Consumer Federation of America

TESTIMONY OF

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ON BEHALF OF:
ACORN
CENTER FOR COMMUNITY CHANGE
CONSUMER ACTION
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION
U.S. PUBLIC INTEREST RESEARCH GROUP, AND
THE LOW-INCOME CLIENTS OF THE NATIONAL CONSUMER LAW CENTER

BEFORE THE

US HOUSE COMMITTEE ON
FINANCIAL SERVICES

REGARDING

H.R. 2622
THE "FAIR AND ACCURATE CREDIT TRANSACTIONS
ACT OF 2003"

JULY 9, 2003

Chairman Oxley, Representative Frank, members of the committee, my name is Stephen Brobeck and I am executive director of the Consumer Federation of America. My testimony today is on behalf of ACORN, Center for Community Change, Consumer Action, Consumer Federation of America, Consumers Union, U.S. PIRG and the low-income clients of the National Consumer Law Center. Our organizations have all been active on Fair Credit Reporting Act (FCRA) matters for many years, have participated in the debate leading to the 1996 amendments and have published numerous reports and manuals on credit reporting issues. Most of these groups have also testified directly before the Subcommittee on Financial Institutions but have been asked by the full committee to present their views jointly.

At the outset, we want to commend the subcommittee for holding a comprehensive set of hearings on the Fair Credit Reporting Act (FCRA). The committee has developed a detailed record on issues ranging from identity theft and credit report accuracy to security breaches and medical privacy.

The above groups believe that a careful review of that hearing record would show that broad, comprehensive reforms are necessary to guarantee that credit reports and credit scores are accurate, that the privacy of consumers is maintained and that identity theft is stopped. We also believe that the industry witnesses seeking extension of the 1996 preemption amendments to the FCRA have failed to make their case that states' rights to regulate these areas of the FCRA should be taken away, let alone taken away permanently.

So, while we are pleased that HR 2622, the bi-partisan bill co-sponsored by a number of members of the committee, takes steps to reform the FCRA, we cannot support it.

The bill helps victims after they become victims, but it should include provisions to prevent mistakes by creditors and credit bureaus. The bill does nothing to increase their responsibilities, nor does it provide penalties for failing to meet those responsibilities of ensuring accuracy and privacy in credit reports. Despite a detailed record demonstrating the need to improve the law, the proposed bill instead defers many actions until proposed studies by various agencies are completed.

- First, while the bill commendably guarantees all consumers the right to look at their credit reports annually for free upon request, it fails to fix the numerous problems with the FCRA that virtually guarantee that those reports will be full of mistakes and it fails to give consumers enforceable rights to clean up those mistakes. Consumers will be able to look at their credit reports, and if the bill is clarified, perhaps also look at their credit scores, but won't be able to clear up the mistakes easily.
- Second, while the bill includes several modest measures to assist consumers after they have become identity theft victims, it includes inadequate measures to deter identity theft. Further, the identity theft amendments include a troubling provision wrongly regulating the growing class of reseller credit bureaus differently than the national repositories are regulated, making it harder for consumers to clear their names.

- Third, the bill fails to adequately protect consumer privacy. For example, it does not rein in unfair pre-screening practices and it does not close medical privacy loopholes documented in the hearings. Worse, the bill does nothing to guarantee that all consumers have access to credit reporting rights when adverse credit decisions are made, for example on the basis of affiliate information sharing.
- Fourth, the bill unwisely retains the 1996 amendment exempting affiliate sharing from the definition of credit report. Industry has used confusion over the relationship of this preemptive provision to the Gramm-Leach-Bliley Act's states' rights provisions to chill state and local efforts to enact stronger opt-in financial privacy laws.
- Finally, while enactment of the bill would fail to solve these well-documented problems, the bill would also prevent the states from acting to solve many of them, by permanently extending the FCRA's temporary 1996 limits on some state actions. This provision is opposed by all major consumer and privacy groups and is also opposed by the National Association of Attorneys General.

Therefore, we call on the committee to delete the provisions of HR 2622 which would extend preemption and to add provisions guaranteeing the accuracy and privacy of credit reports and preventing identity theft.

Here is a summary of our major recommendations to improve HR 2622.

First, remove preemption. Although we continue to endorse complete deletion of the preemption provisions, the committee should at least modify the provision so that the preemption sunsets one year following the completion of the studies required by the bill. If the committee is going to defer action on our major recommendations to improve accuracy, it should also defer a final decision on preemption.

