

**WRITTEN STATEMENT OF JOHN A. FORD  
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ATLANTA, GEORGIA**

**BEFORE THE**

**HOUSE COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON  
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT  
SPENCER BACHUS, CHAIRMAN**

**JUNE 4, 2003 HEARING:  
“FAIR CREDIT REPORTING ACT:  
HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY”**

**I. INTRODUCTION**

Mr. Chairman, ranking member Sanders, and members of the Subcommittee, I am John Ford, Chief Privacy Officer for Equifax. I commend you, Mr. Chairman, and the members of your subcommittee and its excellent staff for the thoughtful and thorough manner in which your Committee is reviewing uniform national standards under the Fair Credit Reporting Act (FCRA).

In this statement, I begin with a brief description of Equifax, our core business, and our commitment to fair and ethical information use and to protecting consumer privacy. I then provide an overview of how the consumer reporting system operates and how that system benefits the national economy, our business customers, and individual

consumers. Next, I discuss the many consumer protections that the FCRA provides for consumers, as it was originally enacted and as it was amended in 1996. Finally, I discuss the importance of permanently retaining the uniform national standards in § 624 of the FCRA.

## **II. ABOUT EQUIFAX**

At the outset, I think it is helpful to understand who and what Equifax is and our philosophy regarding information management and treating consumers as valuable customers. Founded in 1899, Equifax is a publicly-traded corporation and the oldest and largest of the companies that provide consumer information for credit and other risk assessment decisions. We are a catalyst for commerce by helping business and consumers do business together. For 104 years, we have provided reliable information, products and services to our customers so that they, in turn, can make reliable and profitable risk decisions.

For consumers, we also have a comprehensive suite of credit solutions to help them better manage their fiscal health and to combat identity theft.<sup>1</sup> Equifax treats consumers as valued customers; in fact, one of our fundamental operating principles is

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<sup>1</sup> For additional information about Equifax products and services please see Attachment A.

that by enlightening, enabling and empowering consumers to better manage their credit health, consumers win, business wins, and our economy wins. Our core competencies are collecting, protecting and effectively managing information to be used primarily for decisioning purposes. As an example of the sheer size and complexity of our credit reporting business, our credit database contains files on 210 million adult consumers, and we make more than 1.6 billion updates to those files monthly.

Our reputation as a responsible steward of information has been earned by our solid performance in delivering reliable information to consumers, to government agencies, and to our business customers, while protecting the privacy of sensitive information. We believe we do it very well.

Our reputation is very important to us, and we work diligently to continue to earn credibility and consumer trust. What we call “The Equifax Difference” embodies our corporate culture – who we are, what we do, how well we do it, and what we stand for. This difference reflects itself – not just in the quality of our products and services, or in our precise data usage, or best practices privacy policy – but in the attitude, integrity, professionalism and passion of our people and in the way we demonstrate the courage of our convictions.

At Equifax, we believe that responsible management of information and protecting consumer information privacy are key catalysts of consumer trust – a critical component to our nation’s economic growth. More than 15 years ago, Equifax was one of

the first companies to develop and adopt a meaningful privacy policy – a policy that acknowledged consumer rights regarding the information we maintained about them. At the risk of sounding flippant, we were privacy before privacy was cool.

The consumer rights portion of our privacy policy has evolved into a policy that embraces data use ethics, the highest integrity in our business practices, and a stringent set of fair information principles. These principles include providing consumers with appropriate: NOTICE, CHOICE, ACCESS, SECURITY, and ACCOUNTABILITY regarding our information collection and use, both online and offline. Our adherence to these fair information principles empowers consumers to have more control over how information about them is used.

Equifax also has been a corporate privacy pioneer in other ways. For example, with the continued consultancy of renowned privacy expert Dr. Alan F. Westin, since 1988 we have conducted privacy audits of our information products and services to ensure that they meet our privacy standards before going to market. Beginning in 1990, we commissioned a series of public opinion polls to gauge consumer privacy sentiments on a wide variety of privacy issues. In addition, Equifax was one of the first ten companies in the world (and the first in our industry) to qualify for the Better Business Bureau's online privacy seal. We also participate actively in self-regulatory

organizations and coalitions such as the Online Privacy Alliance, Privacy & American Business, the Consumer Data Industry Association, and the Coalition for Sensible Public Records Access. Finally, we actively engage in public policy dialogue at the federal and state level.

Our bottom line is really very simple – as a steward of sensitive financial information about virtually every adult American – Equifax must adhere to high standards for protecting privacy; for accuracy, completeness, and timeliness; and for customer service. Anything else is not just unsatisfactory; it is a threat to our very mission and success.

