

No: 06-17226

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOHN C. GORMAN, an individual,

Plaintiff-Appellant

v.

WOLPOFF & ABRAMSON, LLP, AND
MBNA AMERICA BANK, N.A.,

Defendants–Appellees.

On Appeal From the United States District Court
for the Northern District of California
The Honorable James Ware, Presiding
District Court Case No. CV-04-04507-JW

**MOTION OF CALIFORNIA BANKERS ASSOCIATION FOR LEAVE TO
FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR
REHEARING AND REHEARING *EN BANC* OF APPELLEE MBNA
AMERICA BANK, N.A.**

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Request for Leave and Statement of Interest

Pursuant to Federal Rule of Appellate Procedure 29(a) and (b), the California Bankers Association (“CBA”) respectfully requests leave of Court to file the attached proposed Brief of *Amicus Curiae* (the “Brief”) in support of the Petition of appellee MBNA America Bank, N.A. (“MBNA”) for Rehearing and Rehearing *En Banc* (the “Petition”). The CBA respectfully requests that the Petition be granted for the reasons set forth therein and for the additional reasons addressed in the attached Brief. The issues presented in the Petition and Brief are of great importance to the banking community, and merit this Court’s full attention.

The CBA is a nonprofit organization established in 1891 that represents most of the FDIC-insured depository financial institutions in the State of California. CBA’s members range in size from small community banks to the largest banks in the country. The majority of CBA’s members provide some form of consumer credit, including, but not limited to, in the form of credit cards, mortgages or other loans. CBA frequently represents its members in state and federal courts through the filing of amicus briefs and letters in matters that have a significant impact on the banking industry. This appeal is such a matter.

CBA presents in the attached Brief a short discussion of the following issues that have not been addressed from an industry perspective in the Petition: (1) the

industry need for a single national credit reporting system, including standard obligations on the creditors and lenders that choose to voluntarily participate in the system; (2) the practical effect of the Panel's January 12, 2009 opinion, which will be to permit direct litigation against furnishers of credit information for inaccurate or incomplete credit reporting under California Civil Code section 1785.25(a), something which has never previously been allowed due to the preemptive effect of the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. (the "FCRA"); and (3) the chilling effect on the banking industry, and credit reporting system in particular, from increased litigation, including, in particular, the possibility that many furnishers will limit the amount of information they furnish or will cease reporting any information altogether.

Accordingly, pursuant to Federal Rule of Appellate Procedure 29(a) and (b), CBA respectfully requests leave to file the attached Brief of *Amicus Curiae* in Support of the Petition of MBNA for Rehearing and Rehearing *En Banc*.

Dated: March 9, 2009

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned, counsel of record for *amicus curiae* CALIFORNIA BANKERS ASSOCIATION (“CBA”), certifies that CBA is a California non-profit organization and has no corporate parent. There are no publicly-held companies that own 10% or more of CBA’s stock.

Dated: March 9, 2009

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I. STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

Pursuant to Federal Rules of Appellate Procedure 29(a) and 35(a), the California Bankers Association (“CBA”) joins in the Petition of appellee MBNA America Bank, N.A. (“MBNA”) for Rehearing and Rehearing *En Banc* (the “Petition”) and respectfully requests that the Petition be granted for the additional reasons addressed below. Pursuant to Federal Rule of Appellate Procedure 35(a)(2), this appeal involves a question of exceptional importance. Indeed, the issues presented in the Petition are of great importance to the banking community, and merit this Court’s full attention.

The CBA is a non-profit trade association established in 1891 that represents most of the FDIC-insured depository financial institutions in the State of California. CBA’s members range in size from small community banks to the largest banks in the country. Many of CBA’s members issue credit cards and most of them provide some form of consumer credit. In addition, most, if not all, of CBA’s members report some form of consumer information to credit reporting agencies (“CRAs”), as part of the national credit reporting system established by the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (the “FCRA”). Importantly, a single national standard for enforcing credit reporting obligations is essential to the health of the banking and consumer lending system.

From an industry perspective, rehearing and rehearing *en banc* are necessary here because, pursuant to Federal Rule of Appellate Procedure 35(a)(2), the Panel's January 12, 2009 opinion (the "Opinion") involves a question of exceptional importance as to which there is an overriding need for national uniformity. Each of CBA's members likely will be adversely affected by the Opinion because the Opinion creates precedent wholly unique to California by permitting consumers for the first time directly to sue furnishers of credit information under California Civil Code section 1785.25(a) for allegedly inaccurate or incomplete reporting in the first instance. In addition to setting California apart, the private right of action created by the Opinion is contrary to express language of the FCRA and its well-founded policy underpinnings. The Opinion, if not corrected, will be uniquely harmful to the credit reporting system and will result in an overall reduction in availability of credit data about California's residents.

Of utmost urgency, the Opinion undermines the uniform, consistent and predictable standards for a furnisher's credit reporting obligations, as set out in the FCRA. Congress mandated consistency in the treatment of furnishers. Wholly contrary to this mandate, the Opinion allows inconsistent application of liability on furnishers by, on the one hand, recognizing that the FCRA (under 15 U.S.C. §§ 1681s-2(c) and (d)) prohibits the private enforcement of a furnisher's

duty of accurate credit reporting, while, on the other, permitting private enforcement of the identical duty under California state law. In so holding, the Opinion creates a California standard for furnisher liability which is both different from the FCRA and unique among the States. This inconsistency upends the settled system for furnisher reporting established by the FCRA.

There can be little doubt that the chasm created by the Opinion will result in substantially increased litigation, with private litigants seeking to avail themselves of courts in California. This increased litigation will have a substantial impact on the viability of the credit reporting system in general, as well as on CBA's membership directly. The credit reporting system depends upon the voluntary participation of creditors and lenders. Faced with the possibility of increased litigation, out of an abundance of caution, creditors and lenders likely will limit the information they furnish to CRAs or otherwise cease reporting information altogether. Creditors' reluctance to report information will have a crippling effect on the credit reporting system, to the detriment of not only banks and consumer lenders, but also the consumers who rely on the system to obtain credit.

As set forth herein and in MBNA's Petition, CBA respectfully submits that rehearing and rehearing *en banc* of the appeal are essential.

II. ARGUMENT

A. The Opinion Upsets The Critical Balance Established By The FCRA And Undermines The Continued Vitality Of A Uniform Credit Reporting System.

A single national standard for enforcing credit reporting obligations is essential to the health of the banking and consumer lending system. A national credit reporting system provides creditors with an efficient and effective means of obtaining information on consumers when making credit-granting decisions, benefiting both creditors and consumers. As enacted and amended, the FCRA is a comprehensive federal statutory scheme crafted to recognize the essential balance between encouraging creditors' voluntary participation, in part by protecting creditors against burdensome, as well as frivolous, litigation, while at the same time providing consumers with a method of correcting inaccurate information. It is essential to the vitality of that system that creditors be encouraged to add data promptly, and without fear of litigation, but with an opportunity to correct erroneous information after it is brought to their attention. "An elaborate mechanism has been developed" for credit reporting in this country, and Congress's intent was to regulate the system in a manner that protects the rights of both consumers and lenders who furnish data into the system. 15 U.S.C. § 1681(a)(2).