Second, give consumers more information. When a consumer is denied credit on the basis of a credit report, give him or her the right to automatically obtain from that lender a copy of the subscriber report and score used to deny credit. Employment applicants already have a similar right under the FCRA. This provision, coupled with the annual free credit report on request, will be a powerful incentive to improve accuracy.

Third, give consumers better private enforcement rights, since the agencies aren't adequately enforcing the accuracy provisions of the law:

- Give consumers the right to go to a court and seek injunctive relief to stop a credit bureau from selling faulty credit reports about them.
- Give consumers the right to seek minimum statutory damages of $100-$1,000 per violation of the FCRA, as other consumer laws provide, so that they don't have to prove their actual damages to a court. This provision is especially critical for identity theft victims, who often spend hundreds of hours over a period of years trying to clear their good names. While the cost of emotional distress is significantly greater than $100-$1000, the threat of specific damages would be a powerful incentive to force creditors and credit bureaus to clean up the credit reporting system's accuracy.

The remainder of our testimony will discuss in detail the problems identified in the hearings that HR 2622 fails to adequately address. At the end of this testimony, we provide a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

1) The Bill Fails To Guarantee The Accuracy of Credit Reports

A) During the hearings the committee heard detailed testimony about the factors that cause credit report inaccuracies.

Some of the mistakes on consumer reports are the result of mis-merged file information, when the bureau simply adds one consumer's account to another's file. Other mistakes result from fraudulent accounts of identity thieves being mistakenly added to an innocent consumer's report. Still others result from coding or reporting errors where a consumer's on-time payments are falsely listed as late. Surprisingly, some of the "errors" are intentional, where a creditor seeks to deflate its own consumers' credit scores.

In particular, the committee reviewed the findings of a study of the credit files of 500,000 consumers, the most comprehensive study[1] of credit reports ever completed. That study, produced jointly by my organization, the Consumer Federation of America, along with the National Credit Reporting Association[2], found that 29% of consumers had discrepancies in their credit reports obtained from each of the three national repositories resulting in a variance of 50 points or more in their credit scores. Another key finding of this study, using a conservative analysis, was that at least 8 million Americans would likely be mis-categorized as sub-prime and pay tens of thousands of dollars in excess interest payments over the 30-year life of a mortgage.

The committee also heard testimony from the Center for Community Change[3] and the National Fair Housing Alliance[4] that credit scoring models be made more transparent and subject to independent verification both to ensure accuracy and to demonstrate that the scoring models do not result in a disparate racial impact among protected classes.

Similarly, the committee heard that a growing number of credit card companies are "risk re-pricing" their existing customers, often on a monthly basis and raising the interest rates of some consumers to as much as 25% APR, solely on the basis of either a reduced credit score or an alleged late payment to a different creditor. Errors in credit reports or defects in credit scoring models could easily affect such a harsh decision-making tool.[5]

In addition, the testimony of both CFA and the U.S. Public Interest Research Group[6] described how some of the nation's largest credit card companies are intentionally failing to report complete information on their customers in an effort to "game" the credit scoring models, thereby deflating their customers' credit scores. This anti-competitive behavior has been a subject of regulatory scrutiny, as documented in the record testimony. Further, following one of the committee's hearings, the American Banker newspaper obtained information from Capital One that it continues in these practices.[7]

Further, testimony before the subcommittee regarding recent research conducted by the Federal Reserve Board provided confirmation of the consumer groups' major findings that credit reports are inaccurate and that creditors ("furnishers of information" in the FCRA) were intentionally withholding full information about their customers.

B) The Committee Heard Testimony That The 1996 Amendments Intended to Make It Easier For Victims Of Errors and Identity Theft To Clear These Mistakes Haven't Worked

Then, the committee heard detailed testimony from both the National Association of Consumer Advocates[8] and the National Consumer Law Center[9] about the difficulties consumers face when they try to resolve these errors in their credit reports. These groups, as well as U.S. PIRG, CFA, and Consumers Union[10] all provided detailed proposals to make it easier for consumers to correct mistakes and to enforce the law when mistakes were not corrected.

None of these proposals are reflected in H.R. 2622, except for certain modest provisions providing greater assistance for identity theft victims to attempt to clear their names. The bill should provide similar assistance to victims of credit report inaccuracies. The bill relegates all issues of inaccuracy and incomplete reporting to studies rather than solutions.

