Testimony of

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On

"Fighting Identity Theft -- The Role of FCRA"

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Good morning, Chairman Bachus, Ranking Member Sanders, and Members of the Subcommittee. Thank you for providing me the opportunity to come before you today. I am Janell Mayo Duncan, Legislative and Regulatory Counsel for Consumers Union.[1] Consumers Union is the nonprofit publisher of *Consumer Reports* magazine. Our mission at Consumers Union is to test products, inform the public, and protect consumers. Today I offer this testimony on Identity Theft and its relationship to the Fair Credit Reporting Act as part of our consumer protection function.

Identity theft presents an alarming crisis in the United States. Between 2000 and 2002, the Federal Trade Commission (FTC) reported that Identity theft had topped the list of complaints received from consumers. In fact, of the 218,714 reports the FTC processed through its Identity Theft Clearinghouse in 2002, 74% were from victims of identity theft. Although these numbers are high, they represent only those consumers reporting to FTC, and may represent only a fraction of the total number of people victimized last year.

Types of Fraud

Identity theft occurs when a criminal obtains identifying information, usually a person's name or social security number, and begins to represent him or herself as that person. In this electronic age, a thief can obtain an individual's personal information without physically stealing either a wallet or mail. For example, a growing number of cases involve "inside jobs," where employees have or gain access to consumer information in their workplace. Once a thief has the consumer's personal identifiers, he can engage in a number of fraudulent activities, such as

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

taking over a consumer's existing account or applying for new lines of credit in the victim's name.

The victim may not become aware that they have been victimized for months. According to a May 2000 victim survey conducted by the California Public Interest Research Group (CALPIRG), the average victim did not know what had occurred for 14 months. Once aware of the problem, according to the FTC, CALPIRG and the Privacy Rights Clearinghouse, in addition to suffering stress and aggravation, the average victim spends 175 hours and $808 seeking to remedy the situation. Even worse, according to a March 2002 GAO Report, 1,300 consumers reporting harm suffered to the FTC Identity Theft Clearinghouse between November 1999 and September 2001 said they had been wrongfully investigated, arrested, or convicted due to the criminal acts of an identity thief.

Industry Practices

The September 1997 issue of Consumer Reports Magazine included an article entitled, "Are you a target for identity theft?" The article described the crime as "one of the fastest growing in the nation," and chronicled, among other victims, the experience of Adelaide Andrews, whose identity was co-opted by a thief in 1995. (The September Consumer Reports Article is attached to my testimony).

Six years after the article, consumers continue to be victimized by identity theft. The similarity of victims' stories today evidences continuing industry practices that make committing these crimes possible. In the article, we expressed concern at flaws in the credit granting system, and identified several factors that contributed to the occurrence of identity theft, including:

- **Lax identification verification standards.** Where "[t]he credit approval process often amounts to little more than matching two bits of information on the application

-- name and Social Security Number -- with the same information of the credit report of anyone with a good credit score." (Consumer Reports, September 1997, at 13);

- **Too-convenient credit.** The granting of "quick credit," and practices that have been exploited by criminals such as the dissemination of convenience checks, and careless provision of replacement cards for lost or stolen credit cards;
- **Carelessness with credit files.** A consumer credit report can be obtained from Credit Reporting Agencies (CRAs) with only a victim's name and social security number. A thief with only these two pieces of information, and even sometimes with a name and address alone, can therefore easily apply for credit in an unwitting victim's name.[2] In addition, the credit reporting system will automatically change the consumer's file to include the address of the thief after credit is applied for in the victim's name, thereby making it harder for a victim to discover the crime;
- **Inadequate fraud detection.** At the time the article was published, credit bureaus did not monitor for changes in the normal patterns -- however, they now will do so, but only after charging the consumer a fee;
- **Ignored fraud warnings.** Creditors are so eager to lend money that they ignore fraud alerts a consumer has put on his or her file and grant credit to imposters anyway; and
- **Unfair correction practices.** Credit bureaus updating files with inaccurate information, requiring consumers to repeatedly prove their innocence -- sometimes for years.

[2]More recently it has become evident that CRAs may disclose a credit report in response to a credit application even when a Social Security Number is not submitted.

We believe that curbing the incidence of this crime will require getting ahead of problem.[3] The last portion of my testimony contains recommendations that appeared in the 1997 article, as well as additional recommendations for ways to protect consumers from this crime.

Less, Not More, Sharing of Consumer Information is Needed

Some members of industry claim that the key to solving identity theft is to allow unfettered sharing of consumers' personal financial information with affiliates and joint marketing partners. However, such sharing prevents consumers from exercising control over the dissemination of their personal financial information. In addition, we believe that these entities already have access to the information needed, and that credit grantors and CRAs must use resources already at their disposal to prevent this crime. CRAs have the ability to monitor credit files for evidence of fraudulent activity, and should do so for all credit files, at no cost. Finally, credit grantors must heed fraud alerts consumers have already placed on their credit files, and request credit reports using at least four identifiers from the applicant.

