Testimony before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

Regarding

"Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System"

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Introduction and Summary

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting me to testify today regarding consumer credit reporting and the need for reform. I offer my testimony here on behalf of the low-income clients of the National Consumer Law Center.[1] NCLC has long advocated for stronger laws and regulation to ensure accuracy and fairness in the U.S. credit reporting system and to reform the Big Three credit bureaus (Equifax, Experian and TransUnion), known as the nationwide consumer reporting agencies ("CRAs") under the Fair Credit Reporting Act (FCRA).

NCLC has testified many times before Congress, including before this Committee, on the need for reform of the credit reporting system to address issues such as:

- unacceptable error rates and the myriad types of systemic inaccuracies in credit reports;
- the travesty of the automated dispute system used by the credit bureaus;
- the absurdity that credit reports and scores treats consumers who have fallen on hard times as irresponsible deadbeats;
- systemic racial disparities in credit scoring;
- the unfair impact of medical debt on credit reports; and
- the problems with use of credit reports for employment purposes.[2]

These are all topics we once again discuss, because none of them have been adequately addressed despite decades of efforts by federal and state regulators, state legislatures, and consumer advocates. Moreover, we added a new problem to address in 2017, the deficiencies in data security that led to the massive Equifax data breach, which also has not yet been adequately addressed.

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[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by abuses from credit reporting agencies from every part of the nation. It is from this vantage point that we supply these comments. *Fair Credit Reporting* (9th ed. 2017) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu.

[2] *See, e.g.*, An Overview of the Credit Reporting System: Hearing Before the Subcomm. on Fin. Inst. and Consumer Credit of the H. Comm. on Fin. Servs., 113th Congr. (2014) (testimony of Chi Chi Wu); Use of Credit Information beyond Lending: Issues and Reform Proposals: Hearing Before the Subcomm. on Fin. Inst. and Consumer Credit of the H. Comm. on Fin. Servs., 113th Congr. (2010) (testimony of Chi Chi Wu).

A. Too Big, Yet Failing

Credit reports and credit scores play a crucial role in consumers' lives. They determine a consumer's ability to obtain credit and the amount they have to pay for it; whether they can buy a house or rent an apartment; and whether and at what price they can obtain insurance. Credit reports and credit scores can even affect a consumer's ability to find a job. It is no exaggeration to say that a credit report can make or break a consumer's financial life.

Yet unacceptable levels of inaccuracies in credit reports persist, affecting tens of millions of Americans. These errors can cost a consumer thousands of dollars in higher-priced credit, or worse yet, result in the denial of a job, insurance coverage, an apartment rental, the ability to open a small business, or to buy a house.

As we know, the definitive Federal Trade Commission (FTC) study on credit reporting errors found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it.[3] With an estimated 208 million Americans in the credit reporting system,[4] this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering. Another indication of the massive accuracy problems is the fact that credit reporting and other consumer reporting problems are often the top category of complaints to the Consumer Financial Protection Bureau (CFPB), amounting to over 380,000 since July 2011.[5] Three-quarters of those complaints (or about 285,000) involve Equifax, Experian, or TransUnion.[6]

This level of errors and inaccuracy is unacceptable for an industry so important to the financial lives of Americans. We would not be satisfied with this failure rate for other critical industries – imagine if 5% of automobiles spontaneously exploded or 5% of airplanes fell out of the sky? Yet after 50 years of advocacy, legal changes, regulation, and enforcement, we are still faced with a fundamentally flawed credit reporting system. And it's not just the financial impact – these credit histories are our financial reputations. To paraphrase Shakespeare "Who steals my purse steals trash" but "he that filches from me my good name ... makes me poor indeed."[7]

To understand why the credit reporting system is so dysfunctional, we must always keep in mind two critical facts: (1) credit bureaus are entirely private companies that are publicly traded, which means their highest duty is to shareholder profit, not the public good or the American consumer; and (2) the paying clients of credit bureaus are not consumers, but the creditors and debt collectors who furnish or use the information contained in the credit bureaus' databases.

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[3] Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

[4] Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2017 (March 2018), at 13, http://bit.ly/2TiROLR.

[5] *Id.* at 8; Consumer Financial Protection Bureau, Complaint snapshot: Mortgage (January 2019), at 16-17, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortage_2019-01_liwsYNV.pdf (106,301 complaints from January 2018 to October 2018).

[6] Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2017 (March 2018), at 15, http://bit.ly/2TiROLR.

[7] Shakespeare, Othello.

The Equifax data breach in mid-2017 made many policymakers and Americans realize how consumers are the commodity of the credit bureaus, not the customers. Unlike most industries, we cannot vote with our feet when the credit bureaus fail to respond to our complaints and problems. Indeed, two years after the Equifax data breach, every single American consumer who wants credit still needs to deal with Equifax.

B. A Half Century Battle for Fair Treatment

Consumer advocates, members of Congress, state and federal regulators and private consumer attorneys have all been battling the credit bureaus for fair treatment for over 50 years. In 1968, Senator William Proxmire, often considered the father of the FCRA, explained the need to regulate the credit reporting industry as follows:

> The increasing volume of complaints makes it clear that some regulations are vitally necessary to insure that higher standards are observed with respect to the information in the files of commercial credit bureaus. I cite what I consider to be the three most important criteria for judging the quality of these standards. They are first, confidentiality; second, accuracy; and third, currency of information.
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> There are many varieties of inaccurate information, but I shall mention only two. One is the case of mistaken identity, where two individuals with the same names are confused, and the deserving individual is denied credit because of something done by the other person.[8]

Fifty years later, the inaccurate information cited by Senator Proxmire as a key problem affecting credit reports still harms too many consumers. We've had 50 years of legislative activity including the FCRA, 50 years of consumer advocacy, and decades of enforcement by federal regulators and state Attorneys General – yet the struggle for consumer justice in credit reporting is far from being achieved. Some of the systemic inaccuracies that pervade the credit reporting system include:

- **Mixed files.** This is the very error cited by Senator Proxmire in 1968, in which information belonging to one consumer is improperly reported in another consumer's credit report. Mixed files are caused by insufficient and overly loose matching criteria, in particularly the practice of matching data based on only 7 out of 9 digits of a Social Security number.
- **Furnisher errors.** Errors in credit reports are often caused by the creditors and debt collectors that provide data to the credit bureaus, known as "furnishers." Common errors include attributing an account or debt to the wrong consumer, incorrectly recording a payment history, or "re-aging" a stale debt past the seven years permitted by the FCRA.
- **Identity theft.** Credit bureaus and furnishers both bear a share of the blame for the fallout from identity theft. The credit bureaus' loose matching procedures contribute to the problem of identity theft, and their data breaches give thieves the tools needed to

[8] 114 Cong. Rec. 24,903 (1968).

commit fraud. When consumers try to fix the aftereffects of identity theft, furnishers sometimes fail to believe them and the credit bureaus take the furnishers' side.

- **Ignoring judgments and legal settlements.** The credit bureaus will retain negative information even after court judgments or legal settlements declare that a consumer doesn't owe a debt.
- **Being declared dead.** In one of the worst types of credit reporting errors, consumers are labeled as "deceased" when consumers are alive and breathing.

One of the key tools developed by Senator Proxmire and the FCRA to combat inaccuracies in credit reports is the consumer's right to dispute errors and the credit bureaus' obligation to conduct a reasonable investigation. Yet the FCRA-mandated dispute system has been transformed into a mockery, as documented by NCLC's 2009 report issued *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*. The report documented how the credit bureaus' entire role in dispute "investigation" was to convey disputes to furnishers through the highly automated e-OSCAR system. This system primarily using shorthand two- or three-digit codes, with, in a minority of instances, up to just a line or two of text. The credit bureaus used the same four or five codes over 80% of the time and failed to send supporting documentation submitted by consumers to furnishers, in clear violation of the FCRA. Workers did not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute.

In addition, our 2009 *Automated Injustice* report documented how credit bureaus are universally biased in favor of furnishers and against consumers in disputes. In a practice known as "parroting," credit bureaus blindly adopt the response of the furnisher without performing any independent review.

In preparation for this hearing, we have released a 10-year update to *Automated Justice*, which is attached to this testimony. Our report *Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors* documents how in the intervening decade, there has been some reform, but much more needs to be done. It describes how the CFPB began exercising supervision authority over the credit bureaus and started the difficult task of compelling them to reform their procedures and practices, while a coalition of over 30 state Attorneys General reached a breakthrough settlement with the credit bureaus in 2015, requiring an array of changes.

Despite these very laudable achievements, the credit bureaus and the furnishers that supply them with information still have serious problems in ensuring the accuracy of credit reports, and the dispute process remains ineffective and biased. *Automated Justice Redux* contains story after story from lawsuits and the CFPB Complaint Database to illustrate the frustrations and harms caused to consumers from these problems.

It is well past time for major structural changes to the credit reporting industry. Consumers have waited 50 years for meaningful, real reform. These reforms should include:

- **Right of appeal.** Congress should establish a right for consumers to appeal when they disagree about the results of a dispute. The appeal could either be to an independent unit in the credit bureau or to a regulator, such as the CFPB or FTC. If the unit is housed within a credit bureau, the unit must have direct and unfettered authority to make independent decisions and not be subject to any restrictions or incentives to process disputes quickly or in favor of furnishers.

- **Stricter matching criteria.** Congress should require the credit bureaus to use stricter matching criteria, including matching information based on all nine digits of the consumer's SSN or eight digits plus full name and address. At a minimum, the CFPB should be required to engage in a rulemaking to impose stricter requirements and generally establishing minimum procedures to ensure "maximum possible accuracy."
- **Sufficient resources and independent review.** Congress should clarify that the credit bureaus must devote sufficient resources and conduct independent analyses in disputes
- **Injunctive relief for consumers**. Congress should give consumers the right to seek injunctive relief compelling credit bureaus to fix a credit report.
- **Provide a public alternative.** Congress should establish a publicly owned alternative for credit reporting. While public agencies are far from perfect, at least they would be responsive to public pressure and government oversight. If commercial credit bureaus are not responsive to a consumer's dispute, the consumer would have the option of having a lender or other user rely on the publicly owned credit bureau. We note that Demos will be coming out with a report proposing a public credit reporting system in the near future.

We note that all but one of the above reforms were included in Chairwoman Waters's bill from the last Congress, the Comprehensive Credit Reporting Reform Act (CCRRA) of 2017, which we strongly supported.[9] We would support similar reforms in an updated CCRRA of 2019, which is currently in draft.

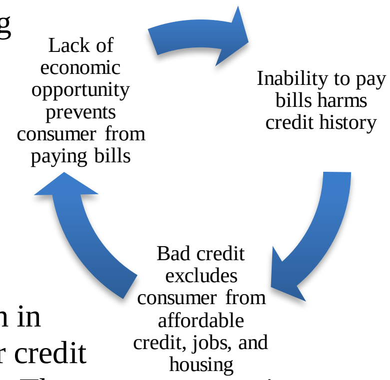
Finally, we note that while CFPB supervision has resulted in meaningful progress toward getting the credit bureaus to improve accuracy and their dispute systems, we are concerned that the Consumer Bureau's efforts may be dialed back because of the change in leadership of the CFPB. We urge Congress to use its oversight role to make sure there is no backsliding of the CFPB's efforts on this issue.

