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on behalf of the

Financial Services Coordinating Council

American Bankers Association
American Council of Life Insurers
American Insurance Association
Securities Industry Association

Before the the Committee on Financial Services,
United States House of Representatives

Hearing on H.R. 2622, the
"Fair and Accurate Credit Transactions Act of 2003"

July 9, 2003

My name is John Dugan, and I am a partner with the law firm of Covington & Burling. I am testifying today on behalf of the Financial Services Coordinating Council ("FSCC"), whose members are the American Bankers Association, American Council of Life Insurers, American Insurance Association, and Securities Industry Association. These organizations represent thousands of large and small banks, insurance companies, and securities firms that, taken together, provide financial services to virtually every household in America.

The FSCC strongly supports H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003" -- the "FACT Act" -- which renews and strengthens the Fair Credit Reporting Act ("FCRA"). We believe its core provisions strike the right balance in preserving the FCRA's uniform national standards and adding strong new provisions to deter and remedy identity theft. Our member trade associations pledge to work hard for the enactment of this critical yet measured approach to FCRA reauthorization.

While the FSCC recognizes that the legislation is still a work in progress, we believe it is imperative that it retain its balanced approach throughout the legislative process. For example, we would strongly oppose addition of the types of restrictions that, however well intended, would substantially increase consumer costs without commensurate consumer benefits, or that would deter financial institutions from making the type of full and voluntary information submissions to credit bureaus that they do now. At the same time, the bill's provisions should preserve adequate flexibility for the industry to address legitimate concerns in the most efficient manner possible. In addition, our members have technical concerns with some of the bill's provisions that we hope can be addressed.

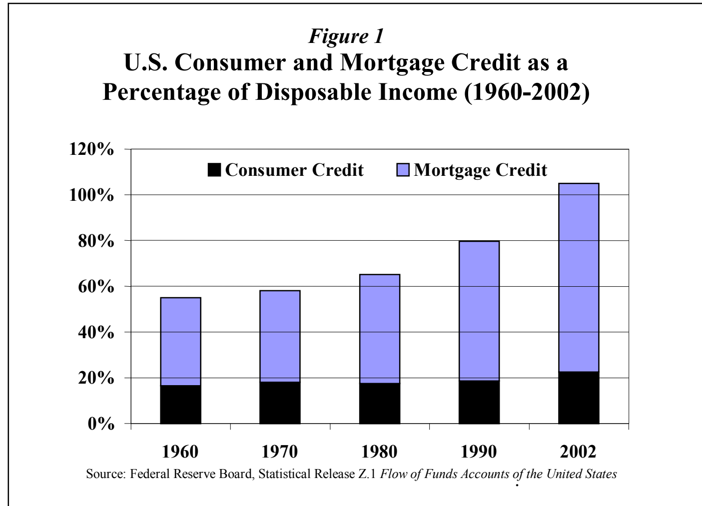
Let me provide more detail about each of these points.

The Importance of Reauthorizing FCRA's Uniform National Standards

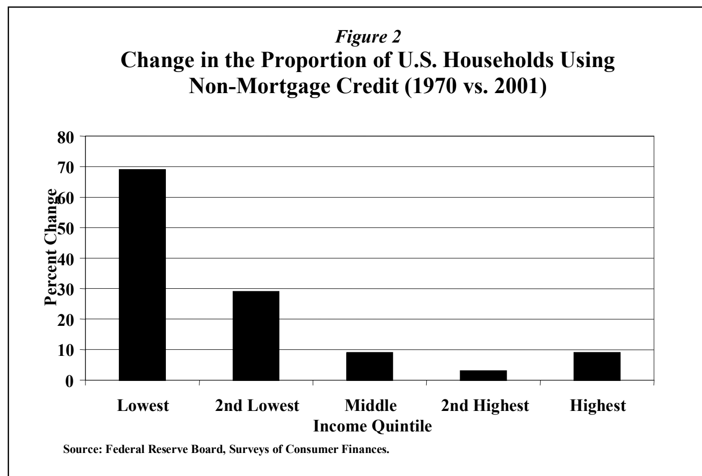
Title I of H.R. 2622 makes permanent the uniform national standards that underpin the FCRA. These standards make our extraordinary credit and insurance markets truly national, which in turn have brought unprecedented benefits to Americans throughout the country. By virtually any measure, the seven-year experiment with uniform national standards has been a resounding success, stirring strong industry competition that has resulted in, among other things, more and cheaper consumer credit and insurance, a wider variety of consumer products, and most fundamentally, economic growth. Accordingly, the linchpin of the FSCC's strong support of H.R. 2622 is the permanent extension of all of the FCRA's core uniform national standards.