### **III. THE STRUCTURE AND IMPORTANCE OF THE CONSUMER REPORTING INDUSTRY**

#### **A. The Structure of the Consumer Reporting System**

##### **1. Evolution and Competitive Nature of the Industry**

In 1970, the credit reporting industry comprised more than 2500 independent, local and regional credit bureaus across the country. As the customer base for the industry began to grow in size, expand geographically, and evolve from local to regional to national organizations, so too did the industry begin to adapt to meet the demands of its business customers and the needs of an increasingly mobile population. This

evolution of the industry was characterized by consolidation and computerization – moving from local or retail merchant credit bureaus using paper and pencil to capture consumer payment data to today, where there are three nationwide credit reporting companies, offering services to businesses and consumers online and offline. And these three companies engage in real competition – competing on price, on data quality and depth of information, on value-added services designed to make the risk assessment process much more efficient and reliable and on direct-to-consumer services. This competition works to help promote a robust, healthy marketplace and to provide consumers with appropriate protections, knowledge, and convenient and timely access to the goods and services they want.

## **2. Information Flows in the Consumer Reporting System**

Next, a brief discussion of the flow of credit data. It is important to understand that inherent in the U.S. credit reporting system is the **voluntary** nature of reporting by data furnishers who report positive and negative consumer credit data. Banks, retailers, and other information furnishers are not required to participate in the system, but most do because they understand the benefits to doing so, both for their business and for the ability to satisfy their customers. It is the voluntary nature of this system that drives the need for balance when it comes to regulation. Marketplace incentives to report data voluntarily can be offset or overshadowed by overly aggressive regulatory, statutory or

case law incentives. Maintaining a “full file” system that is complete and current is crucial to our economy. Ultimately it is this type of “full-file” credit reporting system allows lenders to obtain a reliable, comprehensive and objective picture of a consumer’s credit history, whether that consumer is a current customer or a prospective customer, local resident or not, known personally or not.

Credit reporting agencies receive from data furnishers approximately 2 billion data elements on about 1.5 billion accounts for more than 210 million consumer files each month and issue close to 3 million consumer credit reports every day. We only do business with reputable companies whose business practices we closely scrutinize and validate before qualifying them as legitimate subscribers with a permissible purpose.

The typical data flow process is straightforward. Consumers provide requisite application data to businesses who then request a credit report for use in decision making. Once the consumer is approved and an account has been opened, the credit granter has a choice. It may provide the bill paying history of the consumer to none or one or more of the nation’s credit reporting companies. These data are generally on a monthly basis. As credit reporting companies receive this information from data furnishers, they update each consumer file accordingly. Credit reporting agencies and credit granters have developed format and content standards for the reporting of credit information. These data processing standards help ensure that information is reported and updated efficiently

and accurately. Credit reporting agencies also maintain well-trained data acquisition and auditing teams to provide additional data quality review and foster accurate updating of consumer files.

### **3. Content of Consumer Reports**

An important ingredient to the debate about national standards is an understanding of just what is and is not contained in a credit report. Simply stated, a credit report contains several categories of information:

- Identification Section: information such as name, address, date of birth, and Social Security number.
- Inquiry Section: identifies the organizations that have requested a credit report, as well as a listing of promotional inquiries, portfolio review inquiries or internal audit inquiries. Inquiries related to prescreening and account review and other “audit-related” inquiries are only listed on the credit disclosure to the consumer, not to businesses. Further, those inquiries are NOT included in credit score calculations.
- Public Record Section: lists such public record entries as bankruptcies, judgments, and liens. For Equifax, it does not include criminal history data.
- Trade Line Section: A trade line is an industry term that refers to the set of data provided by a data furnisher (e.g., creditor) about a particular account and which is then reflected on a consumer’s file. Trade lines are essentially catalogues of the bill paying history of consumers on their various credit accounts such as credit



cards, installment loans, mortgage loans, student loans, etc. It does not contain, nor does Equifax know, the items a consumer purchases as part of a credit card transaction nor does it contain check writing transaction data. Also, the credit report does not contain any medical history information.

- Collection Account Section: contains information provided by collections companies on the amount the consumer owes on financial obligations.

#### **4. Accuracy of Consumer Reports**

We at Equifax have a critical interest in the accuracy and integrity of our credit database. So do our competitors. And so do lenders whose ability to make informed decisions depends on reliable data. If we provide inaccurate and unreliable data, we risk losing business to our competitors. As with any industry, competition drives product quality and service levels and is a key to our industry's success in a range of markets. As a publicly traded company, we have financial performance obligations to our stockholders, quality data delivery obligations to our customers, and responsibilities to consumers that we must meet to assure success. As a company that takes pride in its performance and in maintaining a reputation for trustworthiness with the public, we also embrace a commitment for fair and ethical data use. The nature of the competition within the credit reporting industry contributes to increased data accuracy.