C. The Vicious Cycle Effect of Using the Past to Shape the Future

One of the fundamental flaws of the use of credit scores and credit reports is that it is overly blunt, lumping together negative events caused by very different circumstances. Credit reporting and scoring penalizes consumers who have fallen on hard times through no fault of their own, such as from illness, job loss, victims of fraud, or victims of natural disasters, treating them as irresponsible deadbeats. The most recent example is federal workers and employees of federal contractors affected by the recent government shutdown. Consumers may end up with impaired credit histories due to the financial trauma caused by extraordinary life events such as illness or natural disasters.

[9] *See* Letter supporting HR 3755, The Comprehensive Consumer Credit Reporting Reform Act of 2017, https://nclc.org/images/pdf/credit_reports/letter-ccra-waters-2017.pdf.

Indeed, a survey by Prudential Financial of federal employees, contractors, or their spouses found that 27% of them missed a mortgage or rent payment during the shutdown, 13% missed a student loan payment, and nearly half fell behind on bills in general.[10] Credit scores will assume that these delinquencies caused by losing a month's income due to political dysfunction should be treated the same, and have the same predictive value, as a default due to poor financial management by the consumer. Yet these are two fundamentally different circumstances, and likely two very different consumers.



More problematically, consumers who have had the bad luck of being affected by illness, natural disasters, fraud, or other extraordinary life events could have their economic lives significantly impaired for seven years (or ten years, in the case of bankruptcies). The credit reporting damage from the life event may shut them out of affordable credit markets, and could cause them to be denied jobs, apartment rentals, or pay hundreds of dollars more in auto insurance premiums. The cumulative impact of these financial calamities could strand a consumer economically for years after the event itself, which in turn makes it more difficult for them to pay their bills and repair their credit standing. This creates a vicious cycle in a consumer's economic life. These issues are discussed in depth in our report, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession* (2013).

This vicious cycle effect of using the past to judge the future is also responsible for the stunning racial disparities in credit scores. Study after study has found that African American and Latinx communities have lower credit scores as a group than whites - a list of studies is available in our policy brief, *Past Imperfect: How credit scores and other analytics "bake in" past discrimination and perpetuate it* (2016). Communities of color have lower credit scores as a group, not because they are somehow less responsible, but because credit histories are reflective of the racial economic divide and wealth gap in this country.

Communities of color have less income than white Americans, but it is the disparity in assets that is most stunning: African American families own less than seven cents for every dollar in wealth owned by white families, while Latinx households own less than eight cents for every dollar of white wealth.[11] With fewer assets to draw on, people of color – and the friends and family to whom they might turn – are far less able to cushion the blow of financial calamities. This lack of a cushion damages their credit histories, which in turn impedes their access to employment, housing (both rental and homeownership), insurance, and of course, affordable credit. The historic and current discrimination that is reflected in credit histories makes it more difficult for communities of color to move ahead.

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[10] Lananh Nguyen, How the Last Shutdown Affected Federal Workers' Household Finances, Bloomberg News, Feb. 12, 2019, www.bloomberg.com/news/articles/2019-02-12/workers-missed-bills-burned-savings-during-government-shutdown.

[11] Amy Traub, et al., Demos and Institute for Assets & Social Policy, Brandeis University, The Racial Wealth Gap: Why Policy Matters, Mar. 10, 2015, at 1, www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf.

We need a better way to judge consumers. We need a system that can distinguish between consumers who are truly irresponsible and those who simply fell on hard times. We need a system that can take into account extraordinary life events. And, we need a system that does not further widen the economic chasm between whites and communities of color.

Part of the solution is to require the credit bureaus be more precise and distinguish between consumers who have an extraordinary life event versus those who are truly irresponsible. Some proposals to do so would be:

- **Relief for federal workers/contractors and natural disaster victims.** The credit bureaus should be prohibited from reporting adverse information caused when the consumer is affected by economic dislocation on a mass scale, such as the recent government shutdown or a federal or state declared natural disaster. Congress must take action on this issue, as the credit bureaus have ignored or rejected requests by consumer and advocacy groups to voluntarily provide credit reporting relief to federal workers, federal contractors, and natural disaster victims.[12]

- **Help victims of abusive lending practices.** Consumers are unfairly penalized when they have been the victim of abusive practices, such as predatory mortgages or student loans resulting from for-profit school fraud. Adverse information related to these abuses should be removed from credit reports.

- **Limit reporting of medical debt.** Medical debt is one of the most unfair forms of negative information in credit reports, as discussed in Section F below, and the reforms discussed in that section would alleviate some of the harm for consumers who have experienced financial distress from illness and high healthcare bills.

The harm from negative credit reporting would also be reduced by prohibiting non-credit uses of credit information. As discussed in Section G, there is no good evidence for the use of credit reports in employment, and its use in insurance is also highly problematic.[13]

- **Limit non-credit uses of credit reports and scores.** Severely restrict the use of credit reporting information in employment and ban it for insurance.

Another part of the solution is to reduce the time limits that negative information can be reported. This would lessen the amount of time that adverse information can harm consumers. There is nothing special about the current seven-year time limit for negative information under

[12] *See* Letter urging credit bureaus to provide credit reporting relief to federal workers affected by the shutdown, Jan. 18, 2019; Letter urging credit bureaus to provide credit reporting relief to employees of federal contractors and small businesses affected by the shutdown, Jan. 25, 2019; Letter urging credit bureaus to provide credit reporting relief to consumers affected by natural disasters, Jan. 18, 2019. All letters available at https://www.nclc.org/issues/credit-reports.html => Credit Report Letters.

[13] For a discussion of why the use of credit scores in insurance is unfair, *see* Stephen Brobeck, et al., Consumer Federation of America, The Use of Credit Scores by Auto Insurers: Adverse Impacts on Low- and Moderate-Income Drivers (Dec. 2013), https://consumerfed.org/pdfs/useofcreditscoresbyautoinsurers_dec2013_cfa.pdf.

the FCRA. It is certainly not universal. For example, the time limit for negative information in Sweden – a country that is as economically vibrant and prosperous as the United States if not more so – is three years.[14]

- **Shorter time limits for negative information.** The FCRA should be amended to shorten the time periods for negative information to four years (seven years for bankruptcies).

All but the first of these reforms were included in the CCRRA introduced in the last session of Congress, which we supported. The first item, relief for federal workers and contractors, is the subject of the Chairwoman Waters's draft Protecting Innocent Consumers Affected by a Shutdown Act, which we also support.

D. Addressing credit invisibility: the devil is in the details

Another perplexing phenomenon of the credit reporting system is "credit invisibility." According to the CFPB, 26 million Americans (or about 1 in 10) do not have a credit history, and another 18 million are unscorable because their histories are too scant ("thin") or old.[15] The CFPB also found that African American, Latinx, and low-income consumers are more likely to have no credit history or to be unscorable.

Policymakers, advocates, and industry members have all proposed solutions to credit invisibility, including promoting the use of alternative sources of data. In turn, we have urged a cautious and thoughtful approach in developing solutions. As with so many aspects of credit and financial services, "the devil is in the details."

One of the most critical points in discussing alternative data is that the type of data matters. Some data shows promise, other data is a mixed bag, and some data is harmful enough that it should not be used.

- **Gas and electric utility data would likely be harmful**. Most gas and electric companies currently only report accounts on traditional credit reports when they are very seriously delinquent. "Full file" monthly reporting of gas and electric bill payment data has the potential to give millions of low-income consumers bad or worse credit scores by adding payments that are only 30 or 60 days late. Reporting of late payments could also undermine state consumer protections, such as prohibitions against wintertime shut offs for vulnerable consumers, including the elderly.

[14] Marieke Bos and Leonard Nakamura, Federal Reserve Bank of Philadelphia, Working Paper No. 12-19/R, Should Defaults Be Forgotten? Evidence from Quasi-Experimental Variation in Removal of Negative Consumer Credit Information, Apr. 2013, at 1, www.philadelphiafed.org/research-and-data/publications/working-papers/2012/wp12-29R.pdf.
[15] Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

For these reasons, NCLC and several dozen other consumer, utility rights, and other advocacy groups have consistently opposed the "Credit Access and Inclusion Act."[16] We also oppose that bill because it would preempt state consumer protection laws protecting the privacy of utility customers and hinder states from regulating tenant screening agencies.

- **Rental data could be promising with protections.** Traditionally, rental data is only reported when a tenant is so delinquent that the account is sent to a debt collector. Efforts to add positive data appear to be promising, especially those efforts that do not report late payments prior to the debt being sent to collections. Also, tenants who invoke their rights under state or local laws to withhold rent due to poor conditions should not be penalized.

- **Subprime credit information would hurt consumers**. Payday loans and other forms of subprime credit are often not reported on traditional credit reports. Adding these types of credit could damage the credit records of these borrowers. High-cost credit is often designed to lead to a cycle of debt, and even merely using a subprime form of credit can negatively affect a credit score.

- **Telecommunications data – the jury's still out**. Unlike regulated electric and gas service, telecomm (cell phone and cable) industries have fewer consumer protections that could be undermined by monthly reporting. Outstanding questions include the level of accuracy of the data and the impact on consumers who dispute over issues such as cramming and questionable surcharges. Consumers may also not be aware that their cell phone and cable payment histories are being supplied to traditional or alternative reporting agencies.

- **Bank account transaction/cashflow data looks promising but carries risks**. Bank account transaction data appears to be a promising form of alternative data. First, it incorporates an analysis of ability to repay, since it includes both income and expense information. Second, it may avoid the need to rely on long historical timeframes and thus not consider negative marks from economic hardships from several years ago. Also, it might be able to show when there has been a healthy sustained recovery from an extraordinary life event such as a job loss or illness.

  However, bank account transaction data does raise security and privacy issue, as it could be used in ways consumers do not expect or misused to ensure ability to collect, not ability to repay. Lenders could focus on the timing of when income comes in and can be grabbed, not whether consumers have sufficient residual income to afford a payment. Bank accounts include sensitive information such as debit card purchases showing where the consumer shops. Use of this data must be monitored for appropriate use. It should only be used when the consumer has knowingly and actively consented to its use, and it must be protected from access by collectors and others who would use it against consumers

[16] Consumer opposition letter to H.R. 435, Credit Access and Inclusion Act, Dec. 8, 2017, https://nclc.org/images/pdf/legislation/letter-oppose-hr435-hfsc.pdf.

The manner in which alternative data is used is important. For example, using alternative data to create special scores for otherwise unscorable consumers is preferable to the wholesale addition of the same data to traditional credit reports, where it might damage consumers who already have a thick file and credit score. Also, voluntary opt-in efforts for alternative data do not raise the same concerns about wholesale addition.

A number of alternative scoring products have recently been unveiled that hold promise but must also be monitored. UltraFICO is a voluntary opt-in product that will rely on bank account transaction information from Finicity, a data aggregator working in partnership with Experian.[17] UltraFICO will only be used to enhance consumer's credit scores to see whether a denied application can be approved or a lower rate can be offered. ExperianBoost considers utility payments, but does so by reviewing bank account transactions that do not get included in traditional credit reports and is also voluntary opt-in.[18] FICO XD similarly is a second chance score using mostly telecom data from that National Consumer Telecom and Utilities Exchange, which is not included in traditional credit reports.[19]

Another issue with new promising products might be to get lenders to accept them. As discussed in Section F, lenders have not even adopted FICO 9 or VantageScore models that simply lessen the impact of medical debt. There may need to be efforts to encourage lenders to consider alternative data when it is more predictive or beneficial to consumers than traditional credit reporting.