At the end of this testimony, we provide a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

2) The Bill Fails To Prevent Identity Theft

The bill purports to stop identity theft. That's hardly surprising, as no one likes identity theft. It's a drag on the productive economy and it's proven to be a major hassle for hundreds of thousands of consumers annually. Identity theft has been the Number One consumer complaint to the Federal Trade Commission for three straight years, with complaint levels doubling in 2002.

Yet, the bill takes only modest steps to address identity theft. Most of these steps are designed to assist victims, not prevent the problem from happening in the first place.

Identity theft victim Maureen Mitchell[11] told the committee that numerous fraudulent accounts at six different out-of-state addresses were added to her credit reports without any reaction from the credit bureaus. Navy Commander Frank Mellott[12] told the committee how an identity thief armed only with his Social Security Number was able to open numerous accounts in his name. Both these victims testified to the enormous amounts of time and effort they spent clearing their names.

While H.R. 2622 includes modest provisions relating to verifying changes of address, the provisions are inadequate by themselves to prevent identity theft. The bill should also require creditors and credit bureaus to match at least 4 points of correspondence between a credit application and a credit report before issuing that report to a subscriber creditor. The bill should also require that when a creditor receives a Section 401 notice of an address change from a credit bureau, that the creditor face liability for failing to take reasonable steps to confirm the address change before credit is granted.

Further, even the bill's provision, Section 401, for address change verification by credit bureaus, is deficient. Under consent decrees negotiated with the three major credit bureaus by several states and/or the FTC, credit bureaus are required to use "Full Identifying Information," defined as "full last and first name; middle initial; full street address; zip code; year of birth; any generational designation; and social security number." While this provision from the early 1990s was originally intended to prevent credit report mis-merge errors, it would also serve to fight identity theft if it were adequately enforced.

Yet, Section 401 may weaken even this matching requirement provided by the consent decrees, since it allows bureaus to ignore address differences that are not "substantial variations.[13]" In apparent disregard of the consent decrees, the bureaus already use "partial match" algorithms to match similar names, addresses or Social Security Numbers. For example, if 7 of 9 digits of an SSN match the bureau software may presume a clerical error, not an identity theft or a mis-match. Similar algorithms match similar but not exact addresses and names. Enactment of Section 401 would undercut these consent decrees.

At the end of this testimony, we provide a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

3) The Bill Fails To Guarantee Privacy

The committee heard record testimony about a number of other privacy problems that are not addressed by HR 2622.

A) Affiliate Sharing

First, testimony by U.S. PIRG and other witnesses described how the 1996 FCRA exempts affiliate sharing from the definition of credit report and also preempts states from amending that provision.[14] Industry lobbying has effectively chilled most state and city attempts to enact stronger state financial privacy laws under the Gramm-Leach-Bliley Act's (GLB) Sarbanes amendment provision clearly allowing stronger state financial privacy laws. Industry has alleged that FCRA somehow negates GLB's provision.

Nevertheless, California and its cities continue to seek stronger financial privacy laws. Although a state legislative proposal, SB 1, offered by State Senator Jackie Speier, has not passed, several local ordinances have been enacted. Local financial privacy rules in

San Mateo and Daly City now face a court challenge from Bank of America and Wells Fargo, backed by the Comptroller of the Currency (OCC).

If the cities lose in court, particularly under a National Bank Act preemption argument, despite the clear legislative history in their favor, it may be appropriate for the Congress to consider a narrow clarifying amendment to GLB that makes it clear that the Sarbanes amendment is the paramount federal rule on financial privacy, **all** other laws notwithstanding.

Notably, several California organizations including Consumer Action, CALPIRG and the Consumer Federation of California seek to qualify a March 2004 ballot initiative, after the proposed expiration of FCRA preemption, requiring opt-in consent before affiliate sharing for secondary purposes.

The affiliate sharing exception allows detailed experience and transaction information to be shared and used for adverse actions without triggering the FCRA's consumer protection rights,[15] in the circumstance where the information is shared among corporate affiliates. Experience and transaction information could include details from credit card and checking account purchases, mortgage balances and payment histories, bank account and brokerage balances and other deposit account usage information and relationships with co-signers, if any.