It is a testament to the extent of accuracy and reliability in the U.S. credit reporting system that lenders are willing to risk their capital with only an application and a copy of a consumers' credit report. Long gone are the days when a loan required a face-to-face meeting with a lender and days-long decision making processes. In fact, companies are able to so finely tune risk that reliable credit decisions are often made in a matter of minutes.

In discussing credit report accuracy, it is vital to understand the distinctions between:

- Actual errors versus updates
- Cosmetic inaccuracies versus inaccuracies critical to the risk decision
- Anecdotal versus scientific research

Errors versus Updates:

In the media and elsewhere it has been suggested if credit reports on the same consumer from the three national credit reporting companies do not all have exactly the same data, then an error has occurred. Not so. These are simply differences, not errors. Many differences are accounted for because not all lenders report to all three companies. The top 100 lenders all consistently report data to the credit reporting system; however, some small or local or regional lenders do not contribute to each of the credit reporting companies. In addition, loans extended by employers, insurance companies, margin loans on brokerage accounts, and foreign entities are typically not reported to all three

credit reporting agencies. For this reason some credit reports may not contain certain information on certain credit accounts; however, it is incorrect to conclude that the report itself is “inaccurate.”

Also, for quality control reasons, the timing of file updates may vary slightly among the three companies, making the “error” simply a matter of difference in the timing of the file update. For example, the credit report of a woman who recently married and changed her name will reflect the maiden name until some point in the future when the consumer applies for credit or notifies her creditors of her name change and the business reports the new name to the credit reporting company. This is not an error but an update issue. Similar timing issues affecting updates occur in the reporting of judgments being satisfied, liens being paid, etc. The important point here is that, contrary to what some critics have argued, differences in credit report content are not necessarily errors.

#### Cosmetic “Errors” versus Critical Errors:

Some consumer group reports include as errors even inconsequential variances in how data is reported and some leave the reader with the implication that these variances are very consequential. The average consumer has more than ten active credit accounts. Consumers can use a nickname on one application for credit and a full name on another and this will lead to some variances in data on that consumer’s file. A single transposed digit in a consumer’s address can result from poor handwriting or a mistake in entering the data in the first place. This will lead to one lender reporting a slight variance in address data, but there may be nine other lenders reporting the precise home address of the consumer. Where a consumer doesn’t immediately change an address for a credit

card bill, the old address will still be reported by the lender until the new address change has been made. Do variances in addresses or names lead to consequences? We don't believe this is the case. If a credit report has a transposed digit or letter in the address or a missing middle initial, for example, these are cosmetic errors, data that is not critical to the risk decision. This is not to say that this information should not be corrected or updated, but claims by some critics about extraordinarily high inaccuracies in credit reports deflate when one understands the insignificant role such cosmetic data plays in risk decisions. The claims of such incredibly high error rates are simply and totally disproportionate to the reality being experienced by credit granters and consumers in the marketplace every day.

Anecdotal versus Scientific Research:

Said another way, error rates of the scope touted by anecdotal, non-scientific research simply are not supported by the millions of highly efficient and predictive risk assessment decisions made in the market place every day. To generalize from sample sizes of 50 or 150 to a population of 210 million is to commit egregious errors in logic. Those error rates are certainly not supported by the low level of complaints to the FTC or to state attorneys general. In fact, the only scientific study of credit report accuracy and

reliability was conducted in 1991.<sup>2</sup> Based on scientific sampling involving more than 15,000 actual credit reports, the study revealed that, depending upon the various samples used in the study, risk decision changes ranged from less than 0.2% to 3.0%.

And to begin to sum up this discussion of credit report accuracy, let me assure you that Equifax and our industry care very much about the integrity and reliability of our databases. We have invested millions of dollars in advanced technology and in skilled employees with an objective of putting the right information into the right file 100% of the time. Are we making great progress? Absolutely yes. Are we perfect? Absolutely not. In 1970, Congress recognized the complexity of the data management process and the billions of data elements involved and included in the FCRA a process that provides consumers and business and credit reporting agencies an efficient and straightforward capability to address errors and updates in a timely and fair way.