Importantly, no law requires any creditors to furnish data to any CRAs, and they receive no financial compensation for furnishing data. Rather, the entire credit reporting system depends upon creditors' voluntary furnishing of data to the three major CRAs. See An Overview of Consumer Data and Credit Reporting, Federal Reserve Bulletin, February 2003, at 49 ("Reporting entities submit information to credit reporting agencies on a purely voluntary basis; no state or federal law requires creditors to report data to the companies."); Dolores S. Smith, Director, Division of Consumer and Community Affairs, Testimony before the U.S. Senate Committee on Banking, Housing and Urban Affairs on the National Credit Reporting System, July 29, 2003 ("Participation in the U.S. credit reporting system is voluntary. Creditors are not required to obtain consumer reports before making credit decisions, although most creditors rely on consumer reports for risk-management purposes. Creditors are also not required to furnish information to consumer reporting agencies.").¹

Clearly, the system only is valuable with widespread participation by creditors and lenders. Congress expressly acknowledged this by ensuring that

¹ Relevant excerpts of the February 2003 Federal Reserve Bulletin and the Smith testimony are attached to the accompanying Addendum. The full text of both documents are available, respectively, at <https://federalreserve.gov/pubs/bulletin/2003/0203lead.pdf>, and <http://www.federalreserve.gov/boarddocs/testimony/2003/20030729/default.htm>.

consumers possess no direct private right of action to sue furnishers for inaccurate or incomplete reporting in the first instance. See 15 U.S.C. § 1681s-2(c); see also Nelson v. Chase Manhattan Mortg. Corp., 282 F.3d 1057, 1059 (9th Cir. 2002). Rather, under 15 U.S.C. § 1681s-2(b), furnisher liability attaches only if, after receiving a consumer dispute from a credit reporting agency, the furnisher fails to conduct a reasonable investigation of the dispute. See 15 U.S.C. § 1681s-2(c); see also Nelson, 282 F.3d at 1059-60. This filtering mechanism is critical to maintaining the balance inherent in the FCRA. Without it, there would be no national, uniform credit reporting system, and Congress could not encourage the furnishers' widespread participation in the system, reduce the furnishers' exposure to burdensome and frivolous litigation and provide consumers with a consistent procedure for correcting inaccurate information.

The Opinion, however, upends this critical balance, and undermines the consistency and predictability essential to furnishers, by allowing consumers to circumvent the FCRA and bring direct actions under California Civil Code section 1785.25(a) ("Section 1785.25(a)") against furnishers for inaccurate or incomplete credit reporting based on any type of disputed credit information – something the FCRA has never allowed. The inconsistency inherent in this conclusion is readily apparent. There unquestionably is no private right of

action to enforce a furnisher's duties under the FCRA to provide accurate information in the first instance. That is a subject of enforcement by Federal and State agencies and officials only. 15 U.S.C. §§ 1681s-2(c), (d). The Opinion, however, would expand furnishers' legal risk and expense dramatically by permitting consumers to bring direct actions to enforce the very same duties under California law. California now stands alone among the fifty states in affording consumers a private right of action.²

By introducing an inconsistency, the Opinion further directly undermines the predictability mandated by Congress in the FCRA. To achieve the goals of the credit reporting system, furnishers require consistency and predictability. Absent uniform standards, the vitality of credit reporting as we know it is threatened, which will adversely impact lenders and consumers alike.

Further impairing the vitality of voluntary reporting, the Opinion raises the question of whether Section 1785.25(a) imposes a heightened liability risk for furnishers since it does not include a mechanism (as the FCRA does)

² 15 U.S.C. § 1681t-(b)(1)(F) of the FCRA also saves from preemption a Massachusetts provision (Mass. Gen. Law 93 § 54A(a)) that is similar to Section 1785.25(a). However, the courts that have considered the issue have construed 15 U.S.C. § 1681t(b)(1)(F) as continuing to preempt private causes of action under the Massachusetts statute. See Gibbs v. SLM Corp., 336 F. Supp. 2d 1, 13 (D. Mass. 2004), aff'd, Gibbs v. SLM Corp., No. 05-1057, 2005 WL 5493113 (1st Cir. Aug. 23, 2005). Thus, the Opinion also creates a split between the circuits.

allowing furnishers to investigate and cure any alleged inaccurate reporting so as to avoid liability and filtering out frivolous and burdensome lawsuits premised on any type of consumer dispute, whether written or oral, made directly to the furnisher. Perfect reporting is not, and never has been, the standard under the FCRA, particularly with respect to furnishers. It is estimated that billions of items of consumer data are reported voluntarily each month by approximately 30,000 furnishers to the CRAs on approximately 200 million U.S. consumers, resulting in the issuing of more than 1.5 billion reports annually. See Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, at 8-9 (2004).³ Thus, the massive amount of information furnished each month heightens the sheer impossibility of perfection in reporting in the first instance, and reinforces the importance of the FCRA's filtering mechanism to cure any alleged reporting inaccuracies. Any ambiguity in the liability standard, and any suggestion of a heightened liability risk without the critical "cure" mechanisms provided by the FCRA, obviously discourages voluntary reporting. Many lenders – and certainly smaller ones with limited compliance budgets – will

³ The full text of the Report is available at http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf.

come to the conclusion that the safest course is not to report at all. This is a further, equally serious threat to the system.

Finally, and of great import, the CBA and its members are continually concerned over the proliferation of litigation in California. The Opinion opens the door to a multitude of lawsuits against furnishers from California consumers, as well as from non-California consumers against furnishers located in California. This decision will have a chilling effect on the industry, and credit reporting in particular. The CBA's members should be able to reasonably plan for future litigation expenses. The Opinion makes such planning nearly impossible given the large size of California's population, all of whom could be potential litigants. The increased litigation, and the associated substantial burden and expense, inevitably will lead creditors and lenders either to limit the information they furnish or to cease reporting such information altogether, to the detriment of consumers and the credit reporting system.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in MBNA's Petition, CBA respectfully requests that the Court grant rehearing and rehearing *en banc*, as appropriate.

Dated: March 9, 2009

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE PURSUANT
TO CIRCUIT RULES 35-4 AND 40-1

I certify that pursuant to 9th Cir. R. 35-4 and 40-1, the attached *amicus* brief in support of rehearing and rehearing *en banc* is proportionally spaced, has a typeface of 14 points or more and contains 1,917 words.

Date: March 9, 2009

s/ *Julia B. Strickland*

Julia B. Strickland

ADDENDUM

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2. Federal Reserve Bulletin, An Overview of Consumer Data and Credit Reporting, (February 2003), pp. 47-51.
3. Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003 (2004), pp. 8-9.

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the Appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participant(s):

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s/Lori A. Reed

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EXHIBIT 1

An Overview of Consumer Data and Credit Reporting

Robert B. Avery, Paul S. Calem, and Glenn B. Caner, of the Board's Division of Research and Statistics, and Raphael W. Bostic, of the University of Southern California, prepared this article.