As the FTC, in an official position paper released in 1994 before the 1996 amendments,[16] stated on affiliate sharing:

> "Because the subject of information sharing with affiliates has not been the subject of Congressional hearings, the factual basis for the provision is not necessarily available and the Commission cannot easily evaluate its pros-and-cons. The Commission believes, however, that caution is the best approach in considering whether to create what may become a significant exception to the consumer protections provided by the FCRA. It may be preferable to defer creation of any exceptions to the FCRA's protections for affiliate sharing until Congress has an opportunity to study this issue and its implications more carefully."

Unfortunately, Congress did not actually build a hearing record on affiliate sharing before it created this controversial loophole in 1996. It now appears that the FTC's concern that a "significant exception" to FCRA's protections would be created was correct. In testimony on June 26th before the Senate Banking Committee, Citigroup stated that it: "is able to use the credit information and transaction histories that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit.[17]"

The growing use of affiliate sharing under GLB for profiling and credit decision-making, as confirmed by the Citigroup Senate testimony, will lessen the public benefits of the FCRA. When credit decisions are made on the basis of affiliate-shared information, consumers do not have the same bundle of rights as they do under FCRA. As internal creditor databases increase in size and predictive value, either credit decisions or other profiling decisions (whether to even offer a consumer a certain class of product, for example) will more and more be made under the GLB regime. These adverse actions will not result in triggering the same disclosures and rights that consumers obtain under the FCRA. These changes in the marketplace, which are already occurring, mean that consumers may not have the same credit rights in the future.

Unfortunately, HR 2622 does nothing to address either the chilling of states rights or the diminution of consumer rights caused by the affiliate sharing exception.

B) The bill does not improve the inadequate regulation of pre-screened solicitations

Credit bureaus also sell under-regulated pre-screened lists of consumers derived from credit reports, for credit and insurance related purposes. Pre-screened opt-out notices are hard to find and harder to read; the opt-out mechanism is overly complex and, for a permanent opt-out, a consumer must make a call, receive a notice in the mail, sign it, stamp it and return it.[18] The unnecessary complexity contrasts starkly with the much simpler national do not call list recently implemented by the FTC which has receive dramatic consumer response.

C) The Bill Does Not Address Medical Privacy Problems

Testimony by CFA documented how medical information could be improperly inferred from trade lines in credit reports. Detailed testimony from the Electronic Privacy Information Center and Georgetown Medical School assistant professor, Joy L. Pritts, J.D. documented how neither the FCRA nor the GLB prevent the sharing of confidential medical information among corporate affiliates, including banks.

D) The Bill Weakens Protection For Subjects of Investigative Reports In Employment

Another major flaw with H.R. 2622 is its treatment of employment related investigative reports. The proposed amendments would simply exclude such reports from the definition of consumer reports. This amendment eviscerates the current protections under the FCRA for workers. While we agree that changes are necessary to address investigations based on employee misconduct, the proposed amendments are not balanced. Workers who are victims of false accusations must be protected as well. Whistleblowers and workers attempting union organizing drives must also be protected. Yet, investigations of employees without notice to the employees, even after the fact, have the potential to deter legal worker conduct and intimidate employees. We recommend a more comprehensive and balanced means of addressing the issue of employee misconduct and investigations into such conduct, along the lines of the FTC proposal from 2000, or the proposed changes that were negotiated between all interested parties in 2000, when a similar attempt was made to undercut employee protections in the FCRA.[19]

At the end of our testimony, we provide a comprehensive list of provisions designed to improve the FCRA's accuracy, identity theft and privacy provisions and compare these to the provisions in HR 2622.

4) Conclusion

While HR 2622 includes several laudable provisions, it does not address all the important problems identified in the committee's detailed hearing record. Too many of the largest problems are deferred to studies, rather than solved. Yet, the committee is pushing the bill forward as a comprehensive solution, hoping that its modest positive provisions provide enough cover to achieve industry' goal of preempting state laws permanently. That is disappointing.

We generally agree with industry that a uniform national law would be the most efficient, provided it is adequate. But the best way to get to **adequate uniformity** is to retain states' rights. Congress has not demonstrated a propensity for enacting uniform consumer protection laws that are adequate, except when driven by the threat of state actions. If Congress fails to solve the problem, or new problems arise, the states can act more quickly to resolve the problem and provide a template for additional federal action by the Congress.

We hope to work with the committee, and with Members of the House, to eliminate HR 2622's unfair preemption of state laws and to amend it so that it more adequately prevents the problems it fails to prevent.