E. The Unfinished Business of the Equifax Data Breach

It's been 17 months since the Equifax data breach became public, and nearly two years since it happened. It was arguably the worst data breach in American history, not only because it affected 148 million Americans or one in two American adults, but it also involved some of the most critical personal information we have – SSNs (which are the golden keys for identity thieves) dates of birth, and in some cases drivers' license numbers. And despite much outrage and extensive media coverage, American consumers are nowhere close to being made whole or made safe in the aftermath.

Notwithstanding numerous hearings in both the House and the Senate, the only measure taken by the last Congress was to include a provision in the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) of 2018 providing free security freezes[20] – something that state legislatures were already well on their way to doing. And the federal security freeze came at the high cost of preempting those state laws, some of which were more protective of consumers in that they applied freezes to employment and tenant screening use of credit reports.

[17] https://www.fico.com/ultrafico/.
[18] https://www.experian.com/blogs/ask-experian/introducing-experian-boost/ (Dec. 18, 2018).
[19] https://www.fico.com/en/products/fico-score-xd.
[20] Pub. L. No. 115-174,§ 301(a), codified at 15 U.S.C. § 1681c-1(i).

Congress must do better. It should:

- **Give the CFPB clear supervision authority** under the Gramm Leach-Bliley Act and the FCRA over data security at the credit bureaus. The CFPB should be given this authority so that it has a clear mandate to supervise the credit bureaus regarding this area.
- **Impose significant and hefty penalties** when the negligence of the credit bureaus leads to data breaches.
- **Freeze credit reports by default** to prevent identity theft and give consumers more control over their credit reports. The switch for access to our credit reports should automatically be set to "off." We as American consumers should get to decide when to turn it "on." And in the process of turning the switch on, credit bureaus and other CRAs should be required to verify the identity of the consumer to make sure it is really them.[21]

Finally, we note that one of the root causes of the Equifax data breach was the company's failure to adequately invest in its technology and computer systems. To quote from a report from the House Oversight Committee from the last Congress:

> Equifax's aggressive growth strategy and accumulation of data resulted in a complex IT environment. Equifax ran a number of its most critical IT applications on custom built legacy systems. Both the complexity and antiquated nature of Equifax's IT systems made IT security especially challenging. Equifax recognized the inherent security risks of operating legacy IT systems because Equifax had begun a legacy infrastructure modernization effort. This effort, however, came too late to prevent the breach.[22]
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> Legacy technology is both a security issue and a hindrance to innovation, and legacy systems are tough to secure because they are often extremely difficult to patch, monitor, or upgrade. Equifax ran a number of its business critical systems on legacy infrastructure, including the ACIS system compromised by attackers during the 2017 data breach.[23]

These paragraphs are absolutely key to explaining both the Equifax data breach and the problems with accuracy described above. A modern technology company needs to adequately invest in systems for both data security and to keep the data accurate and complete. Yet Equifax failed to do so. Indeed, the House Oversight report documents that the ACIS system that was breached by hackers was built in ***the late 1970s*** to implement compliance with the FCRA.[24]

The negligence that caused the security breach is the same negligence that fails to establish adequate quality control systems for accuracy. And it is absolutely critical to realize Equifax is not alone, it was just the unlucky CRA that got caught first – Experian and TransUnion suffer from the same deficiencies. In fact, Experian had its own large-scale data breach first in 2015,

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[21] Note that there was a bill introduced in the Senate during the last Congress that included a credit freeze by default. S.2362 - Control Your Personal Credit Information Act of 2018 (115 Congr.)(Sen. Reed).
[22] H. Comm. on Oversight and Gov't Reform, 115th Congr., The Equifax Data Breach: Majority Staff Report, December 2018, at 4.
[23] *Id.* at 71.
[24] *Id.* at 72

although it was small by Equifax standards, affecting "only" 15 million consumers.[25] The credit bureaus share many of other antiquated platforms, such as the 25-year old e-OSCAR system built to handle disputes.

For data technology companies to have antiquated legacy systems for its IT infrastructure would be laughable if it weren't so tragic. It shows a shockingly negligent attitude of cutting corners and underinvesting in compliance systems – the same cutting corners evident in their dispute processing. For decades, the credit bureaus have abused consumers, enabled by lack of oversight and the dysfunctional market forces. All three credit bureaus must be required to do much better to keep our data both safe and accurate.

F. Medical Debt Unfairly Penalizes Consumers

The impact of medical debt on credit reports is nothing short of stunning. Medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which prices quotes are rarely provided. Yet as the CFPB found, medical debt represents ***half*** of all debt collection entries that appear on credit reports, and nearly one in five credit reports contains a medical debt item.[26]

Moreover, there is strong evidence that medical debt items are not an accurate reflection of the creditworthiness of the consumer. The CFPB found that medical debt unfairly penalizes a consumer's credit score by 10 points, and for a medical debt collection item that is subsequently paid, by up to 22 points (*i.e.* the consumer's credit score should actually 10 points or 22 points higher).[27] It concluded that "[c]redit scoring models which differentiate medical collections from other collections are likely to more accurately reflect the actual creditworthiness of consumers."[28]

In response to this study and other evidence, FICO modified its latest scoring model, FICO 9, so that it does not consider paid collection items (both medical and non-medical) and gives less weight to unpaid medical debts.[29] VantageScore made similar changes. Currently, these changes do help not mortgage applicants, because Fannie Mae and Freddie Mac do not use these models

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[25] *Id.* at 18.
[26] Consumer Fin. Prot. Bureau, Consumer Credit Reports: A Study of Medical and Non-Medical Collections 5 (Dec. 11, 2014), www.consumerfinance.gov (finding that 52.1% of debt collection tradelines on credit reports were for medical debt).
[27] Consumer Fin. Prot. Bureau, Data Point: Medical Debt and Credit Scores (May 2014), www.consumerfinance.gov. *See also* Consumer Fin. Prot. Bureau, Consumer Credit Reports: A Study of Medical and Non-Medical Collections 7, 28 (Dec. 11, 2014), www.consumerfinance.gov (consumers whose credit reports show only collection items consisting of medical bills are more reliable payers, owe less, and have more available credit).
[28] *Id*.at 51–52.
[29] FICO, Understanding FICO Scores 8, www.myfico.com.

right now, but there is a rulemaking underway that may change this.[30] However, most other lenders, such as credit card issuers and auto lenders, also do not use these updated models.[31]

A more effective solution than changing scoring models would be to require the credit bureaus to remove any paid or settled medical debt. Thus, we have previously supported the Medical Debt Relief Act and the medical debt provisions of the CCRRA, both of which would require removal of paid or settled medical debt. They would also prohibit credit bureaus from including any medical debt on a credit report until 180 days after the bill (extended to 1 year in the current draft of the CCRRA), giving consumers time to resolve complex, confusing medical billing issues.

G. Use of Credit Reports in Employment Is Unreasonable and Discriminatory

The use of credit reports in employment is a practice that is harmful and unfair to American workers. Despite many good reasons to avoid engaging in this practice, about half of employers (47%) do so today,[32] a dramatic increase from only 19% in 1996.[33] One survey reported that 1 in 10 respondents who were unemployed had been informed that they would not be hired for a job because of the information in their credit reports.[34]

The use of credit reports in employment should be severely restricted for the following reasons.

- **Credit checks create a fundamental "Catch-22" for job applicants.** A simple reason to oppose the use of credit history for job applications is the sheer absurdity of the practice. Simply put, workers who lose their jobs are likely fall behind on paying their bills due to lack of income. If credit reports are used against them, these workers now find themselves shut out of the job market because they're behind on their bills. This leads to financial spiraling effect: the worse the impact of unemployment on their debts, the harder it is to get a job to pay them off.
- **The use of credit checks in hiring discriminates against African American and Latinx job applicants.** As discussed above, study after study has documented how, as a group, African Americans and Latinx consumers have lower credit scores as a group than whites. Since credit scores are a translation of the information in credit reports, that means these groups fare worse when their credit reports are considered in employment.

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[30] Federal Housing Finance Agency, Validation and Approval of Credit Score Models, 83 Fed. Reg. 65575 (Dec. 21, 2018) (proposed rule to implement Section 310 of EGRRCPA requiring Fannie Mae and Freddie Mac to consider new scoring models).
[31] Patricia Hasson, New credit score models won't work if lenders ignore them, American Banker - BankThink, June 28 2017 ("So far, lenders are continuing to rely on older credit models that are less predictive and penalize consumers for positive behaviors like paying off collection accounts").
[32] Society for Human Resource Management, Background Checking—The Use of Credit Background Checks in Hiring Decisions, July 19, 2012, at https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/creditbackgroundchecks.aspx.
[33] Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006 at n.3 (citing 1996 data from the Society for Human Resource Management).
[34] Amy Traub, Discredited: Employment Credit Checks Keep Qualified Workers Out of a Job, 2012, www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job.

- **Credit history does not predict job performance.** Credit reports were designed to predict the likelihood that consumers will miss a payment on a loan, not whether they will steal or behave irresponsibly in the workplace. The overwhelming weight of evidence is that people with impaired credit histories are ***not*** more likely to be bad employees or to steal from their employers. The earliest study on this issue concluded there is no correlation between credit history and an employee's job performance,[35] while a more recent study from 2011 also failed to find a link between low credit scores and theft or deviant behavior at work.[36]
- **As discussed in Section A, credit reports suffer from unacceptable rates of inaccuracy, especially for a purpose as important as use in employment.**

Fundamentally, the issue at stake is whether workers are fairly judged based on their ability to perform a job or whether they're discriminated against because of their credit history. Congress should ban the use of credit reports for employment purposes, with only very limited exceptions for a few specific job positions.

H. Conclusion

American consumers deserve a credit reporting system that is accurate, fair, and just. Helping consumers obtain such a system also helps the American economy. To achieve these goals, Congress should:

1. Pass an updated version of the Comprehensive Consumer Credit Reporting Act (such as the draft currently being discussed) that includes:

- providing consumers with a right of appeal for credit reporting disputes;
- requiring stricter matching criteria or a CFPB rulemaking that imposes such criteria and establishes minimum procedures to ensure maximum possible accuracy;
- clarifying that the credit bureaus must devote sufficient resources and conduct independent analyses in disputes;
- providing consumers with a right to seek injunctive relief compelling credit bureaus to fix a credit report;
- shortening time limits for negative information to four years (seven years for bankruptcies);
- requiring the credit bureaus to remove any paid or settled medical debt and prohibiting them from including medical collections on credit reports until after one year from the bill;

[35] Jerry K. Palmer and Laura L. Koppes, *Further Investigation of Credit History as a Predictor of Employee Turnover*. Presentation to the American Psychological Society, 2003. *See also* Press Release, Society for Industrial and Organizational Psychology, Credit History Not a Good Predictor of Job Performance or Turnover, January 16, 2004, http://www.newswise.com/articles/credit-history-not-a-good-predictor-of-job-performance-or-turnover (summarizing study by Drs. Palmer and Koppes).
[36] Jeremy B. Bernerth et al, *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, Journal of Applied Psychology, Oct. 24, 2011.