Although the Committee has heard much testimony in the last several months on these standards, let me briefly revisit some of the key reasons why they are so important. In general, our national credit and insurance markets depend fundamentally on the FCRA's national standards, which translates into products that are far more ***accessible***. This means that consumers can walk into an auto dealership and drive off with a new car on the same day, or move to another state and open a bank account without hassle. Picking up the phone or going online, homeowners can compare mortgage rates across the country and refinance quickly to take advantage of falling interest rates. Consumers can easily take advantage of varied credit card offers from all over the country to obtain the best credit card deal for them. And consumers may choose from a wide array of insurance products that are tailored to their needs.

Such increased accessibility is confirmed by the study that the FSCC commissioned by professors Michael E. Staten and Fred H. Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation,*[1] which has previously been made available to this committee and its staff. As shown in Figure 1, the authors demonstrate that the role of household credit in the U.S. economy, especially mortgage credit, has grown dramatically since the passage of FCRA.



Perhaps even more strikingly, the authors also document the enormous impact of the national credit reporting system on traditionally underserved Americans. As shown in Figure 2, it is the lowest income-earning Americans that have benefited most in terms of the proportion of households that have come to use non-mortgage credit since 1970. This finding is not at all surprising: detailed and reliable information on past payment behavior gives lenders confidence in assessing the creditworthiness of new borrowers and allows them to design products to meet the needs of previously underserved populations. And because the



[1] Michael E. Staten is the Distinguished Professor and Director of the Credit Research Center at the McDonough School of Business, Georgetown University and Fred H. Cate is the Distinguished Professor and Ira C. Batman Faculty Fellow at the Indiana University School of Law-Bloomington.

credit-reporting infrastructure supports broader access to credit and insurance, it can enhance asset and wealth accumulation – an effect particularly pronounced for younger households.

An earlier study co-authored by Prof. Staten illustrates the credit accessibility point even more starkly: it estimates that ***11,000 fewer Americans out of every 100,000 applicants would receive credit if U.S. creditors only had the use of the limited credit bureau data available in many other nations.*** Without uniform national standards, the rules for the collection and use of credit information could differ across jurisdictions, raising questions about the accuracy and completeness of the database. As a result, potentially less credit would be granted, credit decisions would be delayed, and other financial products might not be provided.

In addition to greatly enhanced accessibility, FCRA's uniform national standards provide many other specific benefits, including the following:

- ***Less Expensive Credit.*** When shopping for the best mortgage, car loan, or credit card, we take for granted just how many choices we have. A uniform credit reporting system provides all lenders with consistent and complete information so they can compete against each other for our business, and that translates into better prices for consumers. For example, by one measure, according to Cate and Staten, mortgage rates in the U.S. are as much as two percentage points lower than in Europe at least in part as a result of our comprehensive credit reporting system.

- ***More Convenient Credit.*** Our national system of credit reporting allows phenomenally quick credit decisions – in 2001, for example, 84 percent of automobile loan applicants in the United States received a decision within an hour, and 23 percent of applicants received a decision in less than 10 minutes. Such speed is unheard of in other countries, where restrictive laws often prevent credit bureaus from routinely collecting accurate, up-to-date credit information necessary to support rapid decision-making.

- ***More Portable Credit.*** Over 40 million Americans move every year, and when they do, our national credit system lets their credit information follow them to ease the way for critical decisions by new employers, insurers, mortgagees, and landlords, among others. The ease with which someone can relocate anywhere in the country is important to an increasingly mobile society and a rapidly changing job market.