For some time, the Board of Governors of the Federal Reserve System has sought to obtain more detailed and timely information on the debt status, loan payment behavior, and overall credit quality of U.S. consumers. Such information could facilitate the Board's analysis of macroeconomic conditions, improve its understanding of the way credit is provided to consumers, and enhance the System's supervision of banking activities. For decades, information of this type has been gathered by credit reporting companies, primarily to assist creditors in evaluating the credit quality of current and prospective customers. The information gathered by credit reporting companies is vast and seeks to cover virtually all U.S. consumer borrowing.¹ To the extent that this information is complete, comprehensive, and accurate, it represents a potential new source of statistical data for the Federal Reserve on consumer credit markets and behavior.

To evaluate the potential usefulness of these data, the Federal Reserve Board engaged one of the three national credit reporting companies to supply the records of a nationally representative sample of individuals.² The data provide a unique opportunity

to profile the nature and content of information contained in credit reporting company records.

Assessing the usefulness of these data as a potential source of information for the Board involves several tasks. This article is an initial step in the process; it examines the scope and content of the data, using a framework based on key aspects of credit evaluation. This approach is a natural way to begin the assessment process because the credit reporting companies' primary purpose for collecting these data is to facilitate credit evaluation. Future steps will focus on other aspects of this evaluation, including comparing measures of aggregate borrowing activity and credit quality derived from the credit reporting data with measures from other sources.

The article begins with a brief description of the way the credit reporting companies compile and report their data and gives background on the regulatory structure governing these activities. This description is followed by a detailed look at the information collected in credit reports. The discussion of these data is divided along the lines of the major components of consumer credit report data—credit accounts; public records relating to the person's debt or payment obligations (bankruptcy filings, liens, judgments in civil actions, and so on); collection agency accounts; and inquiries regarding credit status. The distribution patterns of items such as account balances, credit utilization, and measures of payment performance by type of account and creditor are broadly described. Key aspects of the data that may be incomplete, duplicative, or ambiguous as they apply to credit evaluation are highlighted in the analysis. The article concludes with a discussion of steps that might be taken to address some of the issues identified.

1. The Fair Credit Reporting Act generally refers to a company that regularly assembles or evaluates consumer credit information for the purpose of furnishing consumer reports as a "consumer reporting agency." Such companies are also called "credit bureaus" or, as in this article, "credit reporting companies." Three national credit reporting companies—Equifax, Experian, and Trans Union Corporation—jointly have a dominant presence in the market for credit-related information on consumers. Each national credit reporting company seeks to maintain records for each individual, although, for a variety of reasons, all companies may not have the same information for a given individual. For more information on industry structure, see Robert M. Hunt, "What's in the File? The Economics and Law of Consumer Credit Bureaus," *Business Review*, Federal Reserve Bank of Philadelphia (second quarter, 2002), pp. 17–24.

2. Identifying information, such as name, address, and social security number, was omitted from the data obtained by the Federal Reserve. The identities of the creditors, collection agencies, and other

entities that reported information to the credit reporting company were also omitted. An index variable, unique to this dataset, allowed records of the same individual to be linked. A similar index variable allowed records of the same creditor (or other reporter) to be linked. Neither of these variables could be used to link to any publicly available information.

COMPOSITION AND SOURCES OF CREDIT REPORTING COMPANY RECORDS

Credit reporting companies gather information on an individual's experiences with credit, leases, non-credit-related bills, money-related public records, and inquiries and compile it in a *credit record*. A credit record generally includes five types of information:

- identifying information such as the name of the individual, current and previous residential addresses, and social security number
- detailed information reported by creditors (and some other entities, such as a medical establishment) on each current and past loan, lease, or non-credit-related bill, each of which is referred to here as a *credit account*³
- information derived from money-related public records, such as records of bankruptcy, foreclosure, tax liens (local, state, or federal), garnishments, and other civil judgments, referred to here as *public records*

3. Non-credit-related bills include items such as utility and medical bills.

• information reported by collection agencies on actions associated with credit accounts and non-credit-related bills, referred to here as *collection agency accounts*

• identities of individuals or companies that request information from an individual's credit record, the date of the inquiry, and an indication of whether the inquiry was by the consumer, for the review of an existing account, or to help the inquirer make a decision on a potential future account or relationship.

The consumer credit report, the basic product that the credit reporting companies provide to those seeking information about the credit history of an individual, is the organized presentation of the individual's credit record at the credit reporting company.⁴ Industry sources report that credit reporting companies issue approximately 2 million consumer credit

4. Credit reporting companies maintain credit records of individuals, not couples or other family units. Therefore, an individual's credit report is separate and distinct from his or her spouse's report. If individuals are jointly responsible for payment on a loan, such as a mortgage, a record of that credit account will appear in each individual's file, along with an indicator that it is a joint account.

A Summary of Consumer Rights under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) seeks to promote accuracy, fairness, and privacy of an individual's "consumer report" maintained by a "consumer reporting agency" (or credit reporting company). The FCRA provides the following consumer rights and protections:

- **The right to be told if information in a consumer report has been used to take adverse action against a consumer.** Any person who uses information from a consumer report obtained from a consumer reporting agency to take adverse action against a consumer—such as denying an application for credit, insurance, or employment—must tell the consumer the name, address, and phone number of the reporting agency that provided the consumer report, inform the consumer of the right to obtain a free copy of his or her consumer report within sixty days of receiving the notice, and notify the consumer of the right to dispute with the reporting agency the completeness or accuracy of the consumer report.
- **The right to see the contents of a consumer report.** Upon a consumer's request, a consumer reporting agency must provide the consumer with all information in his or her file at the time of the request, except for credit scores,

and identify each person who has requested it recently. There is no charge for the report if an adverse action has been taken against the consumer because of information in a consumer report supplied by the reporting agency and the consumer requests the report within sixty days of receiving notice of the adverse action from the person taking the adverse action.

• **The right to dispute inaccurate or incomplete information with the consumer reporting agency.** If a consumer notifies a reporting agency that his or her file contains inaccurate or incomplete information, the agency must investigate the items (generally within thirty days) by presenting to the furnisher or source of the information all relevant evidence submitted by the consumer, unless the agency determines that the dispute is frivolous. The furnisher or source must review the evidence, investigate the disputed information, and report its findings to the reporting agency. The agency must provide the consumer with a written notice of the results of the investigation, a copy of the consumer report as revised based on the results of the investigation, notice of the procedures used in the investigation (including the furnishers contacted), notice of the consumer's right to add a statement to the file disputing the accuracy or completeness of the information, and notice of the consumer's right to request that the reporting agency notify certain recent recipients of consumer reports of the deletion of the disputed information.

1. For the complete text of the FCRA, see 15 U.S.C. §§ 1681-1681u, or the Federal Trade Commission's web site (<http://www.ftc.gov>).

reports each day.⁵ Access to the information and maintenance of each credit record is governed by conditions spelled out in the Fair Credit Reporting Act (FCRA) (see box "A Summary of Consumer Rights under the Fair Credit Reporting Act").