5) APPENDIX: Comparison of Bill To Consumer Groups' List of Minimum Consensus Reforms

The following is a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

Provide Consumers With Greater Rights to Enforce the Law:

1. Provide consumers injunctive relief; minimum statutory (liquidated) damages and attorney's fees for successful actions. HR 2622 does not address at all changing the FCRA so that consumers can ask a court to stop a credit bureau from reporting false negative information.

2. Provide consumers with minimum statutory (liquidated) damages of $100-$1000 for each violation. Some courts have ruled that a violation of the FCRA has not occurred unless a consumer can prove actual damages. More generally, the difficulty in proving actual damages has acted as a barrier to consumers being able to retain counsel to enforce

the law. Further, it is difficult to prove certain actual damages, such as the value of the loss of your good name in identity theft situations.

3. Maintain voluntary reporting, but require furnishers that report to abide by a completeness standard to prevent gaming the credit scoring system. While Sec. 303(c)(2) of HR 2622 requires the FTC to conduct studies that address the consumer group recommendation that “furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under Section 623 of the FCRA,” testimony presented before the subcommittee has already established that serious problems exist. It is our view that the bill should simply amend the FCRA to require complete reporting by furnishers.

4. Give consumers an FCRA right to contact furnisher directly to initiate reinvestigation. Add duties on “furnishers and users” to improve accuracy and conduct 1681(i) reinvestigations. While HR 2622 fails to provide these important rights to all consumers who are victims of credit reporting mistakes, it does takes steps in this direction for identity theft victims. Section 301 requires the FTC to develop a model form and model procedures to be used by victims of ID fraud for contacting and informing creditors and reporting agencies of the fraud. Section 402 also forbids furnishers from providing information to any reporting agency that the furnisher knows or has reason to believe has resulted from fraud/ID theft.

5. Shorten the act’s 30-45 day reinvestigation period to 10 – 15 days. The bureaus already provide shorter reinvestigations in certain circumstances. The credit bureaus have a well-documented system that provides “concierge” services for certain classes of consumers. VIPs and consumers who are suing the bureaus generally can get complaints resolved more quickly. However, the most efficient reinvestigation systems are provided for consumers working with certain mortgage entities, where rapid re-scoring can gain a correction in 24-48 hours. Yet Section 303 of HR 2622, “Prompt Investigation of Disputed Consumer Information,” only requires the Federal Reserve System and the FTC to study the extent to which reporting agencies are complying with the current procedures and time lines under the FCRA for the prompt investigation and correction of disputed accuracy.

6. Require regular, formal oversight and internal review of credit scoring algorithms and models to ensure full compliance with FCRA, ECOA and Fair Housing laws. This critical reform provision is not in any way addressed by HR 2622.

7. Require FTC and other regulators to fully enforce the existing requirement to consider all information relevant to consumer’s dispute, including information provided by the consumer and to require CRAs to reject findings of so-called furnisher reinvestigation that conflict with such relevant information provided by the consumer. This critical reform provision is not in any way addressed by HR 2622.

8. Reinstate 2-year discovery rule (or 7 years after violation) statute of limitations to sue credit bureaus, but ensure that protections apply to all victims, not only ID theft victims. In 2001 in *TRW vs. Andrews* the Supreme Court held that consumers could only sue a credit bureau for 2 years following a violation, not two years following discovery of the violation. We are disappointed that although Chairman Bachus was a chief sponsor of a bill addressing this problem, HR 3368 in the 107th Congress, that he has not included this important provision in HR 2622. While a variant of the provision is included in S. 22, it is defective at the request of the credit bureaus and would only apply to identity theft victims. We believe that the proper way to reinstate the discovery rule is to apply it to all victims, to make it 2 years after discovery with a maximum of seven years (the same period bureaus can generally issue reports containing negative information). The provision should also include an estoppel provision so that when a credit bureau intentionally misrepresents any information required, an action may be brought at any time within two years following discovery of the misrepresentation.

9. Eliminate Reseller and Specialized Credit Bureau Exceptions. The bill would exempt resellers and certain specialized credit bureaus from certain of the bill's provisions. While the industry has been successful in convincing several states to adopt similar language in their identity theft reforms, this provision is opposed by consumer groups, by identity theft victim organizations, and, we understand, by the National Credit Reporting Association, which represents many resellers. We believe that the intent of the provision is to undercut the FTC's strict enforcement stance in the First American Credco[20] consent decree—which held that resellers should be treated the same as any other credit bureau. Credco should not be undercut by HR 2622.