- ***More Competitive Credit Markets.*** A national credit system means that consumers are not dependent on one or two financial institutions to satisfy their credit needs. Insurers and lenders based in California or New York or Iowa or South Dakota can and do offer financial

products to consumers anywhere in the country, while a local community bank, armed with access to the identical national credit reporting system, can also compete for our business. In contrast, consider the implications of differing state law restrictions on credit reporting, as determined by the Cate and Staten study: "Laws that inhibit the assembly of comprehensive credit reports act as a barrier to competition by giving the dominant incumbent lender a monopoly over the information it possesses about its customers, and makes it easier to hold customers and capital captive. It thus denies new market entrants the information needed to provide and market competitive services."

- ***Increased Consumer Choice***. Uniform national standards have fostered lender competition and innovation to provide new types of products with new consumer benefits, such as credit cards with "frequent flier" benefits, preapproved mortgage offers, and readily available home equity lines of credit.

- ***Strong residential housing markets.*** The ease with which consumers can purchase homes, refinance at a more attractive interest rate, or obtain a home equity loan, has been a source of strength within our economy. Over the last several years, particularly, the ability of consumers to use portions of their home equity for other purposes has given them a level of financial flexibility that has helped consumer spending remain strong as other portions of the economy faltered. Once again, the FCRA's uniform standards support the underlying information flow that occurs in each of these transactions so that a mortgage lender and a homeowner can efficiently take care of business.

- ***Better risk management.*** Risk management is a crucial factor in every decision that a financial institution makes, including determining what types of products and services to offer. Undercutting this decision-making process has important implications. For example, if a lender cannot depend on credit files that are truly complete, loans may not be extended or may become more expensive in order to account for the higher level of risk. Moreover, Cate and Staten find that robust, national credit reporting has made it possible for more people to have access to more credit without significant increases in defaults.

- ***Widely available and affordable insurance products.*** The FCRA facilitates the process of risk classification which has made it possible for insurers to make their products widely available at affordable prices to American consumers. The FCRA provides the framework by which insurers can obtain information needed to make to accurate underwriting decisions. Risk classification provides the fundamental framework for the current private insurance system in the United States. It is essential to preserving insurers' ability to continue to provide insurance at rates that reflect the risk posed by policyholders and are adequate to pay customers' future claims.

- ***Tailored insurance products.*** The FCRA establishes a framework under which insurers may obtain and share consumer information with affiliates. This framework facilitates insurers' ability to provide their customers an increasingly wide array of insurance products tailored to their particular needs. Such information sharing allows affiliates to assess the needs of policyholders and to determine and develop the types of products and services that may be of interest. This sharing of information benefits consumers because it permits insurers to

> provide a wider rage of financial products and services and to provide more efficient delivery of these products and services at lower cost. In addition, it often is more convenient for customers who might otherwise have to spend additional time and resources to obtain similar products and services from other providers.

In short, consumers benefit from the U.S. being a single, integrated, fiercely competitive market, rather than a collection of smaller markets. And it is our national system of credit reporting underpinned by FCRA that has largely created that nationwide market. Choice, convenience, speed, and broad credit availability are part of our system today. By improving the performance of the entire market, FCRA's uniform national standards have lowered the costs of credit and increased the number of Americans who qualify for credit. Thus, the FSCC believes that the permanent reauthorization of these standards in Title I of H.R. 2622 is critically important.

Identity Theft Provisions and Other Measures in the Bill

Stopping identity theft before it occurs and resolving those unfortunate cases that do occur is of utmost importance to the financial services industry. As technology and the Internet have made more information readily available, financial institutions have redoubled their efforts to help educate consumers about how to prevent and resolve cases of identity theft. Our firms and our customers are partners in protecting information.

