

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

**CREDIT REPORTS: CONSUMERS' ABILITY TO DISPUTE AND
CHANGE INACCURATE INFORMATION**

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES

Washington, D.C.

June 19, 2007

I. Introduction

Chairman Frank, Ranking Member B

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

² Pub. L. No. 108-159, 117 Stat. 1953 (2003).

³ As used here, this term applies to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System (“Federal Reserve”), Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration.

Commission has taken to improve the accuracy of consumer reports and enhance the dispute process. These actions include an aggressive law enforcement program, and extensive consumer and business guidance.

II. The Fair Credit Reporting Act

The FCRA, enacted in 1970, governs the collection, assembly, dissemination, and use of consumer report information⁴ and provides the framework for the credit reporting system in the

⁴ Section 603(d) of the FCRA defines “consumer report” as information from a CRA concerning “a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility” for credit, insurance, or other purposes authorized by the FCRA.

among other things, to prevent and assist victims of identity theft and enhance consumer privacy and consumer report accuracy.

A. Identity theft and privacy provisions

Before December 2003, the FCRA did not specifically address identity theft. The FACT Act included significant new provisions to help reduce the incidence of identity theft and to minimize the injury to victims that results from the corruption of their credit histories. First, with respect to prevention, the FACT Act contains provisions to limit the opportunities for wrongdoers to obtain unauthorized access to consumer report information. For example, the Act mandates that businesses dispose of consumer report information in a safe manner.⁵ Merchants must truncate the account number and redact the expiration date on consumers' copies of electronic credit card receipts.⁶ Further, CRAs are prohibited from disclosing medical information in consumer reports, except under specified conditions.⁷

Second, the FACT Act increases consumers' opportunities to review their credit records and spot incipient signs of identity theft before further damage ensues. Consumers have the right to receive a free credit report every twelve months, through a centralized source, from each of the nationwide CRAs,⁸ as well as from nationwide "specialty" CRAs.⁹ Consumers also may purchase a credit score from a CRA,¹⁰ and certain mortgage lenders are required to provide a

⁵ 15 U.S.C. § 1681w.

⁶ 15 U.S.C. § 1681c(g).

⁷ 15 U.S.C. § 1681b(g).

⁸ 15 U.S.C. § 1681j(a)(1)(A)-(B).

⁹ 15 U.S.C. § 1681j(a)(1)(C). Specialty CRAs include tenant and employment screening services, medical records databases, and check verification services.

¹⁰ 15 U.S.C. § 1681g(f).

score without charge to home loan applicants.¹¹

Third, the FACT Act empowers consumers to take step(s), T- § 54480.0100 TD(1681s-2(a)(6))Tjs

¹¹ 15 U.S.C. § 1681g(g).

¹² 15 U.S.C. § 1681c-1.

¹³ 15 U.S.C. § 1681g(e).

¹⁴ 15 U.S.C. § 1681c-2.

¹⁵ 15 U.S.C. § 1681s-2(a)(6).

¹⁶ 15 U.S.C. § 1681e(b).

notification of the actions,¹⁷ obtain copies of their credit reports at no charge,¹⁸ and dispute inaccurate information in their reports with the CRA.¹⁹ The consumer's filing of a dispute triggers an obligation on the part of the CRA and the furnisher of the contested information to investigate the dispute and make any appropriate deletions or modifications to the report.²⁰

The FACT Act added several new provisions to improve the accuracy of consumer reports. The FACT Act facilitates consumers' access to their credit reports by granting them the right to free annual reports, and gives identity theft victims a number of new remedies for eliminating fraudulent information from their reports. The Act also requires furnishers to establish reasonable policies and procedures to comply with guidelines to be specified by the federal agencies regarding the accuracy of the information furnishers submit to CRAs.²¹

In addition, several FACT Act provisions are designed to improve the effectiveness of the dispute process and thus enhance the accuracy of consumer reports. First, the Act supplements the adverse action process by adding a new notification requirement for creditors, the so-called "risk-based pricing notice." Creditors must send this notice when, based on a credit report, they offer material terms that are materially less favorable than the most favorable terms available to a

¹⁷ 15 U.S.C. § 1681m.