Give Consumers More Information About Their Reports

1. Provide an annual free credit report that includes a credit score on request of any consumer, expand the opportunities for certain consumers to gain additional free reports, and cap prices of credit report monitoring and alert services. Commendably, HR 2622 would make annual free credit report rights granted for many years in six states (Colorado, Georgia, Maryland, Massachusetts, New Jersey and Vermont) the law of the land. However, in our view, the following should also be done. First, potential fraud victims, indigent consumers and unemployed consumers should retain their current rights (removed by HR 2622) to additional free reports, not only once each year or following denial. Second, because the bureaus have aggressively capitalized on the identity theft epidemic (that their practices are partly responsible for) by selling expensive credit reporting monitoring services for as much as $99-120/year, Congress should cap the price of these services at $29/year. Notably, recent press reports have accused at least one of the bureaus of using deceptive marketing of "free credit reports" to sell these services.[21]

2. Provide consumers with credit scores as part of their credit reports. While some staff have stated to us that the intent of HR 2622 is to make this laudable change, we do not think that the bill's language gets the job done. Section 502 amends Section. 609(a)(1) of the FCRA by deleting language stating that scores are not part of credit reports and replaces it with affirmative language that requires a "summary of how any individual

credit score" was derived. In our view, since the legislative and regulatory history of the FCRA before the 1996 addition of this language did not guarantee disclosure of scores, removing it won't either. The bill should be amended to specifically require the disclosure of credit scores with credit reports.

3. Give consumers the right to automatically obtain a credit report and score directly from a lender when an adverse action is taken. Consumers face two problems when they request a credit report (and score) from a credit bureau. First, any adverse actions previously taken were based on a subscriber credit report provided to the lender. The subscriber report is often provided based on a limited number of matching data points and is more likely to contain inaccurate or mis-merged information about other consumers than a report requested by a consumer, since a consumer must provide a detailed match of name, address, and Social Security Number. Second, a score derived from that consumer report will probably differ from the score the subscriber obtained from the less accurate report.

While we still support HR 2622's provision to provide a free report annually and, presumably also provide a score, if clarified, we believe more must be done to give consumers quicker and better information about the accuracy of their reports.

The FCRA already requires that employers contemplating adverse actions show consumers a copy of their report. The FCRA should be amended so that after a lender takes an adverse action, the consumer would automatically receive from that subscriber a copy of the subscriber report and score used in the adverse action.

Giving consumers access to the subscriber report, which is much more likely to contain false negative information would have a great impact on credit report accuracy. Providing a report immediately following denial would also be a powerful educational tool for consumers.

4. Notify consumers when negative information is reported. The bill, HR 2622, fails to include the consensus proposal by Rep. Ackerman to guarantee that consumers be warned by their creditors that negative information has been sent to a credit bureau. An even stronger alternative, already law in Colorado, requires that credit bureaus provide an annual notice of rights to consumers. The notice is sent to all consumers who have received one negative item or 8 inquiries generally on their reports. This could be improved by adding a third category—"or had a request for an address change on their reports" (in which case the notice should be sent to the old and new addresses).

Provisions To Fight Identity Theft

1. Give consumers the right to impose security freeze report blocking at no charge. Section 205 of HR 2622 provides to the consumer the ability to "block" trade line information resulting from ID theft. It allows reporting agencies to refuse or rescind a block if it determines the consumer requesting the block misrepresented him or herself or the consumer obtained benefits as a result of the blocked transaction or if there was an error. If the agency takes such action, it must promptly notify the consumer.
But HR 2622 should be amended to give consumers the right to block their credit report from being issued, as California and other states provide.

2. Require full name and contact information, including phone number, with all trade lines on credit report. This will make it easier for consumers to investigate complaints.

3. Require furnishers/bureaus to match 4 points of identification before issuing a subscriber report. Identity theft and mis-merged files regularly occur because the bureau fails to accurately ensure that an application provided by a subscriber matches the report that is issued.

4. Impose stricter address change verification requirements. Title II of HR 2622 adds a provision to the FCRA's Section 605 that any credit card issuer that receives an additional request for an already existing credit card within 30 days after receiving an address change notification shall notify the cardholder at both the new and old addresses. In addition, under Title IV of the bill, Section 605 is amended so that when a person requests a consumer report that includes an address for the consumer that substantially differs from the most recent address in the consumer's file, the reporting agency shall notify the request of the discrepancy and reconcile or resolve the variation.