Credit reporting companies gather the information that is in a credit record primarily from creditors, government entities, collection agencies, and third-party intermediaries (see box "Sources of Credit Reporting Company Data"). Reporting entities submit information to credit reporting companies on a purely voluntary basis; no state or federal law requires creditors or others to report data to the companies. The FCRA prohibits a reporting institution from furnishing any information to a credit reporting company if the institution knows or consciously avoids knowing that the information is inaccurate, and it requires institutions to participate in the process of correcting errors that are identified by consumers.

5. See Consumer Data Industry Association (formerly, the Associated Credit Bureaus), Press Release, March 12, 1998.

The national credit reporting companies attempt to collect comprehensive information on all lending to individuals in the United States, and the information each maintains is vast.⁶ Each of the three national credit reporting companies has records on perhaps as many as 1.5 billion credit accounts held by approximately 190 million individuals. Credit reporting companies receive information from creditors and others generally every month, and they update their credit records normally within one to seven days of receiving new information. According to industry sources, each of the three national credit reporting companies receives more than 2 billion items of information each month.

Credit reporting companies use various techniques to process the high volume of information they receive. When a credit reporting company receives data from a creditor, government agency, or third-party provider, it first assesses its accuracy. If the data are found to contain errors, they are returned to the

6. See "About CDIA" on the web site of the Consumer Data Industry Association, www.cdialine.org.

A Summary of Consumer Rights under the Fair Credit Reporting Act—Continued

- **The right to have inaccurate information corrected or deleted.** A consumer reporting agency must remove or correct inaccurate, incomplete, or unverified information from its files, generally within thirty days after a dispute is filed. However, the reporting agency is not required to remove accurate data from a consumer's file unless it is outdated information that is required to be excluded from consumer reports.
- **The right to dispute inaccurate items with the furnisher or source of the information.** If a consumer tells a furnisher of information, such as a creditor who reports to a consumer reporting agency, that specific information is inaccurate or incomplete, the furnisher may not then report the information to a reporting agency without including a notice of the dispute.
- **The right to have outdated information excluded from a consumer report.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old. However, there are certain exceptions:
 - Information about criminal convictions may be reported without any time limitation.
 - Bankruptcy information may be reported for ten years.
 - Information reported in response to an application for a job with an annual salary of more than \$75,000 has no time limit.
 - Information reported because of an application for more than \$150,000 worth of credit or life insurance has no time limit.
- Information about a lawsuit, an unpaid judgment against a consumer, or record of arrest can be reported for seven years or until the statute of limitations runs out, whichever is longer.
- **Limits for access to a consumer report.** A consumer reporting agency may furnish a consumer report only to a person with a permissible purpose recognized by the FCRA—usually, to consider an application for credit, insurance, employment, housing, rental, depository account, or other legitimate business need, or in accordance with the written instructions of the consumer.
- **The requirement for consumer consent to furnish reports to employers or to furnish reports containing medical information.** A consumer reporting agency may not furnish a consumer report generally to a consumer's employer or prospective employer, or a consumer report containing medical information about the consumer in connection with a credit or insurance transaction, without the consumer's written consent.
- **The right to choose to exclude a consumer's name from consumer reporting agency lists for unsolicited firm offers of credit and insurance.** Creditors and insurers may use reporting agency file information as the basis for sending unsolicited firm offers of credit or insurance. Such offers must include a toll-free phone number or address established by the agency from whom the creditor or insurer obtained the information and whom the consumer may call or write to have his or her name and address removed from future lists.

Sources of Credit Reporting Company Data

Credit reporting companies receive the information that is included in credit records from a wide variety of sources. They receive information on individual credit accounts, which makes up the bulk of the data that they maintain from virtually all commercial banks, savings associations, and credit unions, from most finance companies, and from major retailers and many other businesses, such as oil and gas companies. Some utility and medical companies also report on their accounts.

Credit reporting companies also gather information from many agencies specializing in collections. These collection agencies may be acting on behalf of a claimant, or they may have purchased the rights to an account themselves. Collection agencies report information on accounts in collection, including many non-credit-related bills, such as those associated with medical treatment or services from communication or power companies, as well as some credit accounts.

Collection agency reporting does not represent a full accounting of credit accounts that have gone to collection. Many creditors do their own collections rather than using collection agencies. If these creditors report to the credit reporting companies, such collections will appear as updates to credit account files. However, if the creditor does not report to the credit reporting companies, then these collection actions will not appear in the credit files.

Credit reporting companies also gather information on public records, obtaining the information from the court system, government entities, or third parties. Some of these sources have computerized, comprehensive records; others keep only paper records that require labor-intensive transcribing and recording. The former are easily obtained by credit reporting companies whereas the latter are not. Finally, information on inquiries is recorded by the credit reporting companies as the inquiries are made.

reporting entity for resubmission with the necessary corrections. Otherwise, the credit reporting companies compile and reconfigure the newly received data to create or update the record of an individual's credit experiences. This reconfiguration can require a high level of technical sophistication. For example, credit reporting companies have had to develop rules for deciding when to ignore slight variations in personal identifying information and techniques for recognizing that data items with the same identifying information, such as name, may actually be associated with different individuals.

Although credit reporting company data are extensive, they are not complete. First, information on some credit accounts held by individuals is not reported. Some small retail, mortgage, and finance

companies and some government agencies do not report to the credit reporting companies. Loans extended by individuals, employers, insurance companies, and foreign entities typically are not reported. Second, complete information is not always provided for each account reported. Sometimes creditors do not report or update information on the credit accounts of borrowers who consistently make their required payments as scheduled. Credit limits established on revolving accounts are sometimes not reported. Also, creditors may not notify the credit reporting company when an account is closed or undergoes other material changes.

The information reported on credit accounts reflects each account's payment status and outstanding balance shortly before it is forwarded to the credit reporting company. Thus, the report is sensitive to the date on which the information is forwarded. For example, a credit account reported to the credit reporting companies on the day after a payment is made and posted to the account will show a smaller balance than one reported to the companies on the day before the payment.

Although credit reporting companies endeavor to maintain high-quality data, the degree to which consumer credit reports are accurate, complete, or consistent across companies is in dispute. A recent study, for example, found evidence of inconsistencies in the information included in individual credit reports across the national credit reporting companies.⁷ An earlier investigation by a consumer organization suggests that as many as one-third of all consumer credit reports may contain errors that could result in the denial of access to credit.⁸ A study by Arthur Andersen & Company argues, however, that such errors may not have material significance regarding access to credit. The Andersen study concluded that only a small proportion of individuals were denied credit on the basis of inaccurate information in their credit reports.⁹

Overall, research and creditor experience has consistently indicated that credit reporting company information, despite any limitations that it may have, generally provides an effective measure of the rela-

7. See "Credit Score Accuracy and Implications for Consumers," report by Consumer Federation of America and the National Credit Reporting Association, December 17, 2002.

8. See "Mistakes Do Happen: Credit Report Errors Mean Consumers Lose," March 1998, on the web site of the U.S. Public Information Research Group, www.uspirg.org/reports.

