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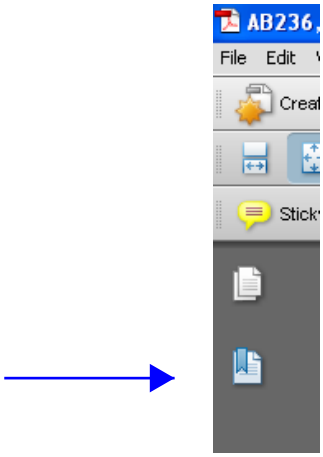

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LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **Public Law 108-159**
House of Representatives Bill No. 2622 of 2003
As signed on December 4, 2003
As codified in 117 United States Statutes 1952

The legislative history of section 1681c(g) of Title 15 of the United States Code as affected by the Public Law referenced above is documented by materials itemized in one declaration. ♦ The materials accompanying Exhibits B and C are listed in this same declaration. The materials are organized as follows:

Exhibit A - House of Representatives Bill No. 2622 of 2003,
Public Law 108-159
Exhibit B - 108th Congress Competitor Bills
Exhibit C – 108th Congress Background Hearings and Materials
regarding "truncation"

As you have provided us with a section and subdivision of focus, in our research of the public laws noted, we have refrained from gathering a complete collection of the documentation available, such as copies of all bills introduced, reports, transcripts of hearings, and debate from the *Congressional Record* regarding every aspect of the public laws. To do so would be to provide an excessive quantity of documents which, while relevant to the public law itself, may contain no reference to the section of your particular focus. Instead, we generally provide for each public law the CIS/Legislative History, or a comparable source of the enactment's history, which shows the various reports, hearings, debate available. (See Exhibit A, #2) Because of your specific topic, truncation of credit card numbers, we were able to assemble documents regarding this specific subject as related to Public Law 108-159 for your convenience. (See generally, Exhibit C) In our research process, we review the abstracts and determine which materials are relevant to your section and subdivision of focus. We review all versions of relevant bills, reports and debates, extracting for you that which is pertinent to your section and subdivision of focus. We generally do not review hearings as they are generally very lengthy; instead we endeavor to provide abstracts.

♦ For information on document numbers, research policies, request for judicial notice and more, please visit www.legintent.com and click on "**Research Aids and Policies**" and "**Points and Authorities**" at the bottom of the web page.

We will provide complete copies of any documents, or at your direction after a review of the materials we provide, obtain further documentation as needed. Occasionally this additional research may necessitate further research charges; we will discuss this with you at the time of your call requesting additional information if this is the case. We normally charge reproduction expenses, such as pdf or copying and delivery, for any further documentation sent.

PUBLIC LAW 108-159
HOUSE OF REPRESENTATIVES BILL NO. 2622 OF 2003
AS SIGNED ON DECEMBER 4, 2003
AS CODIFIED IN 117 UNITED STATES STATUTES 1952

Subdivision (g) was added to section 1681c of Title 15 of the United States Code in 2003 following congressional passage of House of Representatives Bill No. 2622 [hereinafter referred to as "H.R. 2622"], which amended the Fair Credit Reporting Act [hereinafter referred to as "the FCRA"] and enacted the "Fair and Accurate Credit Transactions Act of 2003" [also known as "the FACT Act"]. (See Exhibit A, #1, page 1952)

This bill was introduced on June 26, 2003 by Representative Spencer T. Bachus, III, as lead author. (See Exhibit A, #3a) A July 9, 2003 hearing transcript from the House Committee on Financial Services indicated that:

> The bill was introduced just prior to the 4th of July recess by a bipartisan coalition of 32 members of this Committee, 18 Republicans and 14 Democrats, led by the Chairman of the Financial Institution Subcommittee, the hardworking Mr. Bachus, Ms. Hooley, Mrs. Biggert and Mr. Moore.
> (See Exhibit A, #9, page 1)

H.R. 2622 was first reviewed by the House Committee on Financial Services and was amended by the House. (See Exhibit A, #3b and #5) Thereafter, the Senate Committee on Banking, Housing and Urban Affairs reviewed the bill. (See Exhibit A, #3c) The Senate Committee proposed to strike the text of the bill and insert a substitute text from Senate Bill 1753 of 2003 [hereinafter referred to as "S. 1753"], which the House disputed, prompting a call for the formation of a Conference Committee. (See Exhibit A, #7, page 65) The purpose of a Conference Committee is to bring together legislators, called "conferees," from the Senate and the House of Representatives in an attempt to reach a compromise on a bill's language that is acceptable to both.

The Committee of Conference formally recommended that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. (See Exhibit A, #7) Following approval of the conferees' recommendation by the House and the Senate, H.R. 2622 was presented to President George W. Bush, who signed this bill on December 4, 2003. (See Exhibit A, #1 and #10, page 1746)

As reported in the *Congressional Record*, the Chair of the House Committee on Financial Services, Representative Michael G. Oxley, characterized the Conference

version of H.R. 2622 as "a bipartisan bill that will foster economic growth and development throughout this country." (See Exhibit A, #4d, page H12214) His comments described the bill as follows:

> In addition to preserving our vital national credit system, this legislation is an extremely comprehensive consumer protection bill. The protections are designed to meet head-on the growing crime of identity theft which has accompanied the expanding credit market in our country. The FTC released a study in early September which revealed the damaging extent of this crime in our country. Ten million Americans were victimized by identity thieves last year alone, costing consumers and businesses over $55 billion, not counting the 300 million hours spent by victims to try to repair damaged credit records. The financial costs are staggering, with over $10,000 stolen in the average fraud.
>
> The Committee on Financial Services has worked tirelessly to explore and find solutions to this destructive crime. Over 100 witnesses have come before the committee since last April to discuss the renewal of the Fair Credit Reporting Act, and many of them focused their statements on the urgent need to increase safeguards designed to protect consumers and businesses alike from this crime. . . . [W]e have a bill before us today that empowers both consumers and businesses as we attempt to eliminate this terrible crime. Congress needs to pass strong, uniform identity theft protection; and it needs to do it now.
>
> (See Exhibit A, #4d, pages H12214 and H12215)

