNECTION WITH CREDIT OR INSURANCE TRANSACTIONS THAT ARE NOT INITIATED BY THE CONSUMER.—

(1) IN GENERAL.—A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) in connection with any credit or insurance transaction that is not initiated by the consumer only if—

(A) the consumer authorizes the agency to provide such report to such person; or

(B)(i) the transaction consists of a firm offer of credit or insurance;

(ii) the consumer reporting agency has complied with subsection (e);

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e), to have the consumer’s name and address excluded from lists of names provided by the agency pursuant to this paragraph; and

(iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.

(2) LIMITS ON INFORMATION RECEIVED UNDER PARAGRAPH (1)(B).—A person may receive pursuant to paragraph (1)(B) only—

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) INFORMATION REGARDING INQUIRIES.—Except as provided in section 609(a)(5), a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a

credit or insurance transaction that is not initiated by a consumer.

(d) RESERVED.—

(e) ELECTION OF CONSUMER TO BE EXCLUDED FROM LISTS.—

(1) IN GENERAL.—A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) in connection with a credit or insurance transaction that is not initiated by the consumer by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) MANNER OF NOTIFICATION.—A consumer shall notify a consumer reporting agency under paragraph (1)—

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) RESPONSE OF AGENCY AFTER NOTIFICATION THROUGH SYSTEM.—Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall—

(A) inform the consumer that the election is effective only for the 5-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) EFFECTIVENESS OF ELECTION.—An election of a consumer under paragraph (1)—

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency—

(i) subject to subparagraph (C), during the 5-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) NOTIFICATION SYSTEM.—

(A) IN GENERAL.—Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer shall—

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency—

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (i).

(B) ESTABLISHMENT AND MAINTENANCE AS COMPLIANCE.—Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) NOTIFICATION SYSTEM BY AGENCIES THAT OPERATE NATIONWIDE.—Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) CERTAIN USE OR OBTAINING OF INFORMATION PROHIBITED.—A person shall not use or obtain a consumer report for any purpose unless—

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 607 by a prospective user of the report through a general or specific certification.

(g) PROTECTION OF MEDICAL INFORMATION.—

(1) LIMITATION ON CONSUMER REPORTING AGENCIES.—A consumer reporting agency shall not furnish for employment pur-

poses, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6)) about a consumer, unless—

(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(B) if furnished for employment purposes or in connection with a credit transaction—

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).

(2) **LIMITATION ON CREDITORS.**—Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical information treated in the manner required under section 605(a)(6)) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

(3) **ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.**—Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106–102; or

(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

(4) **LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.**—Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to

any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

(A) REGULATIONS REQUIRED.—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

(6) COORDINATION WITH OTHER LAWS.—No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

* * * * *

§ 607. Compliance procedures

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) DISCLOSURE OF CONSUMER REPORTS BY USERS ALLOWED.—A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) NOTICE TO USERS AND FURNISHERS OF INFORMATION.—

(1) NOTICE REQUIREMENT.—A consumer reporting agency shall provide to any person—

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;
a notice of such person's responsibilities under this title.

(2) CONTENT OF NOTICE.—The Bureau shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it pro-

vides a notice under paragraph (1) that is substantially similar to the Bureau prescription under this paragraph.

(e) PROCUREMENT OF CONSUMER REPORT FOR RESALE.—

(1) DISCLOSURE.—A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report—

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 604 for which the report is furnished to the end-user of the report (or information).

(2) RESPONSIBILITIES OF PROCURERS FOR RESALE.—A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall—

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 604, including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person—

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) RESALE OF CONSUMER REPORT TO A FEDERAL AGENCY OR DEPARTMENT.—Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if—

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in [section 604(b)(4)(E)(i)] *section 604(b)(4)(D)(i)*); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department.

* * * * *

§ 609. Disclosures to consumers

(a) Every consumer reporting agency shall, upon request, and subject to section 610(a)(1), clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that—

(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

(B) nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)(A) Identification of each person (including each end-user identified under section 607(e)(1)) that procured a consumer report—

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include—

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(C) Subparagraph (A) does not apply if—

(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in [section 604(b)(4)(E)(i)] *section 604(b)(4)(D)(i)*); and

(ii) the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do

not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.—

(1) COMMISSION SUMMARY OF RIGHTS REQUIRED.—

(A) IN GENERAL.—The Commission shall prepare a model summary of the rights of consumers under this title.

(B) CONTENT OF SUMMARY.—The summary of rights prepared under subparagraph (A) shall include a description of—

(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 612;

(iii) the right of a consumer to dispute information in the file of the consumer under section 611;

(iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;

(v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and

(vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 603(w), as provided in the regulations of the Bureau prescribed under section 612(a)(1)(C).

(C) AVAILABILITY OF SUMMARY OF RIGHTS.—The Commission shall—

(i) actively publicize the availability of the summary of rights prepared under this paragraph;

(ii) conspicuously post on its Internet website the availability of such summary of rights; and

(iii) promptly make such summary of rights available to consumers, on request.

(2) SUMMARY OF RIGHTS REQUIRED TO BE INCLUDED WITH AGENCY DISCLOSURES.—A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section—

(A) the summary of rights prepared by the Bureau under paragraph (1);

(B) in the case of a consumer reporting agency described in section 603(p), a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;

(C) a list of all Federal agencies responsible for enforcing any provision of this title, and the address and any appropriate phone number of each such agency, in a form that

will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 605 or cannot be verified.

(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.

(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Bureau pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Bureau under paragraph (1), and information on how to contact the Bureau to obtain more detailed information.

