

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

“EXAMINING THE USES OF CONSUMER CREDIT DATA”

**Before the
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE**

I. Introduction

Chairman Capito and members of the Subcommittee, my name is Robert Schoshinski, and I am an Assistant Director for the Division of Privacy and Identity Protection at the Federal Trade Commission (“Commission” or “FTC”).¹ I appreciate the opportunity to appear before you today to discuss consumer reports and credit scores.

Today, data compiled and maintained by consumer reporting agencies (“CRAs”) is used to make critical decisions about the availability and cost of various consumer products and services, including credit, insurance, employment, and housing. Consumer reports are often used to evaluate the risk of future nonpayment, default, or other adverse events. For example, complete and accurate consumer reports enable creditors to make informed decisions, benefitting both creditors and consumers.

Errors in consumer reports, however, can cause consumers to be denied credit or other benefits or pay a higher price for them, and may lead credit issuers to make inaccurate decisions that result in declining credit to a potentially valuable customer or issuing credit to a riskier customer than intended. The Fair Credit Reporting Act² (“FCRA”) was enacted in 1970 to balance businesses’ “depend[ence] upon fair and accurate credit reporting” and the “need to insure that CRAs exercise their responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”³ The FCRA (1) prevents the misuse of sensitive consume

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 15 U.S.C. §§ 1681-1681x.

³ *Id.* at § 1681(a)

information by limiting recipients to those who have a legitimate need for it; (2) improves the accuracy and integrity of consumer reports; and (3) promotes the efficiency of the nation's banking and consumer credit systems. Since the FCRA's passage, Congress has amended the statute to address developments in the consumer reporting system and the marketplace, and to increase consumers' rights and protections with respect to the collection and use of their data.

The Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA since its enactment,⁴ and has appreciated Congress' ongoing efforts to protect consumers while ensuring that creditors and others have ac

⁴ As enacted, the CRA established the Commission as the primary federal enforcement agency with wide jurisdiction over entities involved in the consumer reporting system; the primary exceptions to the Commission's jurisdiction are federally regulated financial institutions. 15 U.S.C. § 1681s(a)(1). Pursuant to the Consumer Financial Protection Act of 2010 ("CFPA"), Title X of Pub. L. 111-203, 124 Stat. 1955 (July 21, 2010) (The Dodd-Frank Wall Street Reform and Consumer Protection Act), the Commission will share its FCRA enforcement role with the Consumer Financial Protection Bureau ("CFPB") in many respects.

⁵ 15 U.S.C. § 1681(a)(3)

⁹ *Id.* at § 1681m(a) The adverse action notice also must include a statement that the CRA that supplied the consumer report did not make the decision to take the adverse action and cannot give the consumer any specific reasons for the decision.

¹⁵ Pub. L No. 108-159, 117 Stat. 1952 (Oct, 2003). For further discussion of the Commission's implementation of the FAT Act, see Prepared Statement of the ETC, *SCB* *s ArD i*

when, based on the consumer's credit report, the creditor provides credit to the consumer on less favorable terms than it provides to other consumers. Rather than conducting the analysis necessary to determine which consumers should receive a risk-based pricing notice, however, many creditors may choose to provide free credit score disclosures to all consumers, further improving the availability of credit score information to consumers. The Commission notes that authority over these regulations transferred in large part to the CFPB in July 2011.

²¹ Title X of Pub. L. No. 111-203, 124 Stat. 1955 (July 21, 2010).

²² 15 U.S.C. § 1681m(a).

requires furnishers, in most cases, to investigate disputes that consumers submit directly to them regarding the accuracy of information that the furnishers reported to a CRA. In addition, the FACT Act amended the FCRA to allow identity theft victims to address inaccuracies in their consumer reports that resulted from the theft.²⁷ Finally, as mentioned above, the FACT Act greatly increased consumers' access to their files maintained by CRAs, permitting them to evaluate whether the files contain inaccurate or incomplete information that they should dispute. Ensuring the accuracy and completeness of the underlying consumer files upon which credit scores are based should increase the accuracy and predictive value of credit scores, benefiting both consumers seeking credit and insurance as well as the use of the credit scores.

II. FTC's Activities To Implement the FCRA

As mentioned above, the Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA for over 40 years. The Commission now shares many of these responsibilities with the CFPB, and the agencies have been working together to avoid duplication and leverage their respective resources to address specific concerns. Vigorous enforcement of the FCRA to maintain accuracy and fairness in the consumer reporting system and to protect consumer privacy remains a top priority for the Commission, as does effective and timely consumer and business education concerning their rights and obligations created by the statute.

evaluators, such as credit scoring systems, to inaccurately estimate how much available credit a consumer is using, which is typically an important factor in assessing credit worthiness.

²⁷ See, e.g., 15 U.S.C. § 1681c-2 (allowing identity theft victims to permanently block the reporting of information in their file that resulted from the theft)

permissible purpose under the statute.²⁹ In its complaint against Teletrak, Inc. (“Teletrak”), a CRA providing consumer reports to businesses that mainly serve financially-distressed consumers, the Commission alleged that the company created a marketing database of information that it gathered through its credit reporting business and then sold the information in this database to marketers. For example, Teletrak sold lists of consumers who previously sought payday loans to third parties that wanted to use this information to target potential customers with marketing for similar products. The Commission’s complaint alleged that these marketing lists were consumer reports and that Teletrak violated the FCRA by selling these consumer reports without a permissible purpose under the statute. The Commission’s consent order required Teletrak to pay civil penalties of \$1.8 million and prohibits the company from violating the FCRA in the future.