9. See Consumer Data Industry Association, Press Release, March 12, 1998; also see Robert M. Hunt, "The Development and Regulation of Consumer Credit Reporting in America," Federal Reserve Bank of Philadelphia, Working Paper no. 02-21, November 2002.

tive credit risk posed by prospective borrowers.¹⁰ Nonetheless, the industry and its critics alike recommend that consumers review their credit reports periodically, especially if they are in the market for new credit, if they have been denied credit, or if their creditor has changed the terms of an account on the basis of credit reporting company information.

DESCRIPTION OF CREDIT REPORTING COMPANY RECORDS

One of the three national credit reporting companies provided the Federal Reserve with the full credit records (with the exception of personal and creditor identifying information) of a nationally representative sample of individuals as of June 1999.¹¹ Approximately 248,000 individuals included in the database of the national credit reporting company were randomly selected (table 1).¹² The credit reporting company then provided the Board with the entire credit record of each of these individuals, excluding any identifying information. Each consumer credit record contained possibly more than 350 variables that described consumer credit usage and performance.

The sample contains information on about 2.58 million credit accounts, a number that, by the authors' estimate, translates into approximately 1.43 billion credit accounts in the credit reporting company's full database (table 2, memo item). The authors estimate the aggregate balances owed on the credit accounts in the full database to have been \$6.7 trillion as of June 30, 1999. Credit accounts were reported by thousands of organizations, including more than 23,000 creditors reporting currently (those providing data at the time the sample was drawn).

10. See Robert B. Avery, Raphael W. Bostic, Paul S. Calem, and Glenn B. Canner, "Credit Risk, Credit Scoring, and the Performance of Home Mortgages," *Federal Reserve Bulletin* (July 1996), pp. 621-48.

11. Most credit and other records contained in the credit reporting company files of individuals are common to the three national companies, which have adopted common standards for the reporting and coding of information provided by creditors and others. Nonetheless, some differences remain across companies. Some small institutions do not report to all three companies, and coverage of public records may not be identical. Moreover, differences can arise because of the timing of the receipt and processing of information at each company within a typical reporting cycle. Finally, rules regarding the linkage of reports to a common individual and the treatment of items such as noncurrent data can vary across credit reporting companies.

12. This sample consists of approximately 1 file out of every 657 files from the reporting company; the sampling frame excludes non-individual accounts, such as small business accounts, and records of deceased persons.

1. Individuals with credit reporting company records, by type of information

| Type of information | Number | Share of sample (percent) |
|--------------------------------|---------|---------------------------|
| Sample size | 248,027 | 100.0 |
| Credit account | 216,202 | 87.2 |
| Open and active account | 198,399 | 80.0 |
| No active account | 12,637 | 5.1 |
| Authorized user only | 5,166 | 2.1 |
| Public record | 26,478 | 12.1 |
| Collection agency account | 74,888 | 30.2 |
| Inquiry | 142,905 | 57.6 |
| None of the above | 318 | 0.1 |
| Memo | | |
| Credit account only | 63,674 | 25.7 |
| Public record only | 42 | 0.0 |
| Collection agency account only | 25,905 | 10.6 |
| Inquiry only | 55 | 0.0 |
| Credit account and | | |
| Public record | 28,534 | 11.5 |
| Collection agency account | 46,496 | 17.5 |
| Inquiry | 138,564 | 55.9 |

1. Active accounts are those used within one year of the date the sample was drawn.

2. Individuals who are authorized to use an account but not legally responsible for its payment. Generally, these accounts will not be used in a credit evaluation of the authorized user.

3. Includes only inquiries made within two years of the date the sample was drawn.

* Less than 0.5 percent.

Individuals have credit reporting company records for a number of reasons: having a record of a credit account (whether open and active or not), being an authorized user on a credit account, having a money-related public record, having a record of a collection action, or having had an inquiry about their credit circumstances. Approximately 87 percent of individuals in the sample had a record of a credit account, and 92 percent of these had an open and active account as of the date the sample was drawn (table 1). A very small share of the individuals in the sample had only a public record item or an inquiry. However, about 11 percent of the sample had a credit reporting company record only because of a collection action.

The following discussion highlights the contents and scope of the data in the sample. A close examination of the data reveals that the information is not complete in all regards and at times contains duplications and ambiguities. These omissions and limitations may require users of the information to make assumptions about how to treat certain reported items in developing a credit profile for a consumer. The following discussion reviews the more important of these issues and quantifies their scope. Because the information is now somewhat dated, some of the patterns presented here may not reflect current circumstances.

EXHIBIT 2



The Federal Reserve Board

Dolores S. Smith

Director, Division of Consumer and Community Affairs

National credit reporting system

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

July 29, 2003

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify on the significance of maintaining a reliable national credit reporting system, the importance of the Fair Credit Reporting Act to that system, and the need for consumer awareness of how this system functions and relates to their ability to obtain credit.

I. Background and Overview of the Fair Credit Reporting Act

A. Background

In the past, local banking institutions knew the credit capacity of individuals in their community. As the financial services industry has grown larger, financial products and services more complex, and the U.S. population more mobile, it is no longer feasible for institutions to evaluate the credit standing of consumers based solely on their direct experiences with such consumers. Centralized credit bureaus, or consumer reporting agencies, have evolved to provide a repository of credit history information that can be accessed by creditors to evaluate the creditworthiness of prospective borrowers. This national credit reporting system provides creditors with an efficient, competitive, and cost-effective method of obtaining data for credit decision-making and consumers with increased credit availability.

The data on what consumers understand about the credit granting process, and how their credit report relates to that process, are limited. There is some anecdotal evidence that consumers are generally aware of the terms "credit scoring" and "credit rating," but that they are not clear on how credit scores are used in credit granting. Because information obtained through the national credit reporting system has become invaluable to creditors in determining the creditworthiness of consumers, it is crucial that consumers understand how this system operates and impacts their ability to obtain credit and the pricing of credit. Educated consumers who make informed decisions about credit are essential to an efficient and effective marketplace. Consumers who understand how their credit-risk profile relates to credit rates and terms can better determine which credit product suits their needs.

Today, each of the three national consumer reporting agencies--Experian, Equifax, and Trans Union--maintains records on as many as 1.5 billion credit accounts held by approximately 190 million individuals. Each of the consumer reporting agencies receives more than 2 billion items of information per month and issues roughly 2 million credit reports each day.¹

The information gathered by the consumer reporting agencies is obtained from banks, savings associations, credit unions, finance companies, retailers, other creditors, and

collection agencies, as well as from public records. A consumer report generally consists of five types of information: identifying information, such as the consumer's name and address; detailed information reported by creditors regarding individual credit accounts; public record information, such as records of bankruptcies, foreclosures, and tax liens; information reported by collection agencies, mostly regarding non-payment of bills; and information regarding inquiries about a consumer's credit record. Consumer reports are used for credit, insurance, employment, and certain other limited purposes.

B. Overview of the Fair Credit Reporting Act

The Congress adopted the Fair Credit Reporting Act (FCRA) in 1970 to regulate credit reporting systems in the United States, and passed significant amendments in 1996. The primary purposes of the FCRA are to ensure fair and accurate credit reporting and to protect consumers' privacy. Among other things, the FCRA imposes certain obligations on consumer reporting agencies, on users of consumer reports, and, since 1996, on furnishers of information.