(e) INFORMATION AVAILABLE TO VICTIMS.—

(1) IN GENERAL.—For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

(A) the victim;

(B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or

(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

(2) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

(A) as proof of positive identification of the victim, at the election of the business entity—

(i) the presentation of a government-issued identification card;

(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

(B) as proof of a claim of identity theft, at the election of the business entity—

(i) a copy of a police report evidencing the claim of the victim of identity theft; and

(ii) a properly completed—

(I) copy of a standardized affidavit of identity theft developed and made available by the Bureau; or

(II) an affidavit of fact that is acceptable to the business entity for that purpose.

(3) PROCEDURES.—The request of a victim under paragraph (1) shall—

(A) be in writing;

(B) be mailed to an address specified by the business entity, if any; and

(C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including—

(i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and

(ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.

(4) NO CHARGE TO VICTIM.—Information required to be provided under paragraph (1) shall be so provided without charge.

(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

(A) this subsection does not require disclosure of the information;

(B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

(C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

(D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

(6) LIMITATION ON LIABILITY.—Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

(7) LIMITATION ON CIVIL LIABILITY.—No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.

(8) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

(9) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—No provision of subtitle A of title V of Public Law 106–102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

(10) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

(A) the business entity has made a reasonably diligent search of its available business records; and

(B) the records requested under this subsection do not exist or are not reasonably available.

(11) DEFINITION OF VICTIM.—For purposes of this subsection, the term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

(12) EFFECTIVE DATE.—This subsection shall become effective 180 days after the date of enactment of this subsection.

(13) EFFECTIVENESS STUDY.—Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.

(f) DISCLOSURE OF CREDIT SCORES.—

(1) **IN GENERAL.**—Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

(B) the range of possible credit scores under the model used;

(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

(D) the date on which the credit score was created; and

(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(2) **DEFINITIONS.**—For purposes of this subsection, the following definitions shall apply:

(A) **CREDIT SCORE.**—The term “credit score”—

(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”); and

(ii) does not include—

(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

(II) any other elements of the underwriting process or underwriting decision.

(B) **KEY FACTORS.**—The term “key factors” means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.

(3) **TIMEFRAME AND MANNER OF DISCLOSURE.**—The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).

(4) **APPLICABILITY TO CERTAIN USES.**—This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—

(A) distribute scores that are used in connection with residential real property loans; or

(B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.

(5) **APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.**—

(A) IN GENERAL.—This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

(B) EXCEPTION.—This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.—This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

(7) COMPLIANCE IN CERTAIN CASES.—In complying with this subsection, a consumer reporting agency shall—

(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

(8) FAIR AND REASONABLE FEE.—A consumer reporting agency may charge a fair and reasonable fee, as determined by the Bureau, for providing the information required under this subsection.

(9) USE OF ENQUIRIES AS A KEY FACTOR.—If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.

(g) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—

(1) IN GENERAL.—Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the “lender”) shall provide the following to the consumer as soon as reasonably practicable:

(A) INFORMATION REQUIRED UNDER SUBSECTION (f).—

(i) IN GENERAL.—A copy of the information identified in subsection (f) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

(ii) NOTICE UNDER SUBPARAGRAPH (D).—In addition to the information provided to it by a third party that

provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.—

(i) IN GENERAL.—If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(ii) NUMERICAL CREDIT SCORE.—However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

(iii) ENTERPRISE DEFINED.—For purposes of this subparagraph, the term “enterprise” has the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.—A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(D) NOTICE TO HOME LOAN APPLICANTS.—A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

“NOTICE TO THE HOME LOAN APPLICANT

“In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

“The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

“Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

“If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting

agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

“If you have questions concerning the terms of the loan, contact the lender.”.

(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.—

This subsection shall not require any person to—

- (i) explain the information provided pursuant to subsection (f);
- (ii) disclose any information other than a credit score or key factors, as defined in subsection (f);
- (iii) disclose any credit score or related information obtained by the user after a loan has closed;
- (iv) provide more than 1 disclosure per loan transaction; or
- (v) provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

(F) NO OBLIGATION FOR CONTENT.—

- (i) IN GENERAL.—The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.
- (ii) LIMIT ON LIABILITY.—No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.—As used in this subsection, the term “person” does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.—

(A) IN GENERAL.—Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

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MINORITY VIEWS

Committee Republicans view H.R. 3614, the *Restricting Credit Checks for Employment Decisions Act*, as a far-reaching approach that could yield unintended consequences and put consumers and investors at risk.

H.R. 3614 prohibits the use of credit checks for all private and public companies in hiring decisions. The legislation allows an exception for credit checks in limited circumstances, including when authorized by federal, state, or local law or if the credit information is being used with respect to a national security investigation. In cases where consumer reports are permitted as a condition of employment, H.R. 3614 requires a potential employer to disclose to the consumer the reasons for obtaining a consumer report.

Committee Republicans believe the exceptions included in H.R. 3614 are too limited and do not extend to positions where an employee's financial history may play a justifiable role in the hiring process. An individual's financial history is particularly important in the financial services industry, where employees may have access to vast amounts of personal and financial information for millions of American consumers. Credit checks can also provide information about whether there is potential for increased risk of fraud or illicit activity.

Committee Republicans share the concern that credit history can negatively impact a candidate's chances of being selected for a job. In the majority of cases credit history alone should not alone disqualify an individual from employment. Republicans remain open to conversations on reform. However, such a sweeping approach is not the answer. Credit history can and should be a predictor of dependability and may be valuable in certain scenarios along with other factors needed to fulfill responsibilities. An outright prohibition of credit checks is irresponsible.

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