¹⁸ 15 U.S.C. §§ 1681g, 1681j.

¹⁹ 15 U.S.C. § 1681i(a)(1)(A).

²⁰ 15 U.S.C. §§ 1681i(a), 1681s-2(b). Under the FCRA, CRAs must convey a dispute about the accuracy or completeness of information in a consumer report to the furnisher of that information for investigation. The CRA also must send to the furnisher all relevant information about the dispute supplied by the consumer. Upon receipt of the dispute, furnishers must (i) review the information provided by the CRA, (ii) make appropriate corrections if the disputed information is inaccurate or incomplete, and (iii) provide the corrections to all nationwide CRAs that received the inaccurate or incomplete information.

²¹ 15 U.S.C. § 1681s-2(e).

substantial proportion of consumers from or through that creditor. Like the adverse action notice, this notice will alert consumers to the role their credit reports played in receiving less favorable terms, thereby encouraging them to obtain copies of their reports and review them for possible inaccuracies.²² Second, the FACT Act grants consumers the right to dispute the accuracy of their consumer reports directly with the furnisher of the disputed information, under circumstances to be determined by the FTC and the banking agencies.²³ Third, the FACT Act requires financial institutions that regularly furnish information to CRAs to provide a notice to consumers when they furnish negative information.²⁴ Fourth, the Act prohibits furnishers from re-reporting disputed information found to be inaccurate or incomplete.²⁵

Accuracy in consumer reporting always has been a primary goal of the FCRA. As businesses and other entities continue to make greater use of consumer reports in granting credit, employment, insurance, rentals, and other products or services, it is critical that the information in the reports be as accurate as possible and that consumers' dispute rights be effective. This is all the more important for victims of identity theft, the consequences of which can include fraudulent information corrupting the victim's credit report. The Commission works to enhance consumer report accuracy in three ways - promulgation of rules and studies under 15 U.S.C. § 1681m(a)(7)(C) (in the re

²² 15 U.S.C. § 1681m(h).

²³ 15 U.S.C. § 1681s-2(a)(8).

²⁴ 15 U.S.C. § 1681s-2(a)(7).

²⁵ 15 U.S.C. § 1681s-2(b)(1)(E).

one or more other agencies, to promulgate approximately twenty implementing rules, guidelines, compliance forms, and notices, and conduct nine studies and issue reports to Congress.²⁶ After the enactment of the FACT Act, the FTC created an internal FACT Act implementation working group, comprised of staff from all parts of the agency, including the Bureau of Consumer Protection, Bureau of Economics, and Office of General Counsel.²⁷ At any given time, the Commission has about 15-20 staff assigned to FACT Act implementation. Through these efforts, the FTC has completed the FACT Act implementation activities assigned solely to it, with limited exceptions.²⁸ In addition, the Commission and its sister agencies have made substantial progress in completing their required joint tasks.

A. Rules, guides, forms, and notices

The FTC and other agencies have completed most of the FACT Act-mandated rules,

²⁶ Some of the studies must be conducted multiple times over a period of years. In addition to these requirements, the FACT Act directs the Commission to consult on four other rules or studies for which other agencies are responsible, conduct two educational campaigns, and serve as a member of the Financial Literacy and Education Commission.

²⁷ In early 2006, the Bureau of Consumer Protection implemented an internal reorganization. Before 2006, the Bureau's Division of Financial Practices was responsible for privacy and security generally, including FACT Act implementation, and protecting consumers in the financial services marketplace. As part of its reorganization, the Division of Financial Practices was split into a new Division of Financial Practices, focusing on consumer protection in the financial services marketplace, and a new Division of Privacy and Identity Protection, focusing on privacy and security, including FACT Act implementation. The purpose of this reorganization was to refocus resources on each of these programs.

²⁸ Three activities are ongoing: the final Circumvention Rule is still in interim form; the Commission continues to monitor the marketplace in determining a credit scoring fee; and, although the Commission has begun the complaint-sharing program with credit reporting agencies and referred 20,000 complaints, it is working to resolve some anomalies and will submit its first annual report to Congress shortly. See further discussion in sections A and B above.

²⁹ Agency Information Collection Activities; Submission for OMB Review; Comment Request, 72 Fed. Reg. 14575, 14576 (Mar. 28, 2007).