A person may obtain a consumer report only for a permissible purpose. The FCRA specifies the permissible purposes, which include using the information contained therein for a transaction involving an extension of credit to a consumer. If a creditor takes any action that is adverse to a consumer based on information in a consumer report, the creditor generally must give the consumer a notice of the adverse action. This notice informs consumers about their rights under the FCRA.

Participation in the U.S. credit reporting system is voluntary. Creditors are not required to obtain consumer reports before making credit decisions, although most creditors rely on consumer reports for risk-management purposes. Creditors also are not required to furnish information to consumer reporting agencies. But if they do, the information they furnish must be accurate. They must correct and update erroneous information, and must investigate any disputed information.

Consumer reporting agencies have extensive responsibilities under the FCRA. Those responsibilities include: maintaining reasonable procedures to ensure that consumer reports are furnished only to persons having a permissible purpose; following reasonable procedures to ensure the maximum possible accuracy of consumer reports; reinvestigating the accuracy or completeness of any disputed information and notifying the consumer of the results of the reinvestigation; omitting certain obsolete information from consumer reports after specified periods of time; and providing consumers with a copy of their consumer reports upon request.

The FCRA contains important consumer rights and protections. Several are designed to promote accuracy in consumer reports. For example, the right to receive notice if information in a consumer report has resulted in adverse action enables consumers to check the accuracy of information in their credit reports. An adverse action notice must inform the consumer of the name, address, and telephone number of the consumer reporting agency that furnished the report, the consumer's right to obtain a free copy of the consumer report, and the consumer's right to dispute the accuracy or completeness of any information in the consumer report. Consumers have a right to obtain a copy of their consumer reports, upon request; currently this right does not extend to getting their credit score.² Consumers also have the right to dispute the accuracy or completeness of any information in their consumer reports with a consumer reporting agency, to have such information deleted or corrected,

and to have a statement of dispute included in the report if the dispute is not resolved. Consumers may also dispute the accuracy of items with the furnisher of the information.

Other consumer rights and protections are designed to protect consumer privacy. Consumers have a right to be excluded from prescreened solicitation lists. The three national consumer reporting agencies maintain a toll-free telephone number that consumers can call to exercise this right. Limiting access to consumer reports to persons that have certified a permissible purpose under the FCRA also protects consumer privacy. In general, the FCRA restricts the sharing of certain information among affiliates unless the consumer is given the opportunity to opt out of that sharing. Additional privacy protections apply in circumstances where consumer reports are provided to prospective employers or contain medical information, and where investigative consumer reports are prepared or obtained.

II. The Importance of the National Credit Reporting System

Maintaining a reliable national credit reporting system is essential to ensure the continued availability of consumer credit at reasonable cost. As Chairman Greenspan has observed, "unless we have some major sophisticated system of credit evaluation continuously updated, we will have very great difficulty in maintaining the level of consumer credit currently available."³ Without the information that comes from various credit bureaus and other sources, lenders would have to impose higher costs on consumers to compensate for the increased risk and uncertainty associated with the credit they extend.

The ready availability of accurate, up-to-date credit information from consumer reporting agencies benefits both creditors and consumers. Information from consumer reports gives creditors the ability to make credit decisions quickly and in a fair, safe and sound, and cost-effective manner. Consumers benefit from access to credit from different sources, the competition among creditors, quick decisions on credit applications, and reasonable costs for credit.

A. The Importance of Credit Scoring

Credit scoring has become an important tool in the credit granting process. Credit scoring models, which typically are proprietary to individual institutions or consumer reporting agencies, use credit bureau information and other data to construct mathematical scorecards that can accurately predict levels of creditworthiness across various populations. These models assign positive and negative weights to items of information that have demonstrated statistical usefulness for the evaluation of credit risk. Credit scoring enables creditors to evaluate, quickly and inexpensively, the risk of lending to credit applicants, and promotes the making of expedited credit decisions in a safe and sound manner. Consumers benefit from the increased availability and lower cost of credit made possible by the use of credit scoring models. Credit scoring also may help to reduce unlawful discrimination in lending to the extent that these systems are designed to evaluate all applicants objectively and thus avoid issues of disparate treatment.

As Chairman Greenspan has noted, the emergence of credit scoring technologies "has proven useful in expanding access to credit for us all, including for lower-income populations and others who have traditionally had difficulty obtaining credit. It has also enabled financial institutions to offer a wide variety of customized insurance, credit and other products."⁴ Chairman Greenspan has stressed the importance of maintaining a system that provides incentives to develop more sophisticated credit scoring models and enables

credit scoring models and technologies to advance.⁵

B. Risk-Based Credit Pricing

Credit evaluation systems rely on information gathered by consumer reporting agencies on consumers' borrowing and payment experiences to measure the credit risk posed by current and prospective borrowers. Risk-based pricing, which has become increasingly common in all sectors of the credit industry, is a mechanism by which the rates offered or charged to consumers reflect the creditworthiness and risk posed. Risk-based pricing is made possible because creditors have available to them data from consumer reports, including credit scores, which permit them to assess the risk profiles of individual consumers. For example, a consumer demonstrated to have an extremely low risk of default or delinquency, based on a consumer report, would likely be offered a very favorable interest rate; a consumer with a marginal credit history, on the other hand, may also be offered credit, but at a higher rate. Risk-based pricing permits creditors to offer credit products tailored to the consumer's individual risk profile.

III. The Importance of the FCRA to the National Credit Reporting System

A. Federal Preemption under the FCRA of Certain State Laws

In 1996, the Congress amended the FCRA and, among other things, preempted the states from enacting laws or regulations dealing with seven areas addressed by the FCRA. These seven areas include: the procedures for using prescreened solicitations; the time for reinvestigating disputed information; the duties of creditors that take adverse action; the informational contents of consumer reports; the duties of furnishers of information; affiliate information sharing; and the form and content of the summary of rights disclosure. Through these preemption provisions, the Congress effectively established uniform national standards in these areas. The FCRA preemption provisions are scheduled to sunset on January 1, 2004. After that date, states would be permitted to enact laws in these seven areas if those laws explicitly provide that they are intended to supplement the FCRA and give greater protection to consumers than is provided under the FCRA.

Chairman Greenspan has stated his support for making permanent the provision currently in the FCRA to provide for uniform federal rules. In an appearance before the House Financial Services Committee earlier this year, Chairman Greenspan spoke of the importance of having "national standards" under the FCRA, and cautioned that with significant differences state by state, it would be very difficult to maintain as viable a system as we currently have.

The FCRA promotes the national credit system in important ways. Perhaps most significantly, the availability of standardized consumer reports--that contain nationally uniform data--allows banks to make prudent credit decisions efficiently wherever they do business and wherever their customers live and work. The FCRA's national standards governing furnisher responsibilities and duties of users taking adverse action--the two primary areas of responsibility for most financial institutions--promote efficiency by enabling banks to comply with a single set of rules for all of their domestic credit operations. State-specific restrictions on furnishing information to consumer reporting agencies, or on the contents of information contained in consumer reports supplied by consumer reporting agencies, could negatively affect credit availability and increase the cost of credit.