That said, the financial services industry has no illusions about the enormity of this problem. The FTC telephone hotline added almost 219,000 consumer reports to its Identity Theft Data Clearinghouse, up from more than 117,000 the year before – an 87 percent increase. And this may well understate the extent of the problem. Attorney General Ashcroft has stated that an "estimated 500,000 to 700,000 Americans have their identity stolen" each year. Regardless of the precise number of cases, one thing is clear: identity theft is a major concern to

consumers and financial institutions alike, and all of us can do more to address this potentially devastating crime.

In that context the FSCC fully appreciates why the Committee is now considering the identity theft provisions in H.R. 2622, which are woven through the fabric of most of the titles of the bill. In addition, several of the bill's provisions provide consumers with greater access to credit report information and address related consumer protection provisions. Set forth below are the FSCC's initial comments on several of these provisions, *i.e.*, the ones that affect our individual financial institution members most directly.

Before turning to these individual comments, however, let me note that many of the bill's other provisions impose new responsibilities on consumer reporting agencies. While the indirect effect of these credit bureau provisions could result in significant new costs for our members, we believe the credit bureaus themselves, who are also testifying today, are in the best position to address any practical issues or concerns that are raised by such provisions. In this regard, however, we do implore the Committee to recognize that none of these provisions, however beneficial to particular consumers, comes without cost, and these new costs must ultimately be borne by consumers. The FSCC believes that, before taking action on any of these credit bureau provisions, the Committee should weigh carefully the expected "all in" cost to consumers as well as expected benefits, because in some cases the ultimate consumer cost may in fact be quite substantial.

Section 201. Investigating changes of address. This section requires a credit card issuer that receives a request for an additional credit card within 30 days after receiving a notice of a change in address to notify the cardholder of the request either (1) at both the new address and the old address; or (2) by such other means as the issuer and the cardholder have previously

agreed to -- all in accordance with reasonable policies and procedures established by the card issuer pursuant to new regulations to be issued by the Federal Reserve Board. The FSCC supports the thrust and intent of this provision, and we note that many of our members already provide such notice to their customers. Our only concern is whether too much of the specific detail of this antifraud measure will be encrusted in statutory language that may become outdated in the not-too-distant future. One possible improvement might be to delegate more authority to the Federal Reserve to craft regulations to address the problem, with the thought that such regulations can be adapted to changing circumstances over time much more easily than could standards codified in statute.

Section 202. Fraud alerts. The FSCC supports the use of fraud alerts and believes they are a critical tool for containing the magnitude of losses caused by identity theft. In general, the bill mandates that our members could not extend credit in the name of a consumer whose credit report is subject to a fraud alert without obtaining authorization from the consumer in a manner prescribed in the fraud alert. Unlike some state laws, however, the bill requires the establishment of a fraud alert whenever a consumer merely "asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime." A concern of some of our members is that this very broad standard could lead to a number of "false positive" reactions, and that in turn could lead to much inconvenience since authorizations could be required each and every time a consumer added a charge to his or her credit card.

Section 203. Truncation of credit card and debit card account numbers. This provision generally prohibits entities that accept credit cards from printing the last 4 digits of the card account number or the expiration date. The FSCC generally supports this provision as a

reasonable, useful, and appropriate means to help curb identity theft, though some of our members have questioned the need for including expiration date information.

Section 206. "Red Flag" guidelines to identify possible identity theft. The FSCC supports this provision, which requires the federal banking agencies to prescribe guidelines for use by banks "in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft." Indeed, such agency-issued guidelines provide a flexible mechanism for adapting to inevitable changes in tactics by identity thieves, and thus may have significant advantages over specific standards prescribed in statutory language.

Section 301. Coordination of consumer complaint mechanisms It makes very good sense for the FTC and the credit bureaus to develop a model form and model procedures to be used by identity fraud victims for contacting and informing creditors of the fraud.

Section 303. Study of investigations of disputed consumer information. The FSCC recognizes that the committee has received sometimes conflicting testimony in the past several months about the adequacy of investigations of disputed consumer information by credit bureaus and entities that furnish information to credit bureaus. Much of this testimony has been based on individual anecdotes, with no clear indication of whether problems are episodic or systemic. In this context, the FSCC understands the felt need for the studies of such issues required by section 303. Our one suggestion is that the financial services industry be provided the opportunity to comment and provide input to both the Federal Reserve and the FTC before the studies are finalized.