Increasing Criminal Penalties is Insufficient

Despite passage of the Identity Theft and Assumption Deterrence Act of 1998, which made the theft of personal identifying information a crime, commissions of this crime continue to skyrocket. It is therefore more important that industry practices that allow thieves to exploit the system be addressed. In May 2003, CALPIRG Education Fund released the results of its interviews of with a sample of law enforcement officers from California and other cities with a high incidence of identity theft. Based upon the interviews, researchers concluded that: 1)

[3] The results of a limited survey conducted on the prevalence of problems with consumer credit reports appeared in the July 2000 issue of Consumer Reports. In the survey, Consumers Union staffers and others requested copies of their credit reports. One participant, a "Junior," found that his files contained information that belonged to his father, a "Senior." Others found that they were given the records of total strangers. Identity thieves benefit from this improper mixing of files, because imposter-generated fraudulent activity is easily mixed into the consumer report of an innocent victim.

identity theft is on the rise; 2) such crimes often remain unsolved; and 3) law enforcement officers believed that credit lenders should meet stricter requirements to ensure that credit is not granted to identity thieves. In fact, over 85% of officers responding believed that credit lenders must revise their practices.

Conclusions and Recommendations:

This hearing is entitled "Fighting Identity Theft -- The Role FCRA." In summary, we believe that current operation of the FCRA federal preemption, and allowable industry practices are, to a great extent, responsible for the skyrocketing number of cases of identity theft. Although thieves have become more sophisticated and organized, and the problem more widespread, the basic elements placing consumers at risk have not changed, and continue unabated.

We urge this Subcommittee to work to pass meaningful legislation that will address the elements of the FCRA and industry practices that help make commission of this crime possible. As stated above, we do not believe that the answer to the burgeoning crime of identity theft is to allow the financial services industry to have increased and unfettered access to consumer information. Instead, part of the solution lies in requiring industry to better manage and safeguard information already at their disposal.

We believe that the current preemption of state laws must be allowed to expire so that states can act quickly to address emerging methods of committing identity theft crimes. Thus far, states have been the most responsive and effective source of solutions to this growing problem. In addition, we believe that the consumer must be empowered with more control over the dissemination of their personal information to prevent identity theft, as well as with additional tools to clear their name if they do find that their good name is in jeopardy.

Changes to Industry Practice:

- Ban the commercial use of Social Security numbers.
- Increase penalties for furnishers that reinsert information in a consumer's credit file that had been previously disputed by consumer as inaccurate, and had been removed from the credit report by CRAs.
- Require CRAs to notify consumers at the original address when an address change is made to their report.
- Require companies to safeguard consumer financial information, and to notify them if the security of the information held is compromised.
- Require credit card number truncation.
- Require CRAs to alert consumers, free of charge, when suspicious activity is observed on the report (e.g. change of address, multiple inquiries, other indicators).
- Prohibit CRAs from releasing consumer information unless they have made a careful matching of a minimum of 4 identifiers (e.g. a unique identifier, full name, current address, previous address, and/or date of birth).
- Prohibit furnishers from selling debt to a debt collector where the consumer is an identity theft victim with respect to the debt in question.
- Extend the provision in the law with respect to the duty of "reinvestigation" to apply to furnishers. Currently the consumer must contact the CRA to dispute items on a credit report, and cannot initially seek correction of a disputed item from the furnisher itself.

Empowering Consumers to Prevent I.D. Theft and Clear Name:

- Allow consumers to easily monitor their credit files. Allow consumers to obtain, at no cost, a copy of their credit report and credit score from the three major CRAs.[4]
- Clarify that despite any ambiguity under the provision of FCRA, under the provisions of Graham-Leach-Bliley, states may pass stronger laws to give residents greater control over their personal information.
- Give consumers control over the sharing of personal information among companies, including affiliates.

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[4] Six state currently allow consumers to obtain free credit report/s annually (Colorado, Georgia, Maryland, Massachusetts, New Jersey, Vermont). A few states cap the fee a CRA can charge.

- Improve consumer rights to enable victims of identity theft to more easily remove erroneous information from their credit reports.

- Create an easy system for consumers to place fraud alerts on their credit reports. Increase penalties on creditors that grant credit when there is a fraud alert on the account.

- Allow victims of identity theft to have access to creditor records (such as applications and transaction records) on accounts fraudulently opened in their name.

- Allow victims of identity theft to freeze their credit reports to prevent identity thieves from accessing any more credit in their names.

- Allow consumers to block accounts on their credit reports that appear as the result of the fraudulent activity of the identity thief.

- Victims currently are burdened by a nightmare of phone calls, and affidavit filings to clear their names. Create a central location and phone number as a resource for consumers to clear their names if they become a victim of identity theft.

Law Enforcement

- Increase the two-year statute of limitations for prosecution of criminals engaging in identity theft, and make the time run from the time of discovery of offense.

If implemented, we believe these measures could play a significant role in reducing the incidence and effects of this crime. I thank the Chairman, Ranking Member Sanders, and the Subcommittee for the opportunity to testify, and I look forward your questions.