CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity

STATEMENT OF

STUART K. PRATT

CONSUMER DATA INDUSTRY ASSOCIATION
WASHINGTON, D.C.

BEFORE THE

House Financial Services Committee

ON

H.R. 2622
"Fair and Accurate Credit Transactions Act of 2003"

July 9, 2003

Chairman Oxley, Congressman Frank, and members of the committee, thank you for this opportunity to appear before you today. For the record, I am Stuart Pratt, president and CEO of the Consumer Data Industry Association.

CDIA, as we are commonly known, is an international trade association representing approximately 500 consumer information companies that provide credit and mortgage reporting services, fraud prevention and risk management technologies, tenant and employment screening services, check fraud prevention and verification products, and collection services, as well.

You have asked the CDIA to testify on H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003." We applaud you for holding this timely hearing on a bill of great importance to consumers and to the continued growth of our nation's economy. We thank you for your leadership in focusing the time and resources of your committee on the issue of reauthorization of the Fair Credit Reporting Act's uniform, national standards.

House Financial Services Subcommittee on Financial Institutions Chairman Bachus, Representatives Hooley, Biggert and Moore are all to be applauded for their endorsement of the FCRA's national standards first set into place in 1996, through the introduction of H.R. 2622. We agree with Chairman Bachus' observation about the success of the FCRA: "But by far the most striking result of our national credit reporting system is the dramatically increased availability of credit – what has been called the democratization of credit. Low- and middle-income families are the big winners under FCRA. My Dad used to say, 'you can get a loan if you don't need it.' That used to be the case, but no more."

In Title I, Section 101, H.R. 2622 reauthorizes and makes permanent the national, uniform standards, which are essential to the continued success of our nation's economy. Reauthorizing and making permanent the national standards under FCRA ensures that consumers can continue to enjoy $30 billion in additional disposable income per year due to increased competition.[1] With reauthorization, consumers can be assured of continued access to an extraordinarily competitive mortgage lending marketplace, which, by some estimates, reduces the average consumer's interest rate by two full percentage points.[2] In his remarks on Monday, June 30, 2003 wherein he laid out the Administration's support for reauthorization, Secretary of the Treasury John Snow observed that "It is not an overstatement to suggest that preserving the integrity and availability of consumer credit in this economy is preserving prosperity itself."

The CDIA and its members join with leading economists, financial services organizations, the Chamber of Commerce and many other organizations in endorsing reauthorization of and making permanent those provisions of the FCRA that ensure uniformity at the national level. This is a necessary step to ensure that consumer expectations for access to credit and other services at the lowest prices or rates possible are met continually in the future, and to ensure the continuation of the world's most robust national economy; one that is built on the predicate of a nationwide system of credit and credit reporting.

[1] Turner, Michael, et al., *The Fair Credit Reporting Act: Access, Efficiency & Opportunity, The Economic Importance of Fair Credit Reauthorization*; Information Policy Institute, July 2003, page 5.
[2] Kitchenman, Walter, *U.S. Credit Reporting: Perceived Benefits Outweigh Privacy Concerns*, The Tower Group, 1998, pages 7-8.

Section-by-Section Review:

You have asked that we provide comments on H.R. 2622 and you have our clear and unequivocal support for Title I, Sec. 101, which reauthorizes and makes permanent the uniform national standards found in Section 624 of the Act. We believe that for the bill to be ultimately successful, the approach proposed in this bill wherein it reauthorizes and makes permanent all of the uniform national standards is essential.

Following are our initial comments on various sections where there is in some manner an effect on our members that we want to bring to your attention. Our comments focus on those areas of the bill where our preliminary review has resulted in the identification of an issue that is perhaps more than merely a technical suggestion. We appreciate this chance to share these comments with you and we look forward to continuing to work with you and all of the current sponsors of H.R. 2622 to ensure that the FCRA retains the careful balance of interests that has made it such a success story for consumers.

<u>Title II – Section 202 – Fraud alerts.</u>

This provision would require that consumer reporting agencies place a fraud alert on a consumer's file when requested by the consumer and when the consumer "has a good faith suspicion" that he or she is or may become a victim of identity theft or a similar crime. CDIA's members, which operate as nationwide consumer reporting agencie,s have added fraud alerts to consumer's files since the mid-nineties. Since March of 2000, our members went further in their commitment to ensure the effectiveness of such alerts.[3] We do believe that if a duty to include fraud alert's in the files of consumers is to be codified into law, that there should be a timeframe associated with the alert. Generally our members maintain alerts for no less than 90 days from the date on which the alert was first placed in the consumer's file. The placement of the alert is based on the consumer's assertion that he or she has a "…good faith suspicion…" that he or she has been or is about to become a victim of fraud. The consumer reporting agency should be allowed, when it deems it necessary, to seek to verify the consumer's suspicion by requesting some documentary evidence of the consumer's assertion which gives rise to the request for placement of a fraud alert. CDIA members believe that the duties imposed on those who receive fraud alerts may be too restrictive in light of the fact that the alert is placed not just where there is absolute confirmation of a consumer's status as a victim but even where the consumer "….asserts in good faith a suspicion that the consumer…is about to become a victim of fraud." On the whole our members believe that fraud alerts can be a tool for helping to prevent identity theft and we look forward to working with the Committee to iron out the details of this proposal.