5. Give a consumer a right to put a fraud flag on his or her credit report and impose penalties for bureaus selling/issuing any subscriber report where fraud flag is not prominent. Commendably, HR 2622 includes a provision making it a violation for a bureau to issue a report without a fraud flag.

6. Impose penalties for furnisher issuing credit on any report with a fraud flag. Title II of the bill commendably prohibits the user (requester) of the consumer's report from extending credit in the name of the consumer without first obtaining preauthorization of the consumer who placed the fraud alert.

7. Require credit card number truncation. The bill commendably codifies federally several state laws requiring truncation of credit card numbers on most receipts, to reduce the risk of fraud.

8. Get the Social Security Number out of circulation. Social security numbers are the key that opens the door to your financial identity. We believe that the recent DC Circuit, U.S. Court of Appeals decision removing SSNs from credit headers, which are unregulated information products sold by the bureaus outside the FCRA, should be codified in federal law as an amendment to the FCRA.[22] We also believe that the Ways and Committee should enact the additional provisions included in HR 2036 from the 107th Congress which would prohibit businesses from coercing consumers into providing their SSN as a condition as a condition of doing business.

9. Prohibit selling debt to a debt collector where the consumer is an ID theft victim with respect to that debt. This concern is not addressed by HR 2622.

10. Give victims access to business records of all creditors including telecommunications providers when fraudulent accounts opened. Not addressed by HR 2622. This provision is

law in California and is the subject of several bills from the 107th and 108th Congress. However, it should be enacted without a reseller exception, as S. 22 includes.

Tools To Protect Privacy

1. Eliminate two-tiered pre-screened credit card and insurance solicitations opt-out. HR 2622 does not address this important amendment which would provide that all opt-outs, not only opt-outs made in writing after returning a "signed notice of election," are permanent until rescinded.

2. Require pre-screening opt-out to use express, prominent language. HR 2622 does not address the problem that the FTC and bank regulators have ignored the failure of credit card companies to make pre-screened opt-out notices "prominent," as the law requires. The solution is for Congress to require an express, statutory warning with a specified format.

3. Close loopholes allowing inadvertent disclosure of medical information by bill collectors and other furnishers.

4. Ban sharing of medical information between affiliates without express consent and then only for limited, one-time purposes

5. Ban the use of credit scores in insurance. Consumers with excellent insurance claims records are routinely being non-renewed or having homeowners or auto insurance rates raised on the basis of credit scores, which are based on inaccurate credit reports. HR 2622 does not address this critical issue.

6. Ensure that the use of credit reports for employment investigations does not violate employee privacy or impede whistleblowers or lawful union organizing. See discussion in Section 3 above.

7. Ensure that employment users comply fully with FCRA provisions. HR 2622 does not address this issue. At a minimum, the FTC needs to conduct a study to determine whether employers using credit reports for adverse actions are complying with the act's expanded 1996 provisions.

8. Require any agency or business that possesses a citizen's or consumer's computerized data to adhere to a security breach notification law. HR 2622 – not addressed. Although the committee held an entire hearing[23] devoted to the serious problem of security breaches, as epitomized by the recent Tri-West, Tele-Data and University of Texas cases, nothing in the bill would require data collectors (government or private) to notify consumers of computer hacks or other theft of databases resulting in threats to their privacy. California has enacted legislation requiring minimal notification standards which should be adopted by Congress.

9. Prohibit risk-based re-pricing (bait and switch). HR 2622 does not address the serious problems raised by the growing practice of credit card companies raising their customers' interest rates to penalty rates of 25% APR or more, based on their credit scores. The problem is exacerbated by the fact that some of these same credit card companies may also be deflating their customers' credit scores through incomplete reporting.

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[1] "Credit Score Accuracy and Implications for Consumers", December 17, 2002, Consumer Federation of America and the National Credit Reporting Association http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf See direct testimony of Travis Plunkett, Legislative Director, Consumer Federation of America, before the Financial Institutions Subcommittee, 12 June 2003, at http://financialservices.house.gov/media/pdf/061203tp.pdf

[2] See also the direct testimony of Paul Wohkittel, Legislative Chairman, National Credit Reporting Association, before the Financial Institutions Subcommittee, 4 June 2003 at http://financialservices.house.gov/media/pdf/060403pw.pdf

[3] See direct testimony of Allen Fishbein, General Counsel, Center for Community Change, before the Subcommittee on Financial Institutions, 12 June 2003, at http://financialservices.house.gov/media/pdf/061203af.pdf

[4] See direct testimony of Shanna Smith, Executive Director, National Fair Housing Alliance, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403ss.pdf

[5] "Surprise Jumps in Credit Rates Bring Scrutiny," by Jennifer Bayot, The New York Times, 29 May 2003, Page 1.