Consumers are provided the opportunity to know the information in their credit file. The FCRA takes this into account and gives consumers the means to be pro-active in managing their credit file. The act provides consumers with important tools in this area: 1) the right to see the contents of the their consumer file; 2) the right to immediate notification if information contained in the report led to an adverse action by the user of the report as well as the right to receive a free disclosure of their credit file; 3) the right to dispute inaccurate or incomplete information with the credit reporting agency (and by

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<sup>2</sup> Credit Report Reliability Study (Feb. 4, 1992) conducted by the ACB Consumer Information Foundation.

extension with the furnisher of the data) and to receive a response within 30 days; and 4) the consumer has the right to have inaccurate information corrected or deleted. In short, the FCRA gives consumers the ability to ensure that their consumer files are accurate.

## **B. The Consumer Reporting System Benefits Consumers**

The U.S. credit reporting system and standard of living are the envy of the world. Through the information processes used by the credit industry, millions of consumers every day are able to purchase a car over their lunch hour, pre-qualify for a mortgage loan in less than 15 minutes, and buy on credit other products and services almost instantaneously. Congress has long recognized that the consumer reporting industry plays “a vital role in assembling and evaluating consumer credit and other information on consumers” and that the “banking system is dependent fair and accurate credit reporting.”<sup>3</sup> The fact is that the US national credit reporting system makes consumer credit more widely available and less costly for all Americans.

Federal Reserve Chairman Alan Greenspan has observed that “it’s not that long ago when going into a bank and trying to get a consumer loan was just never conceived as an appropriate thing to do. You went to a pawn broker. You didn’t go to a bank. They didn’t make consumer loans. That has changed, and it...has a dramatic impact, I think, on consumers and households and their access to credit in this country at

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<sup>3</sup> 15 U.S.C. § 1681(a)(1),(3).

reasonable rates. [The credit economy] cannot function without ...the credit histories of individual borrowers. And I should certainly hope that it is maintained.”<sup>4</sup>

FTC Chairman Timothy Muris has called the timely access to credit “a miracle [that] is only possible because of our [nation’s] credit reporting system.”<sup>5</sup>

The availability of low cost, convenient credit is directly related to the availability of complete and reliable credit histories, regulated by the national uniform standard currently provided by the federal FCRA. The modern credit system benefits individual consumers, as well as the economy as a whole in a number of quantitative and qualitative ways:

- Compared to other countries, mortgage interest rates in the US are lower by up to 200 basis points (2%) because of the reliability of consumer credit information provided by the credit reporting industry.<sup>6</sup>
- Availability of single family housing ownership is at an all time high.<sup>7</sup>

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<sup>4</sup> Federal Reserve Chairman Alan Greenspan, Before the House Committee on Financial Services, Hearing to Receive the Testimony of the Chairman of the Federal Reserve Board of Governors on Monetary Policy and the State of the Economy, (Feb. 12, 2003) (Response to Question from Rep. Spencer Bachus (R-AL)).

<sup>5</sup> Timothy J. Muris, “Protecting Consumers’ Privacy: 2002 and Beyond,” Remarks at the Privacy 2001 Conference (Cleveland, Ohio: Oct. 4, 2001).

<sup>6</sup> Walter Kitchenman, “US Credit Reporting: Perceived Benefits Outweigh Privacy Concerns” (The Tower Group, 1999), p. 7.

<sup>7</sup> Department of Commerce, Bureau of the Census, “Census Bureau Reports on Residential Vacancies and Home Ownership,” (Apr. 24, 2003) (Table 4).

- Credit reports are an EZ-Pass on the national credit highway. Transactions that once typically took days can now be accomplished in a matter of minutes. 84% of consumers, for example, obtain an auto loan within 1 hour; 23% in under 10 minutes. Most retailers can provide consumers with a credit card in less than 2 minutes.<sup>8</sup>
- Two thirds of the U.S. economy is fueled by consumer credit.<sup>9</sup>
- Consumer credit is wide-spread:
  - 67% of homeowners hold mortgages;
  - 73% of consumers hold general purpose credit cards; and
  - 33% of consumers hold auto loans or leases.<sup>10</sup>
- Credit reports help credit grantors pierce the “fog of uncertainty,” keeping delinquencies down. Only 2.8% of mortgages are delinquent over 30 days, while 4.6% of credit cards are delinquent more than 30 days.<sup>11</sup>

#### **IV. THE FCRA PROVIDES IMPORTANT CONSUMER PROTECTIONS**

Congress passed the FCRA in 1970 to legally mandate confidentiality, relevancy, and accuracy standards for the consumer reporting industry and to authorize the use of credit reports for credit and other consumer and household purposes.<sup>12</sup> In order to protect the confidentiality of covered information about a consumer’s credit worthiness, credit

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<sup>8</sup> Fred H. Cate, Robert E. Litan, et. al., “Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining The Balance” AEI-Brookings Joint Center For Regulatory Studies (March 2003) at p. 13.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at p. 8.