Further, given the critical need for accuracy in consumer reports, the Commission continues to enforce the FCRA’s provisions requiring CRAs to follow reasonable procedures to ensure maximum possible accuracy of information included in reports and to conduct reasonable investigations of consumer disputes. The Commission recently took action against HireRight Solutions, Inc. (“HireRight Solutions”), a CRA providing employment background screening services.³⁰ In its capacity as a CRA, HireRight Solutions provides background reports that contain information about prospective and current employees to help thousands of employers

²⁹ *Teletrak, Inc. v. FTC*, No. 1:11- CV-2060 (N.D. Ga. filed June 24, 2011) (stipulated final judgment and order), <http://www.ftc.gov/opa/2011/06/teletrak.shtm>.

³⁰ *HireRight Solutions, Inc. v. FTC*, No. 1:11-cv01313 (D.D.C. filed Aug. 8, 2012) (stipulated final judgment and order), <http://www.ftc.gov/os/caselist/1023130/index.shtm>.

make hiring decisions. The Commission's complaint alleged that, in many cases, HireRight Solutions failed to follow reasonable procedures to prevent patently inaccurate consumer reports

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³¹ *In re* *WCP* Docket No. C-4330 (Aug 17, 2011) (decision and order); *In re* *ACRA* *th* Docket No. C-4331 (Aug 17, 2011) (decision and order); and *In re* *FA* Docket No. C-4332 (Aug 17, 2011) (decision and order), <http://www.ftc.gov/opa/2011/08/creditreporters.shtm>.

³² [http://www.ftc.gov/multi media/video/jobs.shtm](http://www.ftc.gov/multi%20media/video/jobs.shtm).

³³ *WtW* *WY* *Wb*, *W*
<http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/at080.shtm>.

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³⁸ *Att*

[http://business.ftc.gov/documents/bus07-consumer-reports-what-insurers-need-know.](http://business.ftc.gov/documents/bus07-consumer-reports-what-insurers-need-know)

³⁹ *Att*

[http://business.ftc.gov/documents/bus33-credit-reports-what-information-providers-need-know.](http://business.ftc.gov/documents/bus33-credit-reports-what-information-providers-need-know)

⁴⁰ *Att*

[http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know.](http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know)

⁴¹ *Att*

<http://business.ftc.gov/documents/alt152-disposing-consumer-report-information-new-rule-tells-how>

the FCRA if they have reason to believe the background reports they provide are being used for employment screening housing, credit, or other similar purposes. The Commission urged the companies to review their apps and their policies and procedures to ensure compliance with the statute if it applies.

III. Special Concerns: “Thin Files” and Reporting of Medical Debt

Two issues relating to our nation’s consumer reporting system continue to be of special concern, especially with the increased reliance on credit scoring systems to make eligibility determinations. The first relates to problems faced by consumers with limited or no credit history, often described as having “thin files.” The second is the impact of medical debt on consumer reports and credit scoring models.

A. “Thin Files”

“Thin files,” or consumer files with limited or no credit histories, limit the ability of credit providers to assess the consumer’s credit worthiness. In 2003, Congress asked the Commission to study whether common financial transactions not generally reported to CRAs would be useful in determining the credit worthiness of consumers.⁴⁵

In 2004, the Commission issued a report concluding that there is a sizable consumer population that is difficult to evaluate for credit purposes because they have thin files or no credit history.⁴⁶ The report discussed the breadth of the problem and described the types of groups that have little or no credit histories, such as recent immigrants, young people living on

⁴⁵ FACT Act, Pub. L. No. 108-159, § 318(e)(D), 117 Stat. 1952, 1998.

⁴⁶ FTC, *Report to Congress on the Fair and Accurate Credit Transactions Act of 2003*, at 78 (Dec. 2004), <http://www.ftc.gov/reports/fata/041209fatapt.pdf>.

⁴⁷ *Il* at 82-84.

⁴⁸ *See* .g Policy & Economic Research Council, *A* ~~1997~~
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B. Medical Debt

The treatment of medical debt for credit reporting and credit scoring purposes also presents unique challenges. Although medical service providers may not report debts directly to CRAs, third-party debt collectors will often report medical collection accounts. As with all debts reported to a CRA, medical debts that are reported result in negative items on consumers' credit reports even after such debts have been paid. Such items can adversely affect a consumer's credit score.

Some have questioned the appropriateness and value of medical debt in assessing and predicting credit risk because of the unique nature of such debt. For example, in some cases, the debt may arise because of a billing dispute or misunderstanding between the consumer and their insurer. Also, some argue that medical debt is atypical and unexpected, and thus may not be a good indicator of a consumer's general credit worthiness. On the other hand, others argue that such debts typically reflect accurate financial obligations.

⁵¹ See, e.g., Cal. Health & Safety Code § 127425(d).

⁵² See, e.g., H.R. 2086, 112th Cong. (2011).

Commission has not taken a position with respect to any federal or state legislation on this issue, it continues to monitor developments in this area.

IV. Conclusion

Thank you for the opportunity to provide the Commission's views on the topic of consumer reports and credit scores. We look forward to continuing to work with Congress and this Subcommittee on these important issues.