<u>Title II – Sec. 204 – Summary of rights of identity theft victims.</u>

This provision suggests that consumer reporting agencies deliver a summary of consumer rights related to identity theft found in various consumer credit protection laws. Our members do deliver a notice of consumer rights today under FCRA. This notice goes to every consumer who requests a copy of his or her file. The Federal Trade Commission has developed a model notice for general use by all types of consumer reporting agencies and if the FCRA changes due to the enactment of H.R. 2622, our members would adjust the consumer rights notice to include new

[3] See CDIA's March 14, 2000 news release on their website at www.cdiaonline.org under the "media" button on the homepage.

provisions of the FCRA that relate a consumer's rights relative to identity fraud. The CDIA's members are willing to deliver a notice that explains a consumer's rights as a victim of identity theft under FCRA and with respect to a CRA's practices. Our members are very concerned about the sheer length and complexity of the notice suggested by the bill's current language. CDIA's call center personnel will not be able to answer questions about laws that do not relate to the duties of consumer reporting agencies. If such a lengthy notice is to be delivered, then it should be delivered by the Federal Trade Commission's ID Theft Clearinghouse, where a consumer can then ask FTC assistance personnel questions about a range of consumer protection laws that govern the practices of card issuers, depository institutions, etc.

<u>Title II – Sec. 205 – Blocking of information resulting from identity theft.</u>

This provision would require a consumer reporting agency to block items of information identified by the consumer. Since October 9, 2001 the CDIA's nationwide consumer reporting agency members have been on record that such a practice is appropriate when they notified the Federal Trade Commission of their new nationwide initiative to allow any consumer who is a victim of identity theft to request the removal of fraudulent data where he/she has a police report which validates the claim. Following are the comments of J. Howard Beales, III, Director of the FTC's Bureau of Consumer Protection, regarding our members' program.

> "Another collaborative effort with tremendous promise is your new police report initiative. Through this program, the three agencies have agreed to block any credit line when they receive from the consumer a copy of the police report documenting the identity theft. And, last year the IACP passed a resolution encouraging local law enforcement to issue police reports to ID theft victims.[4] We're doing our part too, developing a training

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4 International Association of Chiefs of Police, *Curbing Identity Theft*, (Nov. 15, 2000) available at http://www.theiacp.org/leg_policy/Resolutions/resolutions2000.htm#idtheft

> video with IACP to encourage the police to issue the reports. I appreciate that certain consumer-based initiatives require you to balance accuracy issues – knowing that the consumer's report contains all relevant credit information, including derogatory reports – against customer service. From my perspective, your police report initiative strikes just the right balance. You have an assurance of the consumer's good faith, evidenced through the official police report, and the consumer will be untouched by the false negative information."

CDIA's members have technical issues that need to be addressed with this language and we look forward to working with the you, your staff and the sponsors on this provision.

<u>Title III – Sec. 301 – Coordination of consumer complaint investigations.</u>

This provision requires the FTC to promulgate rules to ensure the exchange of information between consumer reporting agencies and the FTC, regarding victims of identity fraud. The intent of this provision is not unlike a new voluntary initiative of our members. As of April of this year, consumers can make a call to any of the CDIA's nationwide consumer reporting agency members and in doing so, their information will be transferred to all nationwide agencies.[5] Thus, while CDIA's members appear well positioned to work with the intent of this proposal, we strongly question the need for the FTC to be given rulemaking authority in this area. Note that in 1996 no regulatory powers were needed when the law was changed to require any consumer reporting agency that compiles and maintains files on a nationwide basis to jointly implement an automated systems for reinvestigations with other similar consumer reporting agencies.[6] Further, we urge the Committee to consider the implications of what appears to be a requirement that consumer reporting agencies report information about citizens to the FTC. There likely are consumers who are legitimate victims but who still do not wish to have personal

[5] See CDIA's April 16, 2003 news release on their website at www.cdiaonline.org under the "media" button on the homepage.

information reported to the government. As with other provisions previously discussed, we look forward to continuing to work with the Committee on our concerns.