<sup>11</sup> *Id.* at p. 10.

<sup>12</sup> *See*, 15 U.S.C. § 1681(b).



standing, credit capacity, character, general reputation, personal characteristics or mode of living, the original FCRA required (and still requires) consumer reporting agencies to disclose such information only if the recipient has one of the permissible purposes enumerated in the statute. The 1970 FCRA also established relevancy requirements for the content of consumer reports, requiring that consumer reporting agencies exclude information from their reports if the event that gave rise to the information predated the report by a specified number of years (which varied depending upon the type of information involved). The 1970 FCRA also addressed accuracy and access issues, imposing accuracy obligations on consumer reporting agencies; requiring report users to notify consumers if the report resulted in an adverse credit action against the consumer; and established procedures by which consumers could obtain a copy of their consumer report and seek corrections of inaccurate data.

In the late 1980s, Congress began considering and deliberating possible FCRA reforms necessary to reflect the increasingly national nature of the financial system and other societal and technological changes that had occurred since 1970. These efforts culminated in the adoption of an extensive FCRA reform package in 1996. As a result of the 1996 amendments, for the first time:

- Furnishers of information were obligated to reinvestigate and correct information they submitted to consumer reporting agencies;
- Notices were required for all adverse actions (which was re-defined more broadly than in the 1970 act) based in whole or in part on the contents of a consumer report;

- The fee a consumer could be charged to obtain a consumer report was capped;
- Consumers were guaranteed the right to opt-out of the use of their consumer reports for firm offers of credit or insurance (prescreening);
- Special protections were instituted when consumer reports are used for employment purposes; and
- Medical information could only be included in a consumer report with the consent of the consumer to whom the information pertained.<sup>13</sup>

Having greatly strengthened the consumer protections afforded by the FCRA, Congress also elected to establish uniform national standards by preempting state authority with respect to carefully selected FCRA provisions.

## **V. THE IMPORTANCE OF UNIFORM NATIONAL STANDARDS**

### **A. The Scope of the Uniform National Standards at Issue**

Key provisions of the FCRA currently set to expire at the end of this year apply to a limited but critical number of provisions of the act. These provisions establish uniform national standards regarding three key goals that Congress addressed in the 1996 FCRA amendments:

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<sup>13</sup> For additional information about the FCRA's consumer protections, please see Attachment B.

- Encouraging furnishers of information to continue voluntarily providing information and other provisions to promote a full and complete credit file;<sup>14</sup>
- Assuring uniformity in notices and summaries of consumer rights for consumer clarity and convenience;<sup>15</sup> and
- Protecting provisions of the FCRA which promote the economy.<sup>16</sup>

In addition, the 1996 amendments made clear that state attorneys-general have the ability to enforce the FCRA's requirements in any court of competent jurisdiction.

## **B. Preservation of Uniform National Standards is Essential**

In Equifax's view, preservation of national standards in these areas is essential. Consumer reports are an integral part of the U.S. credit system, a national activity essential to efficient interstate commerce. This is truer than ever with the growth of E-commerce. Permanent extension of these provisions would not eliminate any existing consumer protections or rights and would preserve a strong privacy and consumer

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<sup>14</sup> In support of this goal, Congress preempted state activity regarding:

- The time periods for retaining information in consumer reports;
- The time periods for reinvestigation by information furnishers; and
- Information furnisher liability for the accuracy of reported information.

<sup>15</sup> In support of this goal, Congress preempted state activity regarding:

- Uniform notice and free report when users take adverse action based on report;
- Uniform summary of consumer rights; and
- Uniform prescreen notices.

<sup>16</sup> In support of this goal, Congress preempted state activity regarding:

- Prescreening: Use of credit report information for purpose of making a firm offer of credit or insurance. Consumers have the right to opt-out of such use.
- Affiliate Sharing: Sharing of information among affiliates is also allowed by the FCRA. Consumers also have the right to opt-out of such affiliate sharing.

protection system that is working well. Many members of Congress worked diligently for more than 7 years to reach consensus by both parties for the 1996 amendments to the FCRA. Unless Congress acts, the national standards that are so beneficial to consumers and business will fade into the sunset at the end of this year.

Congress made a carefully considered judgment in 1996 that all of the provisions protected by Section 624 should be subject to preemption. The overall experience of the past seven years is that this judgment is still sound. There are no compelling reasons to allow national standards to lapse. All of the existing national standards are economically important to credit grantors and the credit reporting industry; contribute to the availability of cost-effective and convenient credit for consumers; and are equally appropriate in terms of preserving uniform national standards.