Section 402. Prevention of repollution of consumer reports. This provision would prevent furnishers from providing information to a credit bureau where the furnisher knows or has "reason to believe" that the information resulted from fraudulent activity, including identity

theft. Some of FSCC's members are concerned that the "reason to believe" standard, while seemingly sensible, would in fact be triggered too easily in circumstances where a financial institution was truly acting in good faith. We believe that is not the Committee's intent, and we hope to work with you and your staff in the coming week to see if there is an appropriate way to address this concern. Indeed, since our credit reporting system depends on voluntary submissions of information to credit bureaus, it would be counterproductive to impose restrictions on furnishers that would make them more reluctant to provide information in the first instance.

Section 403. Notice by assignees and agents. This provision sensibly requires agents and assignees of consumer report users to notify such users whenever the agents or assignees learn that information in a consumer report is fraudulent and may be the result of identity theft. The FSCC believes this a prudent measure to increase awareness of identity fraud with appropriate attendant consequences.

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As described at the outset, our hope is to provide additional comments on provisions in the bill as it proceeds to its first mark-up next week. Again, the thrust of our comments will be to preserve adequate flexibility for provisions to adapt over time to changing circumstances; to weigh carefully potential costs as well as potential benefits; and to preserve the incentives for information furnishers to ***voluntarily*** provide full information to credit bureaus.

A Final Word on Medical Information

Finally, let me say a word about a topic that is not covered by the provisions in this bill, which is the improper use of medical information for credit granting purposes. The FSCC recognizes the concerns that have been expressed about this issue in recent hearings. In that

context, we want to respectfully remind the committee that financial institutions have a long history of dealing with highly sensitive information, including consumers' medical information, in a professional and appropriate manner. They recognize that consumers have heightened confidentiality concerns with respect to their personal medical information and are keenly aware of the importance of maintaining the confidentiality of that information.

Moreover, insurers' ability to collect and share medical information is currently regulated under federal and state privacy laws and regulations. The FCRA provides that medical information can be disclosed by a consumer reporting agency to an insurer only in connection with an insurance transaction and only with the consumer's consent. The GLBA treats medical information as nonpublic personal information and therefore medical information comes within the GLBA's protections. Health insurers and long term care insurers are subject to the regulations adopted by the Secretary of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). These regulations require an opt-in prior to disclosure of medical information unless the disclosure is for treatment, payment, or health care operations. The ability of other insurers to obtain medical information is also subject to the HIPAA regulations. In addition, state privacy laws and regulations require an opt-in for the sharing of medical information. The NAIC Privacy of Consumer Financial and Health Information Model Regulation, the NAIC Insurance Information and Privacy Protection Model Act, and a multitude of other disease specific state laws and regulations require insurers to obtain consumers' consent before disclosing medical information unless the disclosure is in connection with an insurance business function.

In short, both banks and insurance companies both operate under and support strict protections for the confidentiality of medical records. Within the constraints of these limitations,

however, insurers must be permitted to collect and share medical information essential to the performance of fundamental insurance business functions, such as medical underwriting and claims evaluations. Similarly, banks must be permitted to obtain medical information, with the consent of the consumer, in those limited instances, such as in connection with key man insurance, where medical information is relevant to the granting of credit. Transfers of information needed for purposes of the payments system should also not be impeded.

Conclusion

The FSCC commends members of this Committee for the balanced approach of H.R. 2622. Extension of the FCRA's uniform national standards is critical to financial institutions' ability to continue to make financial products widely available in the United States, and the bill's significant new identity theft provisions will make a difference in the fight against that crime. Such an amended FCRA, together with the privacy provisions of the Gramm-Leach-Bliley Act, constitute an appropriate national standard for affordable and accessible financial products; prevention of identity theft; and the protection of consumers' financial privacy.