³⁰ *FTC v. Consumerinfo.com, Inc.*, SACV05-801AHS(MLGx) (C.D. Cal. Aug. 1

2004, the Commission published standard forms that CRAs must give to consumers when providing them with their credit reports, summarizing consumers' rights under the FCRA. The Commission also issued forms that CRAs must provide to information furnishers and consumer report users summarizing their FCRA duties. These forms were revisions to forms previously prescribed by the Commission in 1997.³¹

- *“Identity Theft Summary.”* Pursuant to section 151 of the FACT Act, on November 30, 2004, after consultation with the banking agencies, the Commission published a model form that CRAs must provide to identity theft victims, summarizing victims' FCRA rights.
- *“Prescreen Opt-Out Notice” Rule.* Section 213(a) of the FACT Act directed the Commission, in consultation with the banking agencies, to prescribe a simple and easy-to-understand notice that creditors and insurers must include in written “prescreened” offers. On January 31, 2005, the Commission published such a notice, which informs consumers of their right to opt out of prescreened offers and explains the process for doing so.
- *“Identity Theft Forms and Procedures” Guidance.* On April 27, 2005, the Commission published guidance to implement section 153 of the FACT Act, which directed the Commission, in consultation with the banking agencies, to develop a model form for identity theft victims to use to contact creditors and CRAs.
- *Medical Information Rule.* Section 411 of the FACT Act amended the FCRA to prohibit creditors from obtaining or using medical information in determining a consumer's eligibility for credit, except as permitted by regulations to be issued by the banking agencies (but not including the FTC). The agencies issued final regulations on November 17, 2005. The Commission had provided extensive written comments to the banking agencies to aid in the rulemaking proceeding.
- *Nationwide Identity Theft Campaign.* Last year, the Commission launched a nationwide identity theft education program mandated by the FACT Act, centered around the themes “Deter, Detect, and Defend.” This campaign includes information about how victims can mitigate the damage caused by identity theft should it occur.

2. Tasks still in progress

Certain of the agencies' FACT Act tasks are still in progress. The agencies are actively working on each task and are committed to completing them as quickly as possible.

³¹ Section 211(c) of the FACT Act specifically required the Commission to revise the consumer summary form. The Act did not require revision of the furnisher or user notices, but various changes to the FCRA introduced by the FACT Act rendered the existing forms obsolete.

- “*Affiliate Marketing*” Rule. Section 214 of the FACT Act requires the FTC, the banking agencies, and other agencies to promulgate coordinated rules to provide consumers with notice and a right to opt out of affiliates’ use of certain personal information for marketing purposes. A proposed rule was issued for comment in 2004, and the agencies are completing work on a final rule.
- “*Furnisher*” Rules. Section 312 of the FACT Act requires the Commission and the banking agencies to promulgate two rules relating to furnishers of information to CRAs: (i) coordinated rules to prescribe guidelines and regulations to ensure the accuracy and integrity of information furnished to CRAs,³² and (ii) a joint rule identifying circumstances under which furnishers must investigate a dispute in response to a consumer’s direct request.³³ The agencies published an Advanced Notice of Proposed Rulemaking³⁴

³² 15 U.S.C § 1681s-2(e).

³³ 15 U.S.C. § 1681s-2(a)(8).

³⁴ Interagency Advance Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 71 Fed. Reg. 14419 (Mar. 22, 2006), available at <http://www.ftc.gov/os/2006/03/interagencyANPRfrn.pdf>.

³⁵ Currently, many credit reporting agencies appear to be charging fees under \$10 to obtain a credit score.

agencies to promulgate guidelines and regulations requiring creditors to establish reasonable procedures to identify identity theft risks. In addition, section 315 of the FACT Act requires the agencies to prescribe regulations to provide guidance for reasonable policies and procedures by users of consumer reports when they are notified of a discrepancy between the address in a consumer's credit file and that on a credit application. On July 18, 2006,³⁶ the agencies published a Notice of Proposed Rulemaking for both rules, with a 60-day comment period that closed on September 18, 2006. The agencies have reviewed the comments and are preparing recommendations for final rules.