Excerpts from legislative history relative to the 1996 amendments to the FCRA reflect bipartisan support of national standards for credit reporting. For example, Senate Report No. 104-185 states that inclusion of the uniform national standard “recognizes the fact that credit reporting and credit granting are . . . national in scope and that a single set of Federal rules promotes operational efficiency for industry, and competitive prices for consumers.” Similarly, the statement of Senator Donald Riegle (D-MI), in 140 Cong. Rec. S5029 dated May 3, 1994, stated that the addition of the national uniform provision “reflects a reasonable compromise between the need for uniformity and the maintenance of effective consumer protection and credit reporting.” And as a final example, House Report Rep. No. 102-692 states, “In general, we agree that matters of a state and local

nature should be legislated at the state and local level. However . . . credit reporting companies operate on a nationwide basis. A uniform national standard as it relates to credit reporting will benefit consumers and will enhance the free flow of interstate commerce.”

These uniform national standards reflect the national nature of the consumer reporting system, the financial system, and consumer financial behavior. As noted earlier, the consumer reporting system in 1970 consisted primarily of thousands of small, local credit bureaus; while a few independent credit bureaus remain, most of the work of the consumer reporting system is performed by three national credit reporting agencies and their affiliates. Financial institutions offer their products and services on a national scope far beyond what could occur in 1970. Safely conducting online banking, online bill paying, online stock transactions, qualifying for credit cards and home mortgages over the Internet and all with national lenders operating on a national basis – none of these activities were possible in 1970, many not even possible in 1996.

Why else should the national standards prevail? Add to the lengthening list of reasons the fact that consumers are highly mobile and often have a presence in multiple states today. Forty-two million Americans move every year.<sup>17</sup> Six million Americans have second or vacation homes, many in a different state from their primary residence.<sup>18</sup> In addition, millions of Americans, including many in this area, live in one state but work in another state. In short, consumers have a multi-state presence; lenders have a multi-

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<sup>17</sup> Fred H. Cate, Robert E. Litan, et. al., “Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining The Balance” AEI-Brookings Joint Center For Regulatory Studies (March 2003) at p. 15.

state presence; and credit histories must reflect multi-state activity – and do so uniformly so as not to disadvantage consumers.

The view that preservation of key national standards under FCRA is vitally important is held by many. Federal Reserve Board Chairman Greenspan, for example, stated that he “would support making permanent the provision currently in the Fair Credit Reporting Act that provides for uniform federal rules [...] and would not support allowing different state laws in this area.”<sup>19</sup> As you know, Mr. Chairman, Mr. Greenspan recently reiterated this point in response to a question raised during his testimony before the full Financial Services Committee. He said that he has “been in favor of national standards here for reasons which are technically required. If you have very significant differences state by state, it would be very hard to maintain as viable a system as we currently have.”<sup>20</sup>

Similarly, Treasury Secretary John Snow recognizes the importance of FCRA preemption: “It’s awfully important that we get this [preemption] done and we have a national standard,”<sup>21</sup> because “ready and quick access to low-cost credit” is supported by information sharing on a national basis.

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<sup>18</sup> *Id.*

<sup>19</sup> Federal Reserve Chairman Alan Greenspan, Before the House Committee on Financial Services, Hearing to Receive the Testimony of the Chairman of the Federal Reserve Board of Governors on Monetary Policy and the State of the Economy, (Feb. 12, 2003).

<sup>20</sup> Federal Reserve Chairman Alan Greenspan, Before the House Committee on Financial Services, Hearing on United States Monetary and Economic Policy (Apr. 30, 2003) (Response to Question from Rep. Paul Gillmor (R-OH)).

<sup>21</sup> Rob Blackwell, “Treasury Chief Backs Preemption Renewal,” *American Banker* (Mar. 12, 2003) (quoting Secretary of the Treasury John Snow).

Even some organizations usually hostile to federal preemption of state activity have voiced support of preserving FCRA preemption. In March 2003, the Conference of State Bank Supervisors, generally strongly opposed to federal preemption, voted to support renewal of FCRA preemption because it recognized the “importance to the economy” and “benefits to consumers” provided by preemption.<sup>22</sup>

International evidence also supports uniform national standards as well. On May 30, 2003, the European Commission issued its first assessment of the 1995 European Union Data Protection Directive.<sup>23</sup> In part of the report, the Commission stated that it is facing a major obstacle from EU member states themselves which have allowed “discrepancies” to creep into the Europe-wide data protection framework. Internal Market Commissioner Frits Bolkestein said, “Without the free movement of data across borders, Europe’s economy cannot work properly.”<sup>24</sup> Speculation is that these differences and discrepancies make information use more or less restrictive in different EU states. Such differences across the EU can easily translate into discordant protections for consumers, much like eliminating national credit reporting standards in the United States and leaving the field to the states could adversely affect American consumers in our national economy.