[6] See direct testimony of Ed Mierzwinski, Consumer Program Director, U.S. PIRG before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403em.pdf

[7] "FCRA Hearing to Shine Spotlight on Credit Process," American Banker, 12 June 12, 2003 by Michele Heller.

[8] See direct testimony of Len Bennett, National Association of Consumer Advocates, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403lb.pdf

[9] See direct testimony of Anthony Rodriquez, Staff Attorney, National Consumer law Center, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403ar.pdf

[10] See direct testimony of Janelle Mayo Duncan, Legislative Counsel, Consumers Union, before the Financial Institutions Subcommittee, 24 June 2003, at http://financialservices.house.gov/media/pdf/062403jd.pdf

[11] Direct testimony of Maureen Mitchell, identity theft victim, before the Subcommittee on Financial Institutions, 24 June 2003, at http://financialservices.house.gov/media/pdf/062403mm.pdf

[12] Direct testimony of Commander Frank Mellott, USN, identity theft victim, before the Subcommittee on Financial Institutions, 24 June 2003, at http://financialservices.house.gov/media/pdf/062403fm.pdf

[13] The address change provisions of HR 2622 are derived from the Hooley-LaTourette identity theft legislation, HR 2035. Previous versions, such as HR 3053 in the 107th Congress, did not include the weakening "substantial variations" language.

[14] For a detailed analysis of how neither the FCRA nor GLB regulate affiliate sharing, see also the testimony of U.S. PIRG's Ed Mierzwinski, Vermont Assistant Attorney General Julie Brill and Fordham Law Professor Joel Reidenberg at a Senate Banking Committee hearing entitled "Affiliate Sharing Practices and Their Relationship to the Fair Credit Reporting Act" on 26 June 2003 available at http://banking.senate.gov/03_06hrg/062603/index.htm

[15] The 1996 amendments do provide that consumers be provided an extremely limited notice if affiliate shared information is used adversely, but provision of the notice triggers no additional rights. See FCRA

Section 615(b)(2). Compare with notice under 615(a) (adverse action based on credit report), which triggers comprehensive rights and duties under Sections 609, 610, 611.

[16] The FTC took an official position on the proposed FCRA amendments in 1994. U.S. PIRG has archived a (scanned) copy of the document, "HR 1015, Federal Trade Commission Analysis and Recommendations, 25 July 1994," at http://www.pirg.org/consumer/credit/ftcanalysishr1015.pdf

[17] Testimony of Martin Wong, General Counsel, Citigroup, before the U.S. Senate Banking Committee, 26 June 03, available at

[18] See PIRG's testimony before the House Financial Institutions Subcommittee, 4 June 2003 for a detailed analysis. http://financialservices.house.gov/media/pdf/060403em.pdf

[19] See testimony before this committee, 4 May 00, of the National Consumer Law Center and U.S. PIRG, by Margot Saunders of NCLC. The testimony includes an appendix detailing the views of the AFL-CIO. Available at http://financialservices.house.gov/banking/5400sau.htm

[20] See the FTC order in the Credco case: *First American Real Estate Solutions vs. FTC,* Docket no. C-3849 decision and order, 27 January 1999, available at http://www3.ftc.gov/os/1999/08/faresorder.htm

[21] According to the article, "More Girls Than Bargained For," 3 May 2003, The Washington Post, by David Hilzenrath, "The Experian credit reporting bureau's ConsumerInfo.com subsidiary has been the subject of 960 complaints to the" Better Business Bureau over the past three years.

[22] Section 203 of HR 2036 (Shaw) in the 107th Congress would eliminate Social Security Numbers from credit headers by only allowing credit bureaus to sell them as part of regulated credit reports. This matter is in the Financial Institutions Committee's jurisdiction. Section 202 of this bill would prohibit businesses from coercing consumers into providing their Social Security Numbers as a condition of doing business.

[23] Joint Hearing of the Oversight and Financial Institutions Subcommittees on "Fighting Fraud: Improving Information Security," 03 April 2003. See especially testimony of Evan Hendricks, Editor, Privacy Times at http://financialservices.house.gov/media/pdf/040303eh.pdf