- *Complaint Sharing Program.* Section 313(a) of the FACT Act directed the Commission to establish a complaint sharing program, either voluntarily or by regulation, with the nationwide CRAs.³⁷ Under this program, the Commission must refer to the CRAs consumer complaints it receives in which the consumer alleges that the CRA failed to properly resolve a dispute filed by the consumer. The CRAs are required to review the complaints, report back to the Commission on the actions taken as a result of the review, and maintain records sufficient to show compliance. Finally, section 313 requires the Commission to submit an annual report to Congress on the information gathered under the program.

In early 2004, the Commission staff reached agreements with each of the three nationwide CRAs on the operation of the complaint referral program. Beginning in April 2004, Commission staff began forwarding to the CRAs on a monthly basis relevant consumer complaints from the Commission's complaint database.³⁸ Since the initiation of the program, the Commission has forwarded nearly 20,000 consumer complaints to the CRAs.

As required under the program, the CRAs have reported on a sample of the selected complaints on a quarterly basis. However, the reported data have contained some anomalies, and the Commission staff is working to address them. The Commission expects that the anomalies will be resolved soon, at which time it will submit its first annual report to Congress.

B. Studies and reports

The Commission, alone or with one or more of the following agencies, has conducted the following studies and reports:

³⁶ Interagency Notice of Proposed Rulemaking: Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 71 Fed. Reg. 40786 (July 18, 2006), available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-6187.pdf>.

³⁷ 15 U.S.C. § 1681i(e).

³⁸ See FTC press release, "FTC Will Refer Consumer Complaints to Credit Bureaus" (Apr. 23, 2004), available at <http://www.ftc.gov/opa/2004/04/cra.htm>.

³⁹ As noted earlier, the FACT Act mandated additional studies for which the Commission is not responsible.

⁴⁰ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, 18-20 (Dec. 29, 2004), *availab*

The FACT Act required the Commission to consider four specific proposals for improving the accuracy of consumer reports.

- # “*Data Matching.*” Should CRAs be required to increase the number of points of information (e.g., name, address, Social Security number) that they must match to ensure that the consumer is the correct individual to whom a consumer report relates? The report concludes that there are considerable uncertainties in calculating the costs and benefits of requiring several matching points, and notes that it is unclear whether the benefits to consumers would outweigh the costs. Requiring the matching of additional data points could lead to more instances of “fragmented” files, where, as a result of minor discrepancies in matching information, multiple partial files for an individual consumer are created.
- # “*Negative Information.*” Should consumer report users be required to provide notice to consumers when they furnish negative information to a CRA? The report discusses the costs and benefits of this requirement and concludes that it would be premature to impose such a requirement.
- # “*Same Report.*” Should CRAs or creditors be required, when adverse action about a consumer is taken based on his credit report, to provide to the consumer a copy of the same report as that upon which the creditor took the adverse action? The report concludes that this requirement would impose substantial costs to obtain uncertain (and likely limited) benefits, and therefore recommends against its adoption.
- # “*Common Unreported Financial Transactions.*” What are common financial transactions, not generally reported to CRAs, the reporting of which would be useful in evaluating creditworthiness, and how can that reporting be encouraged? The report notes the benefits of reporting nontraditional credit transactions for many consumers who lack a traditional credit history, but concludes that any additional legislation would be premature given the rapid development of nontraditional credit reporting in the marketplace.

Although the Commission has not learned of any information that would change the conclusions of these studies, it continues to stay abreast of market conditions to determine whether these conclusions should be modified.

- *Dispute study*

⁴⁴ Federal Trade Commission & Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006) (“Dispute Study”), available

at <http://www.ftc.gov/os/comments/fcradispute/P044808fcradisputeprocessreporttocongress.pdf>.

⁴⁹ *United States v. Equifax Credit Info. Services, Inc.*, No. 1:00-CV-0087 (N.D. Ga. 2000); *FTC v. Experian Mktg. Solutions, Inc.*, No. 3-00CV0056-L (N.D. Tex. 2000); *United States v. Trans Union LLC*, 00C 0235 (N.D. Ill. 2000). More recently, the Commission alleged that Equifax had violated its consent decree and obtained another Order requiring it to pay \$250,000 in disgorgement. *United States v. Equifax Credit Info. Services, Inc.*, Civ. No.