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<sup>22</sup> Statement by Neil Milner, CAE, President and CEO, Conference of Bank Supervisors (Mar. 17, 2003).

<sup>23</sup> European Commission, “Report From the Commission: First report on the implementation of the Data Protection Directive” (May 15, 2003).

<sup>24</sup> European Commission Press Release, “Data Protection: Commission report shows that EU law is achieving its main aims” (May 16, 2003) (quoting Internal Market Commissioner Frits Bolkestein).

If preemption lapses and state laws proliferate, determining which state laws apply in the event of a conflict would be difficult, if not impossible. Jurisdiction might turn on the location of the consumer reporting agency; the location of the consumer; the location of the information furnisher; or the location of the report user. Sorting out the jurisdictional issues would be expensive, resulting in higher costs for credit reports and higher costs for consumers. This simply would be an unnecessary level of cost, confusion and chaos that would serve neither consumers nor businesses well.

Uniformity is of vital importance to the credit industry where millions of transactions are posted from locations nationwide. If federal uniform standards were to lapse, it is possible that the most stringent state law from a large state would likely become the de facto national standard. In an effort to achieve as much uniformity as possible, to protect against legal liability and to reduce the costs of programming technology, consumer reporting agencies would likely apply the most stringent law from a large market to transactions nationwide. It makes little sense to have one or a few states dictate the future of a nationwide credit system which is important to every citizen of this country and not just those of a particular state. As a result, New York State or California, for example, might in effect set national consumer reporting policy rather than the Congress. Even further, given recent activity in California, without subsequent state preemption, national policy conceivably could be dictated by individual states or even smaller jurisdictions similar to San Mateo County. One wonders what logic the states would consider assuming they wanted to preclude a proliferation of city and county ordinances governing credit reporting?



Of course, even adopting the most stringent state rules may not preserve the national scope of the consumer reporting system, because new laws in some states may irreconcilably conflict with the laws of other states, in which case the consumer reporting system could become balkanized. The unfortunate result of such an inconsistent, possibly conflicting, patchwork quilt of laws has great potential to:

- Destabilize our economy, producing unnecessary economic disarray,
- Jeopardize consumer access to credit,
- Render impossible fair and objective credit reporting and risk assessment,
- Cause less credit extension, granted unevenly and unfairly,
- Generate higher costs for all, and
- Create a system where creditworthiness is a function of the state in which one lives rather than one's history of establishing good credit.

In closing, Mr. Chairman, I reiterate our position that retention of the current national standards in the FCRA is absolutely essential. The system works well and to open the door for 50 different state laws would only serve ultimately to harm consumers, our national economy, and balkanize a credit reporting system that is the envy of the world. It truly is difficult to see how any consumer protections in credit reporting would be enhanced by an inconsistent, perhaps conflicting and potentially confusing set of state and local rules to a degree sufficient to overcome the benefits of retaining our current

uniform national standards. Our banking system is national; our credit reporting system is national; our economy is national; our enforcement and interpretive framework via the Federal Trade Commission is national; so should our governing law be national.

And finally, I would also like to urge the Committee to exercise particular care in considering suggestions that the preservation of uniform national standards in the FCRA be tied to other public policy issues. There are any number of consumer reforms relating to the FCRA and other consumer protection statutes that have been suggested. Equifax certainly understands the diversity of views on reform and stands ready to participate in discussions of these issues. We are deeply concerned, however, about linking reforms to this discrete reauthorization issue. Many reform issues are complex and may require extensive congressional consideration. Congress took more than 7 years to fully consider deliberate, debate and ultimately agree to adopt the extensive package of FCRA reforms that were included in the 1996 amendments. These other public policy issues are important and deserve full assessment on their own merits, not tied to a fully functioning and well performing law whose preemption provisions are set to expire in less than seven months.

**ATTACHMENT A:  
EXAMPLES OF EQUIFAX CONSUMER PRODUCTS**

**Equifax Credit Watch™**

Monitor your credit and protect against identity theft plus access to your credit report and score. Equifax Credit Watch™ delivers the peace-of-mind you deserve - quickly and easily! Try it FREE for 30 days. Now with Identity Theft Insurance.

