The use of credit scores has thrived under the FCRA's rights of notice, access, correction, relevancy and accuracy; and the FCRA has enabled the credit reporting enterprise to serve a purpose useful not only to the credit reporting agencies and their clients, but also to consumers. The credit scores that first emerged from analysis of consumers' credit files broadened access to credit,[2] and they made determinations of a particular consumer's creditworthiness more efficient and more objective than was the case with prior, more subjective determinations.[3]

As scoring models began to proliferate and enter into new types of decisions – including employment, insurance, and mortgage lending – consumers and regulators grew concerned about what exactly was going on within these models.[4] Some of the most important questions were whether credit-related scores were using variables that act as proxies for race, ethnicity, age, and other protected categories.

In 2003, Congress directed the FTC and the Federal Reserve to study these questions in the context of credit-based insurance scores and traditional credit scores.[5] After extensive and rigorous studies, both agencies found that the scores they examined largely did *not* serve as proxies for race or ethnicity.[6] The FTC and Federal Reserve reports shed a lot of light on traditional credit scores and assuaged some important concerns, which was good for everyone involved: consumers, credit bureaus, and credit score users.

Fast forward to today. We're now seeing a proliferation of other types of scores being used to make FCRA-covered eligibility determinations.[7] While these scores are subject to the

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[2] *See* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, REPORT TO CONGRESS ON CREDIT SCORING AND ITS EFFECTS ON THE AVAILABILITY AND AFFORDABILITY OF CREDIT S-1 (Aug. 2007), *available at* http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf ("The large savings in cost and time that have accompanied the use of credit scoring are generally believed to have increased access to credit, promoted competition, and improved market efficiency.") [FRB, CREDIT SCORING REPORT].

[3] *See, e.g.*, Prepared Statement of the FTC Before the House Banking and Financial Svcs. Cmte. 1 (Sept. 21, 2000), *available at* http://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-credit-scoring/creditscoring.pdf ("With credit scoring, lending decisions are likely to be more objective, faster and less costly than traditional 'judgmental' decisions.").

[4] *See* H. REP. 108-263, part I, at 26, *available at* https://beta.congress.gov/108/crpt/hrpt263/CRPT-108hrpt263.pdf (reporting on a hearing of the House Subcommittee on Financial Institutions and Consumer Credit that explored how credit scores and other credit reporting information "are used by the lending, mortgage, consumer finance, insurance, and non-financial industries").

[5] Fair and Accurate Credit Transactions Act of 2003 § 215, Pub. L. 108-159 (Nov. 5, 2003), *available at* https://beta.congress.gov/bill/108th-congress/house-bill/2622/text.

[6] *See* FRB, Credit Scoring Report, *supra* note 2, at S-1 – S2 (conclu clu א' fev"® ᴀ ℷ ᴀ st] t

same obligations of access, accuracy, security, and other requirements imposed by the FCRA, they haven’t yet low-income and other vulnerable consumers. [10] In an ideal world, a data broker's products that identify consumers who traditionally have been underserved by the banking community can be used to help make these consumers aware of useful opportunities for credit and other services. However, these same products could be used to make these consumers more vulnerable to high interest payday loans and other products that might lead to further economic distress.[11] It all depends on how these products are actually used. Importantly, our recent data broker report did not attempt to analyze the harms that could potentially come from the uses of consumer segmentation of poor or minority communities.

One of the reasons I support legislation to create greater transparency and accountability for data brokers, as well as their sources and their customers, is so we could begin to understand how these profiles are being used in fact, and whether and under what circumstances they are harming vulnerable populations. In the meantime, the data broker industry should take stronger, proactive steps right now to address the potential impact of their products that profile consumers by race, ethnicity or other sensitive classifications, or that are proxies for such sensitive classifications. Data brokers should find out how their clients are using these products, tell the rest of us what they learn about these actual uses, take steps to ensure any inappropriate uses cease immediately, and develop systems to protect against such inappropriate uses in the future.[12]

The third challenge I want to mention relates to companies' use of their own data about their customers. Compan companies to think deeply about where "value-added personalization and segmentation end[s] and harmful discrimination begin[s]."[14]

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I want to emphasize that all of these industry players – traditional credit reporting agencies and their new-fangled progeny using alternative scoring models, data brokers and those companies that use their products, and companies engaged in analysis of their own customer data – can take steps right now to address concerns about the potential discriminatory impact of their use of algorithms. I am hopeful that the same reservoirs of data that create the concerns I outlined will also lead to ways to get them under control. I encourage all members of industry to look for ways that the data in their hands could be used to identify disparate treatment along racial, ethnic, gender, or other inappropriate lines – and to correct such treatment to the extent it exists.

[14] *See* Michael Schrage,