⁵¹ *United States v. DC Credit Services, Inc.*, No. 02-5115 (C.D. Cal. 2002) (consent decree) (\$300,000 civil penalty); *United States v. Fairbanks Capital Corp.*, Civ. No. 03-12219 (D. Mass. 2003) (consent decree). The FCRA imposed no accuracy or other duties on furnishers until 1997.

⁵² *FTC v. NCO Group, Inc.*, Civ. No. 04-2041 (E.D. Pa. 2004) (consent decree) (\$1.5 million civil penalty); *United States v. DC Credit Services, Inc.*, No. 02-5115 (C.D. Cal. 2002) (consent decree) (\$300,000 civil penalty);

⁵⁴ *United States v. Sprint Corp.*, Civ. No. 4:04cv361 (N.D. Fla. 2004) (consent decree); *United States v. AT&T Corp.*, Civ. No. 022-3160 (D.N.J. 2004) (consent decree).

⁵⁵ Under Section 404(a)(1)-(2) of CROA, “No person may make any statement, or counsel or advise any consumer to make any statem

B. Consumer and Business Education

A cirDinil400m000 cm 0.00 rgBT3m0.egcm0.00 0.00 0.00 rgBT108.0000 110.4000 TD/F11 6.9600 TF

⁵⁷ Available at <http://www.ftc.gov/bcp/online/pubs/credit/gettingcredit.shtm>.

⁵⁸ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

⁵⁹ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre03.shtm>.

⁶⁰ Available at <http://www.ftc.gov/bcp/online/pubs/credit/repair.htm>.

⁶¹ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm>.

Commission receives about 15,000 to 20,000 consumer contacts each week seeking information on how to recover from identity theft, or avoid becoming a victim in the first place. Victims who contact the hotline receive counseling from trained personnel on steps they can take to recover from identity theft, including their rights under the FACT Act. In addition, the Commission's identity theft primer⁶² and victim recovery guide⁶³ are widely available in print and online.

As noted above, last year, the Commission launched a nationwide identity theft education program mandated by the FACT Act, centered around the themes "Deter, Detect, and Defend." This campaign includes direct-to-consumer brochures, as well as training kits and ready-made materials (including presentation slides and a video) for use by businesses, community groups, and members of Congress to educate their employees, communities, and constituencies. The Commission has distributed over 3.5 million brochures and 40,000 kits to date. The Commission also has partnered with other organizations to broaden its reach. As just one example, the U.S. Postal Inspection Service recently initiated an outreach campaign to place FTC educational materials on subway cars in New York, Chicago, San Francisco, and Washington D.C.

The Commission also recently helped launch a new website, www.idtheft.gov, which will eventually serve as a centralized government clearinghouse for educational resources for consumers, businesses, and law enforcement on ways to prevent and detect identity theft and help victims recover.

Finally, the Commission has issued a number of publications providing information and advice for consumers on their FACT Act rights. For example, as the free annual credit report

⁶² *Avoid ID Theft: Deter, Detect, Defend*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt01.pdf>.

⁶³ *Take Charge: Fighting Back Against Identity Theft*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt04.htm>.

obligations under the FACT Act. For example, FTC publications provide compliance guidance on such subjects as the Disposal Rule⁶⁹ and the truncation of account numbers on credit and debit card receipts.⁷⁰

VI. Conclusion

The FACT Act significantly increased the protections afforded to consumers in ensuring the accuracy of the information in their consumer reports. The Commission, along with its sister agencies, has made substantial progress in implementing the FACT Act through rulemakings, studies, and other actions. Consumer and business education and, when necessary, law enforcement are also important tools used by the Commission to promote consumer report accuracy.

The Commission is troubled that, despite its efforts, consumers continue to report errors in their credit reports that have made it difficult, or more expensive, to obtain credit, insurance, or employment. The Commission is committed to using all of the tools at its disposal to address consumer report accuracy concerns. We look forward to working with this Committee to protect consumers' rights.

⁶⁹ See <http://www.ftc.gov/bcp/online/pubs/alerts/disposalalrt.shtm>.

⁷⁰ See www.ftc.gov/bcp/edu/pubs/business/alerts/alt007.pdf.