- requiring the removal of adverse information resulting from predatory mortgages or private student loans resulting from for-profit school fraud; and
- severely restricting the use of credit reports in employment and banning the use of credit reporting information in insurance.

2. Congress should provide credit reporting relief for federal workers, federal contractors and small businesses affected by government shutdowns (such as the draft "Protecting Innocent Consumers Affected by a Shutdown Act" being discussed), as well as natural disaster victims.

3. With respect to data security for the credit bureaus, Congress should:

- give the CFPB clear supervision authority over data security at the credit bureaus;
- impose significant and hefty penalties when the negligence of credit bureaus leads to data breaches; and
- freeze credit reports by default to prevent identity theft and give consumers more control over their credit reports.

4. Congress should establish a publicly owned alternative for credit reporting.

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Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors

February 2019

By

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and Sarah Bolling Mancini
National Consumer Law Center®

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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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EXECUTIVE SUMMARY

Ten years ago, the National Consumer Law Center (NCLC) issued *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*, the landmark report on the serious dysfunctions in the American credit reporting system. Since then, the Consumer Financial Protection Bureau (CFPB) began exercising supervision authority over the Big Three credit bureaus (Equifax, Experian and TransUnion), and started the difficult task of compelling them to reform their procedures and practices. A coalition of more than 30 state Attorneys General reached a breakthrough settlement with the credit bureaus in 2015, requiring an array of reforms.

Despite these very laudable achievements, the credit bureaus and the companies that supply them with information still have serious problems in ensuring the accuracy of credit reports, affecting millions of American consumers. The dispute process required by the Fair Credit Reporting Act (FCRA) that was intended to fix these problems remains ineffective and biased.

This report provides a 10-year update to NCLC's 2009 *Automated Injustice* report. It uses stories from lawsuits and the CFPB Complaint Database to illustrate that American consumers still suffer from credit reporting abuses, such as:

- having their credit files "mixed" with the wrong person,
- negative information that remains even after court judgments or legal settlements declare that a consumer doesn't owe a debt,
- the after-effects of identity theft when credit bureaus and creditors don't believe the victim, and
- being labeled as dead when they are alive and breathing.

This report also documents the massive number of credit and consumer reporting complaints to the CFPB, over 380,000 since July 2011, with over three quarters or about 285,000 involving Equifax, Experian, or TransUnion. Credit and consumer reporting is often the top category of complaints to the CFPB, especially during the last two years.

Part of the problem is that some furnishers (creditors or other companies that supply information to the credit bureaus) still conduct pro forma, perfunctory investigations into credit reporting disputes and ignore CFPB guidance to consider critical documents and information. Another part of the problem is that the credit bureaus still fail to conduct their own independent investigations and continue to blithely accept what a furnisher tells them, despite evidence such as court judgments or police reports to the contrary.

This report makes recommendations to Congress and regulators detailing the large-scale changes necessary to finally end these problems, including:

- a right of appeals for consumers when they disagree with a furnisher or credit bureau about the results of a dispute investigation,
- stricter matching criteria to ensure that information belonging to one consumer does not get wrongfully mixed into the credit report of another consumer,

- a requirement that credit bureaus devote sufficient resources to the dispute system and a clarification that they must conduct independent analyses instead of simply parroting what furnishers tell them,
- a right to seek court orders to compel credit bureaus to fix reports,
- more control for consumers by requiring that they must proactively authorize the use of their credit reports for credit, insurance and other uses, and
- a publicly-owned alternative to the credit bureaus.

I. BACKGROUND

A. Introduction: the importance of credit reports and the unacceptable error rates in them

Credit reports and credit scores play a crucial role in consumers' lives. They determine a consumer's ability to obtain credit and the amount they must pay for it, and whether they can buy a house or rent an apartment. It could even affect a consumer's ability to find a job. Lenders rely on credit reports and credit scores as a primary factor in the decision whether to extend credit and at what price; home and auto insurers decide whether to offer insurance and base their rates on specialized credit scores; and many employers and landlords rely on reports before making decisions about whom to hire or rent to.

With such far-reaching implications, the importance of ensuring maximum possible accuracy in credit reports should be paramount. Yet unacceptable levels of inaccuracies in credit reports persist, affecting tens of millions of Americans. A landmark 2012 study by the Federal Trade Commission (FTC) found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious they would be denied credit or need to pay more for it.[1] With an estimated 208 million Americans in the credit reporting system, this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering.[2]

> With an estimated 208 million Americans in the credit reporting system, this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering.

Furthermore, despite significant reforms in the last ten years and decades of advocacy by consumer groups, systemic inaccuracies still pervade the credit reporting system and the processes for fixing those inaccuracies remain broken and biased. This report reviews the reforms from the last 10 years and documents how problems remain even after valiant efforts by federal and state regulators to fix them. This report also makes policy recommendations for reform, including a dramatically progressive concept of providing a publicly-owned alternative to the credit bureaus.

B. Market failures and commoditized consumers

To understand why problems persist in the credit reporting system, we must always keep in mind a crucial truth: that the paying clients of this industry are *not* consumers, but the creditors and debt collectors who furnish or use the information contained in the credit bureaus' databases. The Equifax data breach in mid-2017, in which that credit bureau allowed hackers to obtain the sensitive personal information of 148 million Americans,[3] made many policymakers and Americans realize how consumers are the commodity of the credit bureaus, not the customers. Unlike most industries, consumers cannot vote with our feet when the credit bureaus fail to respond to our complaints and problems. Indeed, two years after the Equifax data breach, every single American consumer who wants credit still needs to deal with Equifax.

As one Texas consumer who complained to the CFPB in 2015 put it:

> *. . . I 'm tired and beat up from a constant battle for the last few months, against data furnishers that don't report accurate information and the credit bureaus act like we consumers are always wrong and never look further into the issues, but allow this to go on. It seems as though consumers get the short end of the stick because we don't pay for the service like the creditors do.*
>
> *Source:* Excerpted from CFPB Complaint No. 1562377, filed Dec. 5, 2017.
> (This report relies on complaints in the CFPB database, but we have paraphrased some complaints and edited others to remove typographical and grammatical errors.)

It is crucial to remember that consumers are the commodity of the credit bureaus, not the customers. Unlike most industries, consumers cannot vote with our feet when the credit bureaus fail to respond to our complaints and problems.

This truth lies at the heart of the continued failure of our credit reporting system to adequately respond to the interests and complaints of American consumers. The credit reporting system started out rigged and remains rigged, despite heroic efforts as described below at the end of the sentence.

C. Findings of NCLC's 2009 *Automated Injustice* report

In January 2009, the National Consumer Law Center released *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*, its original report on this subject. The 2009 report explained the basic structure of our credit reporting system; how economic forces in that system created and perpetuated inaccuracies in credit reports; and the complete travesty of a system for resolving consumer disputes. That report focused, as this updated report does, on the "Big Three" nationwide consumer reporting agencies—Equifax, Experian, and TransUnion—referred to here as "credit bureaus."

What is a Consumer Reporting Agency?

The Fair Credit Reporting Act regulates all "consumer reporting agencies," which is a broad definition that encompasses credit bureaus, employment background check companies, check-writing databases, tenant screening companies, and many other types of database companies. The Big Three credit bureaus (Experian, TransUnion, and Equifax) are a subset of consumer reporting agencies referred to in the Act as "nationwide consumer reporting agencies."

Sources: 15 U.S.C. § 1681a(f), 15 U.S.C. § 1681a(p), and 15 U.S.C. § 1681e(b).

Under the Fair Credit Reporting Act (FCRA), credit bureaus and other consumer reporting agencies must follow "reasonable procedures to ensure maximum possible accuracy."[4] Despite this stringent standard, the 2009 report detailed endemic problems that caused systemic inaccuracies in credit reports, such as:

- **Mixed Files.** The credit bureaus use insufficient and overly loose matching criteria, in particular the practice of matching data from creditors and debt collectors to consumers' files based on only 7 out of 9 digits of a Social Security number. This leads to one of the worst problems in credit reporting—the "mixed file," where information belonging to one consumer is improperly reported in another consumer's credit report. Credit bureaus use these overly loose matching criteria and err on the side of including information because their customers—users of credit reports—would rather have a consumer tagged with false negative information rather than have negative information missing about a consumer.

- **Furnisher Errors.** Errors in credit reports are often caused by the creditors and debt collectors that provide data to the credit bureaus, known as "furnishers." The errors include attributing an account or debt to the wrong consumer, incorrectly recording a payment history, or "re-aging" a debt by reporting an incorrect Date of First Delinquency, which is the trigger for the seven-year period that negative information generally can stay on a credit report.
- **Fallout from Identity Theft.** Credit bureaus and furnishers both bear a share of the blame for the fallout from identity theft. The credit bureaus' loose matching procedures contribute to the problem of identity theft, and their data breaches give thieves the tools needed to commit fraud. When consumers try to fix the aftereffects of identity theft, furnishers sometimes fail to believe them and remove the information. As discussed below, the credit bureaus will always take the furnishers' side when consumers try to remove false information.

In addition to requiring maximum possible accuracy, the FCRA has delineated a specific procedure for consumers to dispute the accuracy of information contained in their credit reports. If a consumer disputes an error, the credit bureaus have an obligation to conduct a reasonable investigation, within 30 days, that considers all relevant information supplied by the consumer.[5] As part of that investigation, the CRA must send the furnisher of the disputed information a notice that includes "all relevant information regarding the dispute that the agency has received from the consumer."[6] Despite these specific requirements, the 2009 *Automated Injustice* report documented gross inadequacies in the credit bureaus' dispute processes, including:

What is e-OSCAR?

e-OSCAR is a web-based, automated system that enables furnishers and credit bureaus) to create and respond to consumer credit history dispute. It was created by the Big Three credit bureaus and fourth consumer reporting agency, Innovis.

Source: e-OSCAR, About Us, https://www.e-oscar.org/implementation/about-us.

- **Insufficient Information Conveyed and Considered in Investigations.** Credit bureaus use the highly automated e-OSCAR system to convey disputes to furnishers, primarily using shorthand two- or three-digit codes, and at most only a line or two of text in a minority of instances. The credit bureaus use the same four or five codes over 80% of the time.
- **Failure to Transmit Information Submitted by the Consumer.** Credit bureaus failed to send supporting documentation submitted by consumers to furnishers, in clear violation of the FCRA.
- **Perfunctory Credit Bureau Investigations.** Credit bureaus limit the role of their employees who handle disputes, or of the foreign workers employed by their offshore vendors, to little more than selecting these two or three digit codes. Workers do not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute.
- **Credit Bureaus Always Side with Furnishers.** Credit bureaus are universally biased in favor of furnishers and against consumers in disputes. In a practice known as "parroting,"

credit bureaus blindly adopted the response of the furnisher without performing any independent review.

- **Perfunctory Furnisher Investigations.** Furnishers conducted pro forma investigations, doing nothing more than check whether the information in the dispute transmittal form, called an Automated Consumer Dispute Verification (ACDV) form, matched the information in their own computer systems—the very systems that likely caused the error in the first place.