Title IV – Sec. 401 – Reconciling Addresses

This provision would require consumer reporting agencies to notify a user (e.g., lender) of a consumer report where the address on the file of the consumer reporting agency is substantially different from that which is part of the identifying information submitted by the user which is ordering the file. The requirement also imposes a duty on consumer reporting agencies to "reconcile or resolve" address variances between the incoming inquiry address and that which is on the file.

Today lenders can identify that addresses in the consumer reporting agencies files can vary with the address submitted by the lender, sometimes substantially so. Under the USA Patriot Act Section 326 Account Opening Rules[7] issued by the Treasury, it appears that there is ample regulatory oversight for how various "red flags" may be included in the process of ensuring that a financial institution has a reasonable belief that it knows the true identity of each customer. We strongly believe that this risk-based approach which ensures the accuracy of data reported to consumer reporting agencies by lenders accomplishes the core goal of ensuring that address changes are considered in the context of account opening and the subsequent reporting of address changes to the consumer reporting agency by the data furnisher (e.g., lender). Further, H.R. 2622 does more to ensure that procedures are clear when it comes to identifying possible instances of fraud with the inclusion of Section 206, wherein the Federal banking agencies will

[6] 15 U.S.C. Sec. 1681i(a)(5)(D).

establish and maintain guidelines for identifying activities that may indicate the possible existence of identity theft.

Note that address changes, on their own, are not easily identified as being associated with identity fraud or other crimes. Over 40 million consumers move each year in this country and thus the vast majority of address changes are absolutely legitimate.[8] Further, the proposal appears to assume that addresses which are part of a request for a consumer report become part of that consumer's file. The means by which addresses are loaded into a consumer's file by the consumer reporting agency is via the information reported by lenders when they report payment history information and not via information that comes in with a request for a report made by a user with a permissible purpose. CDIA is concerned also because this provision applies this duty to a broad range of consumer reporting agencies which build their data bases on the basis of other data. This is the case, for example with check acceptance systems, where the primary identifier is the checking account number or routing number, not the address. We believe the intent of this provision, which is to ensure that address changes are considered, in the context of verifying the identity of a customer in a range of financial transactions is well-covered under current law and regulation and through the inclusion of Section 206 in this bill.

Title V – Sec. 501 – Free Reports Annually

This provision would require all consumer reporting agencies to provide one free file disclosure annually and upon request of the consumer. Our members oppose the inclusion of this provision

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[7] 31 CFR Part 103, RIN 1506-AA31, *Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks.*

[8] The U.S. Postal Service confirms that it receives approximately 40 million change-of-address requests in a 12-month period. U.S. Census data confirms a similar number of consumers moving each year.

because we believe that this issue of consumer access to their files was addressed successfully in the 1996 reform of the Fair Credit Reporting Act. Today a consumer has an absolute right of access to his or her file and to all information in that file. Any debate about cost operating as an impediment to consumers was removed when the law was amended in 1996 to ensure that the following populations of consumers with special needs were allowed access to a free file disclosure:

- Consumers who are unemployed and seeking employment
- Consumers who are on some form of public assistance.
- Consumers who have reason to suspect that they are victims of fraud.
- Consumers who are seeking employment and where the potential employer is considering adverse action.

The law was further clarified in 1996 to ensure that every consumer would receive a notice regarding the use of his or her consumer report where adverse action was contemplated or required by including for the first time a definition of the term "adverse action" in the Act.[9] When consumers receive a notice of adverse action they are entitle to a free disclosure of their file. Today, CDIA's members which operate as consumer reporting agencies that compile and maintain files on consumers on a nationwide basis issue in total approximately 16 million file disclosures per year. Nearly ninety five percent of those file disclosures were issued free of charge. Our members believe this is a strong indication that consumers are accessing their files and thus can exercise their rights.

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[9] 15 U.S.C. Sec. 1681a(k).

Our members also have specific concerns with the creation of a nationwide free file disclosure provision and following are those concerns:

Managing Nationwide Call Centers and Managing Compliance with FCRA - the requirements to issue disclosures, to provide toll free numbers and provide access to live personnel are all duties placed on consumer reporting agencies. The FTC's recent roll-out of their Do-Not-Call list is a good example of how difficult it is to manage call volumes. The FTC couldn't allow the entire country to have access to the toll free numbers for requesting registration of a telephone number, and initially considered breaking down the nation into as many as eight different segments. It was reported that by mid-morning on the first day, the FTC's website was so overloaded that it could not handle the volume of visitors. We believe the FTC experience is illustrative of the difficulty of managing call volumes and the FTC has no liability for failure to operate the system successfully, but by contract, consumer reporting agencies do under FCRA. A false e-mail, or nationwide media coverage could result in a flood of calls that would be so far out of the norm that our members' systems could not anticipate the volume or ramp up resources quickly enough to meet even the initial contact volumes, let alone consumers who might call back with a question about their files.