B. Accuracy of Consumer Reports

Although maintaining uniform federal rules in the seven areas where the FCRA currently preempts state action is essential to the national credit system, the current system is by no means perfect. In particular, concerns have been raised about the accuracy and completeness of information in consumer reports. Recent studies have shown that consumer reports sometimes contain inaccurate, incomplete, or inconsistent data, although the degree to which this is a problem is in dispute.⁶ Moreover, the growing problem of identity theft only heightens concerns about the accuracy of consumer reports, because of the difficulties that victims often face in having fraudulent accounts removed from their credit files.

The accuracy of consumer report information is a critical element of the national credit reporting system. Most of the problems associated with consumer reporting agency data appear to result from the failure of creditors, collection agencies, or public entities to furnish complete and consistent information in a timely manner.⁷ Four particular areas of concern with regard to consumer report accuracy include: (1) the failure to report credit limits; (2) the failure to report updated information on accounts; (3) the failure to report non-derogatory accounts or minor delinquencies; and (4) the inconsistent reporting of public record data, collection agency data, and inquiries.⁸ Although the financial services industry has undertaken efforts to address the problem of inaccurate (and incomplete) information in order to deter fraud, ongoing efforts are needed to ensure that information furnished to consumer reporting agencies is accurate, timely, and complete. Concerns about the accuracy of consumer reports can be alleviated to some extent through consumer education, such as efforts to encourage consumers to check their consumer reports periodically.

C. Adverse Action Notices and Risk-Based Credit Pricing

Under the FCRA, if a creditor denies credit or takes other "adverse action" based on information in a consumer report, the creditor generally must give the consumer a notice of that fact. Among other things, the notice must also tell consumers of their right to obtain a free copy of their credit report and to dispute inaccurate information. The FCRA incorporates the definition of "adverse action" contained in the Equal Credit Opportunity Act and its implementing regulation, the Federal Reserve Board's Regulation B. Under the ECOA and Regulation B, consumers are entitled to a notice containing the specific reasons for a credit denial or other adverse action. The FCRA and ECOA notices, which are typically combined, provide an important tool in educating consumers about the impact on credit availability of negative information in their consumer reports. Receiving notice of the specific reasons for adverse action coupled with notice that the adverse action was based in whole or in part on information in a consumer report (1) alerts consumers to specific problems or possible inaccuracies in their credit reports, and (2) informs consumers of their right to obtain a free copy of the report and to dispute inaccurate information.

With the increase in risk-based pricing, consumers who previously would have been denied credit (and would have received adverse action notices) now are offered credit at rates that reflect their risk as borrowers, thus expanding access to credit. When a consumer accepts a creditor's offer of credit, even on different terms from those that were requested, an adverse action notice is not required under Regulation B, and hence is not required under the FCRA. Therefore, when consumers apply for credit, adverse action notices are given to them less frequently than in the past.

Concern has been raised that because of risk-based pricing, adverse action notices may no longer be meeting at least part of the intended purpose under the FCRA--helping to ensure the accuracy of consumer reports. Inaccurate information in a consumer report may

negatively impact access to credit at rates that reflect the consumer's creditworthiness, but there is no adverse action notice directing the consumer's attention to potential errors that may stand in the way of more favorable terms.

One suggested approach for addressing this concern is to revise the FCRA definition of adverse action to require that creditors provide an adverse action notice whenever credit is granted on material terms less favorable than those otherwise available. For example, a creditor using a risk-based pricing system may offer a credit card based on an assessment of the consumer's creditworthiness with rates ranging from 7.99 to 14.99 percent. A consumer would receive an adverse action notice if the consumer was offered and accepted a rate of 8.99, rather than the lowest rate of 7.99 percent, based on that risk assessment. Providing adverse action notices to consumers that receive credit might provide some benefit to consumers, but at a cost to industry that likely would outweigh the potential benefit.

Other tools could be made available to consumers to mitigate these concerns. For example, the Congress is now considering legislation to give consumers the right annually to obtain a free copy of their consumer reports upon request. If enacted, such legislation could encourage consumers to check their consumer reports periodically, particularly if coupled with appropriate consumer education about the importance of consumer reports and how to check for accuracy.

IV. Consumer Education and Financial Literacy

Consumer education and financial literacy play an important role in helping consumers to understand the credit system and their own credit standing.⁹ Financial education can equip consumers with the knowledge required to make better choices among the financial products and services, thus enabling consumers to obtain those products and services at the lowest cost available to them. Financial education is particularly valuable for populations that have traditionally been underserved by the financial system and may help protect vulnerable consumers from abusive credit arrangements that can be financially devastating.

Markets operate more efficiently when consumers are well informed. Making informed decisions about what to do with their money will help build a more stable financial future for individuals and their families. The Federal Reserve System recently launched a national financial education initiative to encourage consumers to learn more about personal financial management, complete with a public service announcement that featured Chairman Greenspan. The objective of this initiative is to highlight the benefits of financial education and to provide information on the resources available to consumers for assistance in managing their finances. The Federal Reserve's financial education web site (www.FederalReserveEducation.org) makes available a variety of materials that may be useful to consumers, including a brochure entitled "There's a Lot to Learn about Money" that contains tips for managing credit wisely and protecting personal credit ratings.

In addition, the Federal Reserve Bank of Boston has published an excellent educational video and booklet on identity theft that explains what identity theft is, how consumers can protect themselves from becoming victims, and what they should do if they do become victims. These materials also explain the importance of checking consumer reports regularly, provide tips for how to read a consumer report, and list appropriate contact information for the three major consumer reporting agencies and certain federal government agencies. A copy of the Boston Reserve Bank's identity theft booklet can be viewed online

at the Federal Reserve Bank of Boston's public web site
(www.bos.frb.org/consumer/identity/index.htm).

V. Conclusion

The Committee is to be commended for undertaking an examination of the FCRA and related issues at this important juncture. In conducting this examination, it is important to maintain a viable, national credit-reporting system that preserves and expands reasonable access to credit, and to promote consumer understanding and awareness of the credit-reporting system and how it relates to the credit-granting process.