As of January 2009, this sham system meant that no one was really investigating the merits or substance of disputes. After multiple fruitless disputes, some consumers resorted to filing lawsuits in order to have inaccurate information corrected.

As discussed in the next section, much has happened in the nearly ten years since NCLC released *Automated Injustice*. A number of reforms have been imposed on credit bureaus and furnishers with the goal of addressing the problems documented in the report. Despite this, serious and intractable problems remain with accuracy and the dispute process.

II. REGULATORY AND POLICY CHANGES SINCE 2009

Over the ten years since *Automated Injustice* was published, a number of regulatory and enforcement actions have changed the landscape for credit bureaus and furnishers. Federal and state regulators have attempted to address violations of the FCRA, improve the accuracy of credit reports, and provide meaningful reform of the FCRA dispute system

A. Furnisher accuracy and integrity regulations; direct dispute rights

On July 1, 2009, the federal banking regulators and FTC finalized a joint rule implementing the requirements of the Fair and Accurate Credit Transactions Act of 2003 (FACTA) to establish standards for furnishers regarding the accuracy of information and to process disputes sent to them directly.[7] The rule, which was later restated by the Consumer Financial Protection Bureau (CFPB), requires furnishers to establish written policies and procedures for accuracy and integrity, commensurate with the nature, size, complexity, and scope of the furnisher.[8] According to the regulations, appropriate policies under the rule would include maintaining records for a reasonable amount of time, ensuring adequate oversight of service providers, furnishing data in a way that prevents re-aging and mixing of files, and providing sufficient information to tie account data to a particular consumer.[9]

The rule also requires furnishers to investigate disputes that they directly receive from consumers.[10] Neither the accuracy and integrity provision nor the direct dispute right is enforceable through a private right of action,[11] which may be the reason the rule seemed to produce little improvement until the CFPB began supervising furnishers (see pages 8–10).

B. Multistate attorney general settlement

In 2015, a number of state Attorneys General's offices worked together to reform practices at the credit bureaus. Following investigations, two significant settlements were reached. First, the New York Attorney General entered an agreement with Equifax, Experian, and

Transunion.[12] Shortly thereafter a group of Attorneys General from 31 states entered into an "Assurance of Voluntary Compliance" with the credit bureaus, with many similar provisions.[13] Collectively, these agreements require the credit bureaus to implement a number of specific reforms, including:

- **Mixed Files**
  - Credit bureaus will share information with each other when one credit bureau confirms that a consumer's file has been mixed with another person's file and will establish best practices for handling and sharing information about mixed files.
- **Better procedures to monitor furnishers**
  - Credit bureaus must track and compile furnisher dispute statistics and provide the Attorneys General's offices with the names of companies that consistently provide inaccurate information.
  - Credit bureaus will take corrective action against furnishers that fail to comply with data furnishing obligations and dispute investigation requirements.
- **Dispute Process**
  - Credit bureaus will implement escalated handling for disputes involving mixed files, fraud, and identity theft, including assignment to specialized groups with substantial experience in those types of disputes.
  - In the case of a dispute where the credit bureau does not otherwise modify the information as requested by the consumer, the credit bureaus must assign an agent to review a consumer's supporting documentation, who will have discretion to decide to make the change requested by the consumer.
- **Data Reporting Reforms**
  - Credit bureaus must prohibit furnishers from reporting debt that did not arise from a contract or agreement to pay (including tickets and fines) and implement a process to remove existing information about such debts.
  - Credit bureaus will not report medical debts less than 180 days old and will remove medical debts paid by an insurer.
  - Credit bureaus must periodically remove or suppress all debt collection accounts that have not been updated by the debt collector furnisher within the last six months.

The reforms were to be implemented in staggered stages over a three-year period ending in September 2018, and do not have a termination date.

C. CFPB supervision of credit bureaus and furnishers

A critical development was the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Dodd-Frank Act created the Consumer Financial Protection Bureau (CFPB) and endowed it with the authority to write regulations to implement the FCRA and to enforce it.[14] Perhaps most importantly, the Dodd-Frank Act gave the CFPB supervision authority over the credit bureaus—a much more powerful and searching tool to reform the credit bureaus than an enforcement-only approach. This authority allows the CFPB to conduct on-site examinations of credit bureaus, just as bank examiners do for banks, in order to assess their compliance with federal consumer protection laws, obtain information about their activities and compliance systems, and detect and assess risks their practices pose for consumers and the marketplace.[15] In addition, the CFPB has supervisory authority over many of the largest furnishers of information, such as large banks, mortgage servicers, student loan servicers, and debt collectors.[16]

In July 2012, the CFPB published a rule establishing its supervision authority over consumer reporting agencies that deal with financial products and services and have annual receipts of over $7 million from consumer reporting.[17] This includes the Big Three credit bureaus and a number of other consumer reporting agencies that focus on financial information. The CFPB's original director, Richard Cordray, immediately made it a priority to examine the credit bureaus' compliance with the FCRA, including the accuracy of credit reports and the credit bureaus' processes for error resolution.[18]

Using its authority in this area, the CFPB has studied the problems with various aspects of the credit reporting system and issued bulletins that provide guidance to credit bureaus and furnishers. These include:

- **CFPB Research Confirms Rampant Problems.** The CFPB's 2012 *Key Dimensions* report described the inner workings of the credit reporting industry in detail, documented problems, and laid the groundwork for reform.[19] The report confirmed many of the problems identified in our 2009 *Automated Injustice* report. It also documented that as of 2012, the credit bureaus were still asserting that their systems did not permit consumer-submitted documents to be forwarded to furnishers, allegedly due to "technological limitations, challenges evaluating the authenticity of consumer documents, and privacy concerns."[20] Finally, the report noted that debt collectors make up only 13% of account information in credit reports, but are responsible for nearly 40% of disputes.[21]
- **CFPB Puts Furnishers on Notice.** In 2013, the CFPB issued a bulletin putting furnishers on notice of their specific obligation to review all relevant information connected with a consumer dispute.[22] Meeting this obligation, the CFPB stated, required, among other things, "Maintaining a system reasonably capable of receiving from CRAs information regarding disputes, including supporting documentation."[23] At about the same time, the credit bureaus finally began making consumer-submitted documents available to the furnishers by uploading them to e-OSCAR. The CFPB followed up its 2013 bulletin with a blog post in February 2014 stating that consumers now had more options for disputing errors in their credit reports, including the ability to upload, mail, or fax supporting documents relevant to a credit report dispute.[24]
- **CFPB Documents Problems Discovered During Supervision.** The CFPB has used its periodic "Supervisory Highlights" publications to point out deficiencies in the credit reporting industry and to document when it has required improvements. Most significantly, the CFPB issued a special edition of Supervisory Highlights in March 2017 that documented the serious and widespread deficiencies uncovered during its supervisory examinations of the credit bureaus as well as furnishers, particularly regarding data accuracy and dispute processes.[25] These problems included insufficient quality control systems for testing the accuracy of credit reports and deficiencies in the credit bureaus' relationship with furnishers, especially as related to the dispute process. The CFPB also found that in cases where consumers had submitted documentary evidence in support of a dispute, "one or more [credit bureaus] failed to review and consider the attached documentation and relied entirely on the furnisher to investigate the dispute,"[26] plainly identifying parroting as a violation of the FCRA.

The March 2017 Supervisory Highlights report also documents how CFPB supervision has compelled the credit bureaus to take measures to improve accuracy and dispute handling. These measures include:

- **Formalizing and centralizing data governance policies** and establishing robust quality control programs.
- **Enhancing standards for public records data** including greater frequency of updates and stricter identity-matching criteria. This has led to the removal of over 90% of lawsuit records and 50% of tax lien records.[27]
- **Monitoring furnishers on an ongoing basis**, including a process to temporarily stop accepting data from furnishers that have accuracy problems or that fail to provide regular updates.
- **Tracking furnishers with higher rates of disputes** and ceasing to accept data from such furnishers when they failed to correct problems.
- **Improving access of data quality reports for furnishers**, including providing these reports to data furnishers at no cost.
- **With respect to disputes, revising policies and procedures** to ensure that the credit bureau conducts an independent review of the dispute and reviews all documents submitted by consumers to prove their dispute.

The CFPB's examinations of large furnishers has also resulted in a number of instructions to some of these furnishers to change their credit reporting practices, as summarized in the March 2017 report. These include:

- **Prevent Re-aging of Accounts.** The CFPB found that furnishers had inadequate systems to prevent re-aging of accounts, in that these furnishers reported accounts that had been transferred to them without any "date of first delinquency" (DOFD).[28] In addition, the Bureau noted that some furnishers updated the DOFD when a consumer filed bankruptcy, to reflect the bankruptcy filing date as the DOFD.[29] The CFPB directed furnishers to revise their written policies to correct these problems.[30]
- **Properly Update Information and Conduct Investigations.** The CFPB directed furnishers to fix problems with their failure to promptly update information sent to credit bureaus when a furnisher determined that reporting was incomplete or inaccurate; their failure to provide notice to consumers of the results of direct disputes or determinations that a dispute was frivolous or irrelevant; and their failure to timely complete investigations when credit bureaus referred disputes to them.[31] Examiners found that furnishers who had not completed their investigations within the statutorily allowed timeframe would at times report information as verified even though a review was not yet completed.[32] The CFPB directed these furnishers to implement systems for timely completion of investigations.

While the CFPB admitted at the time that its efforts were a work in progress,[33] it appeared to succeed in moving the proverbial needle. It was the most progress made in the decades of struggle to reform the credit bureaus' practices. However, as described below, problems persist and we fear the needle on the speedometer for reform is stuck on slow. Moreover, there is a risk that the change in administration at the CFPB has resulted in a dialing back of these efforts to get the credit bureaus to clean up their act.

D. CFPB enforcement actions against the credit bureaus and furnishers

In addition to supervisory efforts, the CFPB has taken enforcement action against both the credit bureaus and furnishers. The CFPB's enforcement actions against the credit bureaus primarily involved their sale practices in promoting credit monitoring products,[34] and did not involve accuracy or dispute issues.

More relevant to this update, the CFPB has taken a number of enforcement actions against furnishers for failing to ensure the accuracy of information furnished to the credit bureaus and other CRAs.[35] The CFPB has brought several actions against debt collectors for failing to reasonably investigate disputes.[36]

However, in a troubling sign, the CFPB settled its latest enforcement action against a furnisher for reporting inaccurate information and other FCRA violations without obtaining any monetary relief for consumers and without imposing civil penalties.[37] Such toothless enforcement signals to furnishers that they may violate consumer rights without any consequences.

III. PERSISTENT PROBLEMS ENDURE DESPITE REFORMS

Despite the CFPB's supervision and the reforms at the credit bureaus that it compelled, as well as the multistate Attorney General settlement, the deficiencies with the accuracy of credit reports and flaws with the dispute system continue to be significant and intractable. Two indications of the persistent nature of the problems are (1) the number of consumer complaints about credit reporting to the CFPB and (2) the evidence from the consumer complaint narratives as well as legal cases that the credit bureaus fail to correct even obvious errors in the face of compelling evidence.