The Risk of Paying for Security Breaches by Others – CDIA testified earlier this year that a single security breach caused our nationwide consumer reporting agency members to incur costs estimated at approximately $1.5 million per company. Congress and state legislatures are already contemplating requiring business of all types to issue notices to consumers where security breaches occur. Such a law just became effective in California. This means potentially tens of millions[10] of notices going out to consumers who will often be directed to call the nationwide consumer reporting agencies to request disclosures of files. CDIA members will end up handling much of the downstream costs of these breaches and nothing in law protects our members from this exposure.

Increased Fraudulent Attempts to Access File Disclosures or Mail Fraud – CDIA's members constantly strive to ensure that every file disclosure request is properly vetted before the file is delivered. However, we believe that most law enforcement agencies will agree that removing even the minor cost of $9, now allows criminals with the intent to access file disclosures to do so without having to pay and thus the incidence of fraudulent attempts to access consumer files may rise. Organized crime rings may not be willing to pay a fee, but they may well be willing to attempt access if it is free.

Increased Costs Pose Tremendous Burdens for CDIA Members – Our members are in the process of considering a range of factors that must be included in the estimates of costs, and as we have final information, we'll ensure that this is reported to the Committee. Some simple math helps illustrate the risks. If a nationwide consumer reporting agency maintains approximately 200 million files and ten percent of these files are accessed free of charge by consumers per year the agency must handle 20 million disclosures. Today, if you evenly divide the 16 million file disclosures issued by the three nationwide systems this works out to 5.3

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[10] CDIA identified the following breaches of personal information within approximately a 12 months. They add up to more than 10 million individuals:

University of TX - 50,000 names

TriWest - 500,000 families (over 750,000 individuals)

DPI - 8-10 million credit card account numbers hacked.

California Employment Database - 200,000 names stolen million disclosures per year. 20 million disclosures is nearly a four-fold increase in disclosures and the costs associated with these disclosures.

For the reasons stated above, our members remain opposed to this provision of the bill and we look forward to continuing a dialogue on this issue.

<u>Title V – Sec. 502 – Summary of credit scores.</u>

The proposal requires that where a credit score is in the file, that the consumer reporting agency that issues a file disclosure, must do so with a summary of how any individual credit score of the consumer was derived and how such score might be improved. Our members provide the following comments on this provision:

<u>The market has responded for consumers</u> – There seems to be a perception that consumers cannot see scores if they so choose today. In fact, many consumers today review their scores through a variety of websites which provide scores, descriptions of how the scores operate and which factors were most influential (both positively and negatively) on the consumer's particular score. Prices vary for such services, but our members believe that the market place has done what most hope will happen whenever a consumer need exists; it has met the need and competition keeps these services innovating to ensure that consumers receive the best advice that can be delivered. Our members believe that the transparency called for with regard to scores is being met by the many services available for consumers. We would urge Congress, on this basis alone, to reconsider a provision of law addressing scores, when the marketplace appears to have positioned itself to meet the need.

The “single score” myth - One of the hopes that seems to be driving the effort to seek legislation surrounding scores appears to be based on the premise that there is a single score in the market place that is used by everyone. In fact there are likely thousands of scores used by various types of lenders and insurers and a consumer reporting agency is not the single source for all scores nor can it ever be in a position of knowing which score a consumer would like to see. Further, while consumer reporting agencies do compete to develop tools that help lenders make decisions, they don’t necessarily own the score that may be used in a particular transaction and cannot purchase that score from another for disclosure to a consumer, if this were required, or disclose the proprietary intellectual property of a particular lender or insurer.

Our members don’t disagree that educating consumers about the general principals that underlie score-based decisions is helpful and important, but as the use of score-based decision tools expands, consumers will be better served by making their own choices about how to be educated via the marketplace, and in particular by ensuring that they have a good, sound understanding of how to manage their financial lives.

Conclusion:

In summary, Mr. Chairman, we applaud the reauthorization of the uniform, national standards and making these standards permanent. For all the reasons previously stated, this is essential. We have provided what we hope are constructive comments on various provisions of the bill and why we are compelled to oppose certain provisions as they are currently drafted. We have done this with the intention of committing ourselves to continued dialogue with this Committee, the sponsors and the Congress. On behalf of our members, we again thank you for holding this hearing and extending to us an invitation to testify. I would be happy to answer any questions.