**3-in-1 Credit Report**

A comprehensive credit report containing credit information from all three of the major credit reporting agencies.

**Score Power®**

Wonder how lenders view you? Get your FICO® credit score - the score lenders use most to qualify you for credit, plus your current Equifax Credit Report™. Now featuring the FICO Score Simulator to show what factors most affect your score.

**Equifax Credit Report™**

Need a quick view of your report before walking into that car dealership? The Equifax Credit Report provides instant access to your credit information online.

**Auto Insurance Score**

Need insurance on your new car? See what many insurance companies see. Get your ChoicePoint Attract™ Auto Insurance Score and your Equifax Credit Report instantly!

**Homeowner Insurance Score**

Need insurance coverage for your new home? See what many insurance companies see. Get your ChoicePoint Attract™ Homeowner Insurance Score and your Equifax Credit Report instantly!

## ATTACHMENT B



### **FCRA CONSUMER PROTECTIONS**

The following summarizes the wide range of consumer protections included in the Fair Credit Reporting Act (FCRA). The protections outlined below do not include the many voluntary consumer protection initiatives that have been instituted by the consumer reporting industry since the enactment of the last major amendments to the Act in 1996.

***Definition of a “consumer report”:***

A consumer report is broadly defined by the FCRA as the communication of information by a consumer reporting agency bearing on the consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for certain limited purposes. This broad definition is a trigger for extensive disclosures and protections for consumers.

### **Can anyone see a consumer’s report?**

No. Consumer reports may be provided and used for only the following permissible purposes: credit transactions involving the extension of credit or collection of an existing account; account reviews (for safety and soundness); employment purposes; insurance underwriting; license eligibility; child support and other judicial inquiries. Users of consumer reports are required to identify themselves, certify the purposes for which the report is sought, and certify that it will be used for no other purposes. Criminal sanctions result from fraud and misuse.

Consumers can opt-out of prescreened offers of credit with a toll-free call.

The FCRA codified the practice of direct mail offers of credit and insurance in the 1996 amendments. However, recognizing consumers’ privacy interests, the Act provides consumers a single toll-free number for all nationwide credit reporting systems to opt-out of all prescreened offers of credit or insurance for either two years or permanently.

## **Can prospective employers use consumer reports without the consumer's knowledge?**

No. If an employer intends to use a consumer report for employment purposes, which is permitted by the FCRA, the employer must give notice of this intent. The consumer then must determine whether to provide permission to use his/her report.

## **How is data accuracy ensured?**

Credit reporting agencies are subject to liability unless they follow reasonable procedures to assure the maximum possible accuracy of the information regarding the consumer. Also, competitive marketplace forces among the consumer reporting agencies provide a strong institutional incentive to maximize accuracy.

### ***Consumers always have a right to their file.***

At any time, a consumer may obtain a copy of his or her entire file from an agency. The report must be provided at a low cost capped by the FCRA (at time of enactment, \$8.00, currently, based upon CPI indexing, approximately \$9.00). The agency must include in such disclosure a summary of the extensive consumer's rights under the FCRA. Consumers also always have a right to be notified of all persons who have requested a copy of their files.

## **What happens when a user of a report takes an adverse action based on the report?**

If any adverse action is taken with respect to a consumer based upon a consumer report (e.g., a denial of credit or employment), the person taking the action must notify the consumer and identify the name, address and toll-free telephone number of the agency that issued the report. If there is an adverse action, the consumer is entitled, upon request, to a free consumer report from the agency that issued the report.

## **What happens when a consumer feels information in a report is inaccurate?**

Any time a consumer disputes the accuracy of any information contained in the agency's file, the agency must within 30 days either reinvestigate the information free of charge and note the dispute in the file or delete the information from the file. The agency must give the consumer notice of the results of the investigation within 5 days of its conclusion. If the agency finds that the information is either inaccurate or not verifiable after the reinvestigation, it must delete the information from the file.

## **Who has enforcement authority over the FCRA?**

*The provisions of the FCRA are enforced vigorously by the Federal Trade Commission, federal banking regulators and the states attorneys general. Additionally, consumers have private rights of action against users, data furnishers and consumer reporting agencies for certain noncompliance with the Act (see below).*

Consumers have private rights of action against users, data furnishers and consumer reporting agencies?

*A consumer has a right to sue users, furnishers and reporting agencies under the FCRA for noncompliance with the Act if reinvestigation procedures are violated. While a plaintiff can recover actual damages (including non-economic damages) as well as attorneys' fees, he or she need not prove actual damages because the FCRA provides for liquidated damages in cases where there has been a violation.*