In 2017, consumer reporting complaints took the top spot, as the number of complaints nearly doubled from 53,900 in 2016 to 100,000 in 2017. The available data from 2018 indicates that consumer reporting will once again be the top category of complaints, with over 100,000 complaints from January to October 2018.

A. Credit reporting tops consumer complaints to the CFPB

The continuing nature and scope of the problem with credit reports is made abundantly clear from the number of complaints received by the CFPB on the issue. Since its creation, there have been over 380,000 complaints about credit reporting or other consumer reporting (collectively "consumer reporting") issues to the CFPB.[38] About three quarters of these complaints—around 285,000—involved inaccurate information on Equifax, Experian or TransUnion credit reports.[39] From July 2011 to December 2017, consumer reporting issues were the third most complained about category, behind debt collection and mortgage complaints.[40]

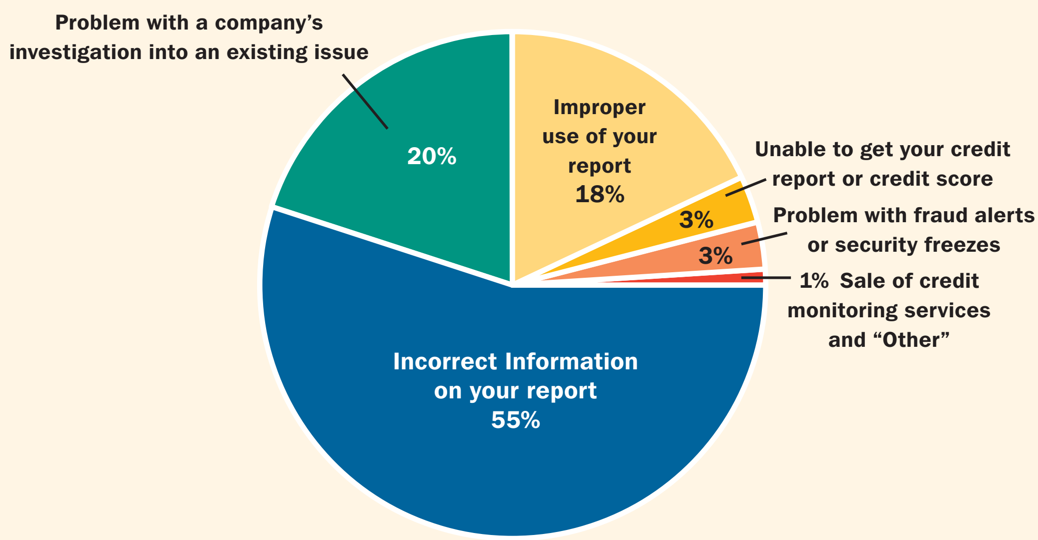
In 2017, consumer reporting complaints took the top spot, as the number of complaints nearly doubled from 53,900 in 2016 to 100,000 in 2017.[41] The available data from 2018 indicates that consumer reporting will once again be the top category of complaints, with over 100,000 complaints from January to October 2018 , compared to about 70,000 for debt collection in the number two spot.[42] In addition, the Big Three credit bureaus have often occupied the top three spots in terms of which companies the CFPB has received the most complaints about.[43]

[N.B. Note that while the dramatic increase in complaints in 2017 occurred in the year of the Equifax data breach, which resulted in theft of the personal information of about 148 million consumers, it was likely too early for an uptick of errors based on identity theft from the data breach. Instead, we believe that many consumers who typically would not have checked their credit reports did so prompted by the Equifax breach and discovered that their credit reports were riddled with errors.]

More than half (54%) of consumer reporting complaints to the CFPB involved inaccurate information. About 20% of complaints involved a credit bureau or other company's investigation into an existing issue, e.g., the investigation did not fix the error or took over 30 days.

CHART 1

Type of Credit or Consumer Complaints Submitted to the CFPB in 2017

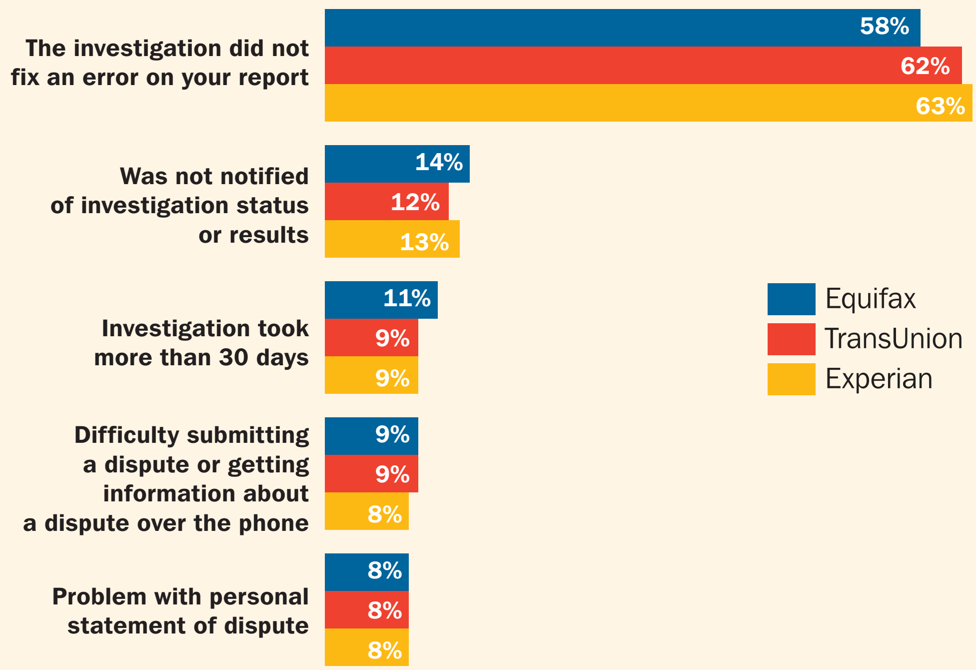


Source: Consumer Financial Protection Bureau, Consumer Response Annual Report January 1—December 31, 2017, Fig. 5, at 13.

Looking exclusively at those complaints to the CFPB regarding credit bureau investigations that were transmitted back to Experian, TransUnion, or Equifax, the majority were that the investigation did not fix the error in the consumer’s report.

CHART 2

Complaints to the CFPB about Credit Reporting Investigations Transmitted to the Credit Bureaus in 2017



Source: Consumer Financial Protection Bureau, 2017, Consumer Response Annual Report January 1—December 31, 2017, Table 2, at 17.

Thus, if CFPB complaints are any indication, existing efforts to date have not proven sufficient to stem the tide of complaints against the credit bureaus about inaccurate information and unreasonable investigations of disputes.

B. Ten years after NCLC’s report, systemic problems continue even after regulatory reforms

Despite the recent reforms, the credit reporting system remains flawed and the dispute process is still biased against consumers. One of the key problems that remains unresolved is the continued existence of mixed files. Another problem is shoddy, minimal investigations by furnishers, and the fact that the credit bureaus continuing to parrot or automatically accept the results of those sham investigations instead of taking their own steps to determine the truth.

Credit Bureaus Refuse to Correct Mixed File

Tammy Brown is a North Carolina resident who works for University of North Carolina Health Care. In 2014, Ms. Brown learned that her credit reports had been mixed with the file of another Tammy Brown in Indiana. Indiana Tammy Brown had filed for Chapter 7 bankruptcy in 2013, which was showing up in North Carolina Tammy Brown's credit reports at Equifax and Experian. In addition, her credit card accounts and a previous mortgage were showing up as discharged in bankruptcy, despite the fact that North Carolina Tammy Brown had never filed for bankruptcy. Her current mortgage was labeled as delinquent or with missed payments, despite the fact that she had never missed any payments. Her TransUnion report also contained erroneous information belonging to the Indiana Tammy Brown. North Carolina Tammy Brown sent dispute after dispute to the credit bureaus, but they never managed to properly fix her credit reports and she was forced to sue all three companies in 2016.

Source: Synopsis of Complaint, Brown v. Experian Info. Sol., Civ. Act. No 16-cv-000348 (N.C. Gen. Ct. Marc. 18, 2016).

1. Mixed files

Mixed files are arguably the worst kind of credit reporting error, and they continue to be a thorny and unresolved problem for consumers. To our knowledge, the credit bureaus continue to use overly loose matching criteria, such as partial Social Security Number matches, which leads to information being placed in the wrong consumer's file. Some examples of mixed files include:

From a complaint in the CFPB database:

> *So I recently found out that all credit bureaus mixed my credit history with my brother's credit history into a single report. I already contacted all bureaus with this dispute. Unfortunately, XXXX is the only credit bureau that handled this dispute as a professional company. XXXX is able to fix this dispute within XXXX hours and I received the corrected report already. However, XXXX and TransUnion are the worst agencies I have ever encountered. . . . Those XXXX companies keep claiming that it is my creditor's fault for not reporting the information with all detail (as they claim they never receive my SSN so all my information were filed under my brother 's name and SSN which means I don't exist in this country). . . . Second, the representatives ask me to mail in a copy of my SSN to prove my identity so they can handle the dispute "properly.' I complied with the request yet it's been freaking XXXX weeks and I haven't heard back from them regarding the status of the dispute.*

Source: Excerpt from CFPB complaint No. 1510006, filed August 9, 2015.

2. Automated investigations continue

As discussed on page 9, one of the key reforms brought about by CFPB supervision was that the credit bureaus and the e-OSCAR system began providing furnishers with copies of the documents submitted by consumers. Furnishers are supposedly required to review those documents. The CFPB's 2013 Bulletin establishes a requirement that furnishers must fully review all the information available to them when processing a dispute.[44] Despite this requirement, some furnishers are ignoring these consumer-submitted documents and failing to review critical information, including account notes. Instead, they continue to conduct pro forma, perfunctory investigations.

The following is the deposition of an employee of Chrysler Financial Services who processed the dispute of Gary Sullivan. Chrysler Financial sued Mr. Sullivan in state court to collect a debt and lost the lawsuit. Despite a judgment that Mr. Sullivan did not owe the debt, Chrysler Financial continued to report it on his credit report. Mr. Sullivan submitted *twenty-one* disputes, yet neither Chrysler Financial nor the credit bureaus changed the information despite the court judgment.

> Q: All right. And what kind of information would you look at when you're responding to an ACDV [Automated Dispute Verification Form, i.e., the dispute transmittal form used by credit bureaus]?
> A: The status of the account, the contract and the application.
>
> Q: All right. And when you say account status, are you talking about the account history and notes in the account history?
> A: No.
>
> Q: All right. So you would not look at the account notes?
> A: No.
>
> Q: And did you make the determination on your own not to look at the account notes or is that how you were trained?
> A: Trained.
>
> Q: All right. And do you see where it says image information a little bit below that?
> A: Yes.
>
> Q: And it says associated images, does that indicate to you that there was an image attached to the ACDV?
> A: Yes.
>
> Q: Sitting here today, do you remember what that image was?
> A: No.
>
> Q: Do you know if there's a way to pull up and look at what that image was?
> A: No.
>
> Q: And no, you don't know if there's a way or no, there is not a way to do that?
> A: I do not know.
>
> *Source*: Excerpt of Deposition of Stephanie Hairston, Sullivan v. Equifax Info. Services, LLC, Civ. Ac. N. 14-CV-02377 (D. Colo. May 11, 2015)

C. Consumer stories of despair in fighting the credit bureaus

In order to give readers a sense of the severity of the problem with the credit bureaus and furnishers' dispute processing, this report includes selected stories that have occurred or were reported during the last five years, after CFPB supervision began and in some case after the multistate Attorney General settlement. These stories either come from legal cases or are credit reporting complaints from the CFPB complaint database. These stories illustrate both how the dispute process for credit reports remains broken, and the human toll that the lack of credit bureau and furnisher accountability takes on ordinary consumers.