Footnote

1. See "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 49-50. [Return to text](#)
2. A credit score is a numerical representation of a consumer's overall credit profile arising from mathematical procedures that weight attributes in the way that best distinguishes between preferred and not preferred accounts. [Return to text](#)
3. Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee. [Return to text](#)
4. Letter from Chairman Alan Greenspan to Congressman Rubén Hinojosa, February 28, 2003. [Return to text](#)
5. Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, July 15, 2003, House Financial Services Committee. [Return to text](#)
6. For a summary of these recent studies, see "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 50. [Return to text](#)
7. *Id.* at 70-73. [Return to text](#)
8. *Id.* at 71-72. [Return to text](#)
9. The Federal Reserve, however, does not have data that measure consumers' level of knowledge or awareness of credit reporting, credit scoring, or how the credit system operates. We do conduct consumer research but the focus generally targets consumer knowledge of specific practices or products. [Return to text](#)

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Last update: July 29, 2003, 10:00 AM

EXHIBIT 3

Report to Congress

**Under Sections 318 and 319 of
the Fair and Accurate Credit
Transactions Act of 2003**

December 2004

Federal Trade Commission

Deborah Platt Majoras, Chairman
Orson Swindle, Commissioner
Thomas B. Leary, Commissioner
Pamela Jones Harbour, Commissioner
Jon Leibowitz, Commissioner

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Federal Trade Commission

The Fair Credit Reporting Act of 1970 addressed these issues by providing a number of new consumer protections. First, it gave consumers a right to information about their CRA file,¹⁸ without charge in the case of a consumer who has been turned down for credit as a result of a report from the CRA.¹⁹ Second, it created a dispute process by which a consumer could contest items in a consumer report that he or she believed to be in error.²⁰ Third, the FCRA required that CRAs implement “reasonable procedures to ensure maximum possible accuracy” in consumer reports.²¹ 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 consumer reports. 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. Amendments in 1996 strengthened the FCRA’s consumer protections by, among other things, placing certain legal obligations on furnishers with respect to the accuracy of information provided.²² In passing the FACT Act in 2003, Congress further strengthened this approach by, for example, requiring that consumers have access to a free copy of their consumer report each year.

Consumer credit in the U.S. has continued to expand since enactment of the FCRA. For instance, the Federal Reserve Board reports that the fraction of U.S. households with bank-type credit cards increased from 16% in 1970 to 68% in 1998.²³ Among the lowest income quintile, the fraction rose from 2% of households in 1970 to 28% in 1998. Further, as the credit market has matured, lenders’ incentives have changed. In addition to avoiding bad credit risks, lenders now focus on identifying people with good credit history so as to expand the market for lender products.²⁴

2. How the system works today

The three nationwide CRAs maintain files on approximately 200 million U.S. consumers and issue more than 1.5 billion reports a year in response to consumer applications for credit,

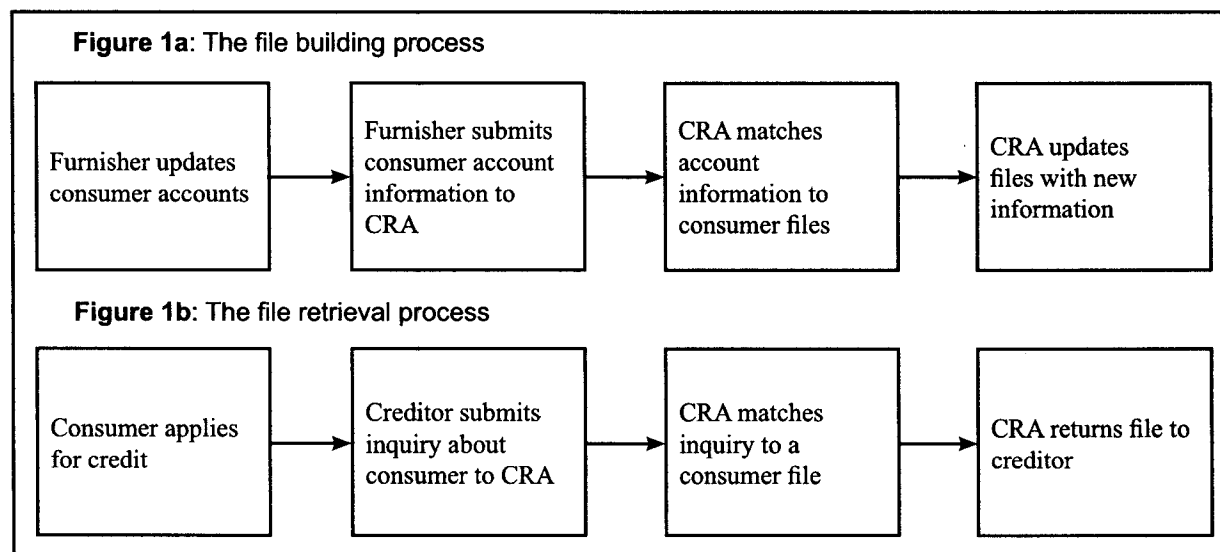
-
18. FCRA § 609, 15 U.S.C. § 1681g. Originally, consumers had a right under the FCRA only to the “nature and substance” of the information in their file. In the 1996 FCRA amendments, this right was expanded to include all information in the consumer’s file, except for risk scores. *See* Consumer Credit Reporting Reform Act of 1996, P.L. 104-208, 110 Stat. 3009-426 (the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1).
 19. FCRA § 612(b), 15 U.S.C. § 1681j(b).
 20. FCRA § 611, 15 U.S.C. § 1681i.
 21. FCRA § 607(b), 15 U.S.C. § 1681e(b).
 22. Consumer Credit Reporting Reform Act of 1996, 110 Stat. at 3009-426.
 23. *Testimony of Dolores S. Smith, Federal Reserve Board, before the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Financial Services*, 107th Cong. (Nov. 1, 2001).
 24. *See, e.g.,* John M. Barron & Michael Staten, *The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience* (2001) (Credit Research Center, Georgetown University). In the section entitled “The Value of Positive Information,” these authors describe a simulated measurement of the curtailment of credit when information in consumer reports is restricted to negative information.

Federal Trade Commission

employment, and insurance. The data in these files are provided on a voluntary basis by about 30,000 data furnishers.²⁵

The CRAs obtain records related to consumers' credit history from creditors, collection agencies, and public sources. Each record is attached to identifying information such as name, social security number ("SSN"), address, and birth date. The CRAs organize these records into "files," which refer to all records that the CRA believes to belong to the same person. The CRAs attempt to maintain exactly one file for every credit-using consumer and to include as many of that consumer's accounts and other records as possible. This report will refer to the process of adding information to consumer files as "file building." A simplified version of the process is described in Figure 1a.²⁶

The CRAs make the information in their files available to subscribers. Subscribers may be the final users of consumer reports, or they may be "resellers," entities that purchase consumer reports from the nationwide CRAs and sell the information to final users. In some cases, the reseller provides further input to the consumer report information, such as merging the reports from different nationwide CRAs, checking for accuracy, or adding information from other data sources. This report refers to the process of furnishing consumer reports in response to inquiries as "file retrieval." (See Figure 1b.)



25. See Statement of Stuart K. Pratt, *supra* note 2. These figures and the discussion that follows were also based on conversations between FTC staff and representatives of the three nationwide CRAs.

26. In the past, at least one of the nationwide CRAs organized its database differently. Rather than maintaining consumer files, it maintained a dataset of separate records (accounts or public records). When an inquiry was submitted, the CRA's computer program located all records that matched the identifying information in the inquiry and compiled that data into a consumer report. This meant that two inquiries that used different identifying information for the same consumer might yield different reports (e.g., a credit report for Ann Margaret Smith might be different depending on whether she applied for credit under the name "Ann Smith" or "A. M. Smith"). It also meant that the same trade line might show up on the reports of two different consumers. For example, an account belonging to "John Doe" might show up on the reports of both John Doe, Jr. and John Doe, Sr. None of the nationwide CRAs follows this procedure any longer; every incoming record is assigned to exactly one consumer file within a given CRA's database.

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the Appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participant(s):

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