1. Failure to correct information even when there is a judgment or legal settlement

One of the most obvious, head smacking, errors occurs when a consumer obtains a court judgment that they do not owe the debt or a legal settlement to fix reporting, yet the debt still appears on their credit report. In a gross example of bias towards furnishers, the credit bureaus will still parrot whatever the furnisher responds with even when confronted with court orders and legal settlements. Examples of this include Gary Sullivan's case against Chrysler Financial in the last section and the following cases.

Reporting a Debt Despite a State Court Judgment against the Furnisher

> *Caren Dacumos co-signed a car loan for Melanthon Ibanez with Toyota Motor Credit Corporation. Mr. Ibanez defaulted on the loan, so Toyota sued both Mr. Ibanez and Ms. Dacumos in King County Superior Court. Ms. Dacumos was able to successfully defend against Toyota's lawsuit and in June 2016, she obtained an order of dismissal with prejudice. "With prejudice" means that the court made a final determination on the merits of the case and Toyota could never sue Ms. Dacumos on the debt again. Despite the dismissal, Ms. Dacumos's credit reports were not updated to reflect that she no longer owed a debt to Toyota. Instead, the car loan was report as a charge off and that $13,593 was past due. (A "charge-off" occurs when a creditor moves a debt from profit to a loss on its balance sheet. Its appearance on a credit report is seen as highly negative and it will cause a significant decrease in a credit score).*
>
> *Ms. Dacumos submitted multiple online disputes in 2016 and 2017 attempting to correct this information. Each time, Toyota verified the false information that Ms. Dacumos still owed $13,593 on the car loan, and the credit bureaus continued to parrot that information on her credit report. In April 2017, Ms. Dacumos sent another round of dispute letters to all three credit bureaus, this time by postal mail, attaching a copy of the court order dismissing Toyota's claims with prejudice. TransUnion responded by correcting the balance to $0. However, Toyota continued to erroneously claim to Experian and Equifax that Ms. Dacumos owed $13,593 on the car loan, and the two credit bureaus continue to take Toyota's side—despite having a copy of the order of dismissal. The ordeal caused Ms. Dacumos significant frustration, emotional distress, embarrassment and the humiliation of being turned down for credit twice at Navy Federal Credit Union. Even worse, the federal court rule against Ms. Dacumos in her lawsuit in a strange opinion holding that even though Toyota could never legally enforce the debt against Ms. Dacumos, it theoretically existed in the abstract and thus could be reported.*
>
> *Source*: Synopsis of Dacumos v. Toyota Motor Credit Corporation, 287 F.Supp.3d 1152 (W.D. Wash. 2017).

Furnisher ignores its own settlement

> *In 2013, Ocwen Loan Servicing took over the servicing of Valerie Jeffers's mortgage. For the entire time Ocwen has had the loan, Ms. Jeffers has been current on all of her payments. Yet Ocwen has, for the most part, always treated her as in default. This led to threats to foreclose, false credit reporting, and other abuses. Ms. Jeffers responded by filing a lawsuit, which resulted in a settlement agreement in September 2016 requiring Ocwen to pay damages and to fix the loan history to show that the mortgage was always current, including instructing the credit bureaus to fix Ms. Jeffers's credit reports. Unfortunately, Ocwen failed to live up to its promise to fix the reporting of the*

mortgage. A month after the settlement agreement, Ms. Jeffers ordered her credit report after being denied a credit card at Sunglass Hut, only to find that Ocwen was again reporting false information. Ocwen reported that, as of September 2016, Ms. Jeffers was 90 days late, thousands of dollars past due, and hadn't made a payment in months.

Ms. Jeffers' next step was to file disputes with the credit bureaus—four times. Every single time, Ocwen responded falsely that Ms. Jeffers was 90 days late, thousands of dollars past due and hadn't made a payment in several months. Ocwen did so, despite its own settlement agreement, because like the credit bureaus, it was conducting sham investigations. Discovery from Ms. Jeffers legal case revealed that when Ocwen gets notice of a dispute, the company outsources its processing to overseas locations, where the people spend about one or two minutes doing the so-called investigation. Literally all the workers do is pull up the account information on their computer, and look at how the loan is currently reporting. Then, on another computer screen, they pull up what they previously reported to Equifax or Experian. And then all they do is match the data—to make sure the name, date of birth, SSN, and balance are the same for both screens. Ocwen never reviewed its own settlement agreement in its so-called investigation. And the credit bureaus accepted whatever Ocwen reported for each dispute.

Source: Synopsis of Trial Transcript, Jeffers v. Ocwen Loan Servicing, LLC, Civ. Ac. No. 17-CV-00025 (D. Colo. Feb. 20, 2018)

Debts paid and dismissed

The CFPB's complaint database similarly contains examples of debts being reported as owing and outstanding despite legal judgments to the contrary:

In XX/XX/XXXX I obtained a home mortgage loan with XXXX. A credit report inquiry by XXXX revealed one derogatory line on my credit report (Item 29 XXXX: see attached) that was incorrectly still present in my record despite the fact that this debt was satisfied (paid off) and signed off by the County Judge (Order of dismissal with Prejudice) one year prior (XX/XX/XXXX Court Order: see attached).

I attempted to dispute and resolve this issue directly with the Credit Reporting Agencies with no success.

I am about to apply for a new home mortgage loan and before I do that I would like to ensure that this derogatory line-item is permanently removed from my file with all 3 major credit reporting agencies.

I am reaching out to CFPB to help me solve satisfactorily this issue.

Source: Excerpt of CFPB Complaint No. 3085700, filed November 28, 2018.

Submitted complaints to all three credit bureaus on XX/XX/XXXX. Within a few days, XXXX and XXXX had removed the paid tax liens from my credit report, but Transunion refused to do so and made a cursory examination with no results. I disputed their answer and have since provided additional documentation, including data from the IRS and XXXX County Court indicating these tax liens have been withdrawn. Transunion has made no effort to make the obviously incorrect changes and has now XXXX times knowingly reported incorrect information to my prospective employer. I have now lost my lucrative job due to their incompetence, rudeness and ignorance.

Among other things, each time we provide them with additional documentation, they restart the 30 day clock making this an endless, pointless exercise that only they seem to engage in.

Source: Excerpt of CFPB Complaint No. 2430488, filed April 12, 2017.

2. *Identity theft*

Identity theft has become alarmingly frequent in our country. In 2017, 16.7 million consumers were victims of identity thieves, who collectively stole $16.8 billion.[45] The FTC reported receiving 371,061 reports of identity theft in that year.[46] The credit bureaus bear a significant share of responsibility for this problem . First, lax data security led to theft of sensitive information from both Equifax in 2017 (148 million consumers) and Experian in 2015 (15 million consumers). Second, the credit bureaus' loose matching procedures contribute to the problem of identity theft; for example, if a thief has only adopted the victim's first name and SSN but not the last name or address, the algorithm used by credit bureaus may merge the fraud information into the victim's file. Third, and most critically for our purposes, both furnishers and the credit bureaus often fail to believe consumers when they report identity theft and try to fix the aftereffects, even in the face of clear evidence, such as a confession from the thief or a police report.

Groundhog Day

Adrienne Escobar's mother, Julie, took a loan out in Adrienne's name and then defaulted on the loan. After the defaulted loan was reported on Adrienne's credit reports, Julie sent a letter in May 2008 to the Pennsylvania Higher Education Assistance Agency Services (PHEAA) admitting that she, not her daughter, took out the loan and offered to fill out the paperwork so that charges could be pressed against her. Instead PHEAA continued to report that Adrienne was responsible for the loan to the credit bureaus and sent her case to a debt collector.

In August 2014, Adrienne filed a dispute about the defaulted loan with two credit bureaus, and PHEAA simply responded that Adrienne "had a charged off student loan with an unpaid balance reported as a loss by a credit grantor that had been transferred to recovery." A second dispute in September 2014 resulted in a variation of that response.

In June 2015, Adrienne tried another tactic by filing a police report identifying her mother as the person who had stolen her identity — something Julie had told PHEAA 7 years earlier. In August 2015, Adrienne sent another dispute package to the credit bureaus, this time including the police report. Once again, Experian and TransUnion referred the dispute to PHEAA, which did not result in any change in the reporting. Equifax also sent the dispute to TransWorld Systems, a debt collector, who did instruct Equifax to delete the account for fraud. Additional disputes for fraud in October 2015 simply elicited the same response from PHEAA.

Finally in May 2016, after sending four disputes complete with documentation to the credit bureaus, and eight years after her mother had admitted to PHEAA in writing that she had committed fraud, the credit bureaus deleted the fraudulent account. Despite this, TransWorld Systems placed another collection account related to the student loan on Adrienne's Equifax file in November of 2016.

In an open and shut case of identity theft and fraud, with the perpetrator admitting in writing that she had stolen the victim's identity, it took four disputes over two years for the credit bureaus *to remove the account—and it got reported once again when a new debt collector took over the account.*

Source: Synopsis of Escobar v. PHEAA, 2018 WL 1740364 (E.D. Pa. Apr. 11 2018).

That's why it's called identity theft

This is taken from a complaint filed with the CFPB:

Over ten years after subletting an apartment in 2007, a servicemember found that a debt collection item had been reported on their credit report, not once but three times, stemming from utility services at the apartment. The servicemember learned that someone had opened a utilities account in their name at the apartment they had sublet. In addition, the thief had opened another fraudulent account in the servicemember's name for another apartment five or six years ago at an apartment where the servicemember had never lived. The first account was not only fraudulent, it was over ten years old and thus too old to appear on any credit report because it was past the FCRA's time limits.

The servicemember complained about their inability to get the information deleted with the following analysis:

"Experian can not now claim that the information is verified as accurate when it's fraud. Just because someone has my name, ssn and birthdate doesn't mean the account they opened is a legitimate account . . . that's why it's called identity theft."

Source: Synopsis of CFPB Complaint No. 2828095, filed Feb. 27, 2018.

This servicemember's case illustrates that too often consumers end up in a Catch-22—how does the average consumer prove identity theft or fraud to a credit bureau that only accepts facts from furnishers? This is especially problematic when the furnisher is a debt collector, which has no incentive to get the reporting correct but primarily wants to get paid on an account. As noted in the CFPB's *Key Dimensions* report, nearly 40% of disputes involve debt collectors yet they only account for 13% of account-level information in credit reports.[47] Despite the skewed incentives of debt collectors, it appears the credit bureaus are still automatically taking their side in credit report disputes.

They don't even believe elderly widows with a police report

Frances Iaquessa is a 70 year old widow who has had a Citi credit card since 1996. A thief stole Ms. Iaquessa's Citi credit card, and charged $16,000—first at Best Buy on June 12, 2018 and then at an Apple Store on June 19, 2018. Ms. Iaquessa was not present at the respective stores on either date, did not make the purchases, and did not receive any goods or services from the stores. Citi was alerted to the unusual purchases through its Fraud Early Warning System and called Ms. Iaquessa; for some reason, a guest in her home, using her phone, confirmed the purchases.

Ms. Iaquessa disputed the charges on June 21, 2018. On July 20, Citi notified Ms. Iaquessa that it rejected her dispute and claimed "you participated in the transactions(s) with the merchant by providing them with your card." On August 9, 2018 and again on October 26, Ms. Iaquessa's attorney sent a formal written dispute to Citi enclosing her police report as to the transactions, asking Citi to listen to tapes of the conversations, requesting documentation of the purchases, and asking that Citi get videos of the transactions from the stores. To date, Ms. Iaquessa has not received an acknowledgement or response.

Ms. Iaquessa's attorney also sent a dispute of the Citi debt to Equifax on August 13, 2018, including a copy of the police report. Equifax conveyed the dispute, with the image of the police report, to Citi, yet Citi once again verified the debt as legitimate. Neither Citi nor the credit bureaus ever conducted a reasonable investigation of the dispute by, for example, using Citi's voice biometrics system to compare the conversations with Ms. Iaquessa and with the person who stole her credit card; reviewing the account history that showed the highest balance ever incurred by Ms. Iaquessa's was less than $2,500 or that her average balance was less than $1,000, or that she had always paid the account as agreed before the theft. They did not review the sale slips to compare signatures with past purchases or contact Best Buy or Apple. Most critically, they disregarded the police report that was consistent with Ms. Iaquessa's earlier disputes of unauthorized use.

Source: Synopsis of Complaint, Iaquessa v. Citibank, N.A., Case 3:19-cv-00002 (D. Conn. Jan. 2, 2019).

3. Mixed messages

To the extent that CFPB supervision and the multistate AG settlement has improved dispute handling, this reform has proven to be inconsistent. The following example shows how consumers might find themselves helped one day and stonewalled the next. From a CFPB complaint:

After being denied a car loan because mortgage and auto debt that did not belong to them, a Texas consumer called Transunion to figure out what was going on. The consumer was informed that TransUnion had merged their credit profile with someone else's with a similar name. The accounts and incorrect personal information were deleted.

After going back for a car loan, however, the consumer was denied because of excessive credit inquiries dating to when their file was merged. The consumer spoke to TransUnion again and was assured the information would be removed. It was not. Upon calling TransUnion again, they were told there was nothing that could be done and they would have to wait for the information to fall off. The next person the consumer spoke to said they had to file a police report for fraud. The consumer noted that you can't file a police report if there was no fraud—simply an error by TransUnion that they had admitted to the consumer.

Summing up the frustration and sense of futility that pervades these complaints the consumer noted: "the creditors are saying call the bureaus and the bureaus say call the cred[itors]."

Source: Synopsis of CFPB Complaint No. 2497366, filed May 30, 2017.

4. Reporting consumers as deceased

One of the most bizarre problems is the reporting of a living consumer as deceased. Usually the error occurs when a creditor reports a consumer as deceased by entering a value of "X" in the data field otherwise used to report an account as a joint obligation or as an authorized user account. When the creditor then furnishes the inaccurate account information to the credit bureau, the deceased condition is reported to the consumer's file. This results in the entire file essentially shutting down, as the file will no longer be able to generate a credit score.[48] As part of the multistate Attorney General settlement, the credit bureaus agreed to develop best practices for identifying and preventing inaccurate reporting when a consumer disputes a report stating that he or she is deceased.[49] However, so far these practices appear not to be working very well.

I'm not dead!

In March 2017, Peggy Bender found herself unable to use her personal credit or debit card through her primary bank. According to her banker, her card no longer worked because Equifax had been reporting to the bank that Ms. Bender was deceased. Shortly thereafter, Ms. Bender received a letter dated April 3, 2017 stating that she was denied a request for prequalification by Credit One Bank because Experian was also reporting her as deceased.

Subsequently, Ms. Bender received additional letters denying her credit on the basis that she was being reported as deceased. She also received two letters expressing condolences for her own death, a particularly unnerving experience. Ms. Bender was also greatly concerned and highly upset about being reported as deceased because she generates income from buying and selling real estate, and a deceased notation would prevent her from obtaining the credit she needed to sustain that real-estate related income.

On February 9, 2018, Ms. Bender sent a written dispute letter to Experian requesting that they correct any "Deceased" coding from her credit file. Experian responded that they had "updated" information about several accounts, attaching a copy of a credit report that did not reflect a Deceased notation on any of Ms. Bender accounts. However, in July 2018, Ms. Bender once against received a letter from denying her a credit card because a credit bureau was reporting her as Deceased. At that point, Ms. Bender decided to seek legal assistance and file a lawsuit.

Source: Synopsis of Complaint, Bender v. Experian Info. Sol., Civ. Ac. No. 4:19-cv-00120 (E.D. Mo. Jan. 29, 2019).

5. *Ignoring disputes as "suspicious requests"*

At least one credit bureau—Experian—has a practice of regularly rejecting disputes as "suspicious requests," asserting that it believes that the dispute was not sent by the consumer. While the credit bureaus are permitted to reject "frivolous and irrelevant" disputes, Experian has a habit of being overly inclusive in what it considers suspicious, even rejecting disputes with identification documents, sent by certified mail, and accompanied by supporting documentation.

From the CFPB complaint database:

I have spent the past 6 months sending disputes monthly to Experian about XXXX inaccurate accounts reporting on my credit report. (XXXX Accounts and XXXX Account) Experian has consistently disappointed me by doing everything in their power to not honor the disputes. They've said: 1) This is a suspicious request and we are protecting your identity, so we will not honor your disputes (Although the dispute was not suspicious, it was sent certified mail with a return receipt and included my identification documentation and a list of the accounts in question); 2) Send more documentation, we can't verify your identity (although I sent a copy of my passport, driver's license and social security card with the original dispute and the address on my disputes matched the address on my driver's license and credit report); 3) We have previously verified these accounts, we believe your dispute is not valid, so we will refuse to process it. (Although their other responses were *not verifying the accounts at all, they were requesting more information and fraudulently denying me my rights under the Fair Credit Reporting Act); 4) Now they have stopped responding to my disputes all together. It's evident to me that Experian is willfully non-compliant and blatantly breaking the law. When I sent the request to XXXX and XXXX, they deleted it right away.*

Source: Excerpt of CFPB Complaint No. 1409259, filed June 6, 2015.

6. Re-aging

A problem that sometimes occurs with debt collectors is the "re-aging" of obsolete debts. The FCRA requires most consumer debts to be deleted from a credit report after seven years from the date of charge-off or 180 days after the delinquency. Re-aging occurs when debt buyers fail to report or purposefully misrepresent the critical date of first delinquency, which is the trigger date from which the seven years is counted. A 2013 FTC report on the debt buying industry indicated that debt buyers obtained information about the date of first delinquency for only 35% of accounts at the time of purchase[50] —which means that up to two-thirds of debt buyer accounts could be reporting an incorrect date.

The following is a complaint from the CFPB database—it appears from the text of the complaint that the redacted dates (XX/XX/XXXX) are over seven years old:

TransUnion continues to report late payments of 180 days past due on a mortgage that is now over 10 years old. I first spoke with [a TransUnion representative], then with her Manager, who explained to me that until [the furnisher] reports the information using the correct term "date of first Delinquency" rather than "date of last payment," this will remain on my report indefinitely. Date of first delinquency is XX/XX/XXXX if last payment made is XX/XX/XXXX. But because that exact phrase was not provided I am told the information is accurate.

"I also called [the furnisher], but after being transferred from 3 different depart[ment]s, I was sent to a dead connection. This information by law should have been removed no later than XXXX, yet it continues to report today and apparently will always be on report. They have the info needed to correct but refuse to do so. It's crazy that such an incompetent company has so much power over a consumer's financial future. [This] continues to cost me thousands of dollars in over interest rates and refusal of credit.

The other reporting agencies each removed this information yet Transunion continues to report outdated information and say they will do so indefinitely. Those are their words not mine.

Source: Excerpt of CFPB complaint 2745578, filed Dec. 5, 2017.

IV. POLICY RECOMMENDATIONS

Despite the substantial and valiant efforts of the CFPB and the state Attorneys General, there is still a great need for reform of the credit reporting industry. Note that these recommendations only address problems with accuracy and the broken dispute system. There are a number of other flaws in the credit reporting system, which require their own reforms.

1. Right to appeal

Congress should establish a right for consumers to appeal when they disagree with a furnisher or credit bureau about the results of a dispute investigation. The appeal could either be to an independent unit in the credit bureau or to a regulator, such as the CFPB or FTC. If the unit is housed within a credit bureau, the unit must have direct and unfettered authority to make independent decisions and not be subject to any restrictions or incentives to process disputes quickly or in favor of furnishers.

2. Stricter matching criteria

Congress should require the credit bureaus to use stricter matching criteria, including matching information based on all nine digits of the consumer's SSN or eight digits plus full name and address. At a minimum, Congress should require the CFPB to engage in a rulemaking that considers imposing such a requirement and in general establishing minimum procedures to ensure "maximum possible accuracy."

3. Require the credit bureaus to devote sufficient resources and conduct independent analyses in disputes

Congress, the federal regulators (CFPB, FTC) and state regulators must:

- Require credit bureaus and furnishers to dedicate sufficient resources and provide well-trained personnel to handle disputes.
- Enforce (for the regulators) or clarify (for Congress) that credit bureaus must conduct an independent analysis of disputes, separate from that of the furnisher.

4. Injunctive relief for consumers

Congress should give consumers the right to obtain court orders (injunctive relief) compelling credit bureaus to fix a credit report.

5. Give consumers more control over their credit reports

Consumers should be in the driver's seat in terms of the sharing of their credit reports. Congress should require that consumers proactively authorize the use of their credit reports for credit, insurance, and other uses. This could be combined with identity verification requirements which would act as a security measure against identity theft—basically making credit reports "frozen" by default.

6. A publicly owned credit bureau

Congress should establish a publicly owned alternative for credit reporting. This would provide the true competition so desperately needed in this industry.

In some countries, credit reporting is a public function or there is a publicly owned database that serves as a public option. Congress should establish a publicly owned alternative for credit reporting. While public agencies are far from perfect, at least they would be responsive to public pressure and government oversight. If the commercial credit bureaus are not responsive to a consumer's dispute, the consumer would have the option of having a lender or other user rely on the publicly-owned credit bureau. This would provide the true competition so desperately needed in this industry . We note that Demos will be coming out with a report proposing a public credit reporting system in the near future.

V. CONCLUSION

In the ten years since NCLC published *Automated Injustice*, we've seen incremental improvement in the credit reporting system, obtained at the cost of much effort by the CFPB and the state Attorneys General. We commend the federal and state regulators for their hard work, but there is much more that still needs to be fixed. American consumers have suffered enough at the hands of the credit bureaus. We must have large scale and sweeping reform, and soon.

ENDNOTES

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