The Conference Report provided the following background discussion:

> The Fair Credit Reporting Act was enacted in 1970, and substantially amended in 1996. The amendments made at that time were necessary to make the law relevant in an information age. Included in the 1996 amendment were a number of provisions that explicitly preempt state laws. These preemptions expire on January 1, 2004.
>
> Since 1996, the national credit markets have undergone significant change. Most of these changes were the result of technological innovations. Technology has expanded the availability of credit, and permitted instant credit decisions. . . .
>
> Despite the myriad benefits of technology to the American consumer, there has been one drawback. Namely, the free flow information has enabled the explosive growth of a new crime---identity theft. Both Committees developed comprehensive hearing records regarding the growth of this crime and the havoc it visits upon the lives of its victims. Law enforcement professionals are cognizant of the growth of this crime, and have worked with the affected industries to combat it. While criminal prosecutions and strict fraud detection protocols can curtail identity theft, and punish the wrongdoers, not enough had been done heretofore to aid the real victims of this crime---the consumer whose identity is

> assumed, and can spend months or years trying to rehabilitate their credit and reorder their affairs.
> (See Exhibit A, #7, pages 65 and 66)

The Senate Committee amendments proposed to replace the contents of the House bill with its own Senate bill version, S. 1753. (See Exhibit A, #3e and #7, page 65) As explained by the Conference Report:

> The House bill and the Senate amendment contain a number of identical provisions. In other instances, the provisions in the respective bills addressed the same issue in a slightly different manner. Both the House bill and the Senate amendment addressed the provisions of the FCRA that preempted state laws, and are due to expire on January 1, 2004. Both bills addressed identity theft, medical information privacy and promote greater consumer access to their credit reports.
>
> The House bill, H.R. 2622, and the bill that served as the core of the Senate amendment (S. 1753) are each the result of an extensive deliberative and legislative process with a three-fold purpose: to assist the victims of identity theft; modernize the FCRA and; enhance the national credit reporting system. Readers should refer to the Committee Reports for the respective bills for further elaboration. The conference agreement contains provisions to accomplish these goals. It is the conferees' belief that this legislation will assist the victims of identity theft, and ensure the operational efficiency of our national credit system by creating a number of preemptive national standards.
> (See Exhibit A, #7, page 66)

After the conferees' amendments were accepted, the proposals in H.R. 2622 were enacted into law. (See Exhibit A, #3e) As indicated in the above quote, S. 1753 was substituted in the place of the original proposals in H.R. 2622. You may find the Congressional Research Service's analysis of the proposals in these bills useful to review. (See Exhibit A, #13) A full understanding of legislative intent is generally dependent upon knowing about the various proposals competing with or preceding the measure ultimately enacted. This can be especially true where the focus is on particular language; by contrasting that enacted with the unsuccessful proposals can afford insight as to the intended meaning. Thus, we provide the legislative history materials pertaining to S. 1753 as well as another competitor from the House, H.R. 2617. (See generally, Exhibit B)

Senator Richard C. Shelby, the author of S. 1753, served as chair of the Senate Committee on Banking, Housing and Urban Affairs, which was the Senate Committee that reviewed H.R. 2622. (See Exhibit A, #3e and Exhibit B, #7) You will find your language of interest in both bills. (See Exhibit A, #3a, et seq., and Exhibit B, #4)

As was also indicated by the Conference Report quoted above, the conferees suggested that the Reports published on these bills should be referred to for "further elaboration." (See Exhibit A, #7, page 66) We have included, without excerpting,

the House and Senate Reports that were published on H.R. 2622 and S. 1753. (See Exhibit A, #5 through #6 and Exhibit B, #5) We could not locate any reports published on H.R. 2617. Your review of these Reports should provide you with an understanding of the purposes underlying the new language proposed to be amended into section 1681c as subdivision (g). (Id.)

We include two of the hearing transcripts released by the House Committee. (See generally, Exhibit A, #8 and #9) Although incomplete at this time, please refer to the enclosed CIS materials to determine if additional hearing transcripts will be necessary. (See Exhibit A, #2) There would be no additional charges except for reproduction expenses.

Analysis of "truncation of credit card numbers" in 15 USC 1681c(g):

We found in our search that Senator Charles Schumer of New York may have been one of the originators of this specific provision. (See Exhibit C, #2) In his statement before the Senate Committee on Banking, Housing, and Urban Affairs, Senator Schumer provided the following background and explanation for his proposals:

> Again, this is a really important issue. I have been concerned and involved in it for over a year, and there is nothing worse than when your identity is stolen through no fault of your own and then it takes you years and years to restore your credit rating. . . .
>
> . . .
>
> So, I think we have to move, and we have to move quickly. . . .
>
> We should do a number of things, and like some others here, I have a proposal that I have been floating and circulating. . . .
>
> . . .
>
> And two other things, Mr. Chairman. I am sorry. I appreciate the indulgence. We should truncate credit card receipts. Some companies do this. In other words, the receipt, the part you discard, does not show the whole number on there so people cannot go into the garbage can, pick it up, and duplicate your credit card number. That is easy to do, and some companies have it and some do not.
> (See Exhibit C, #1, pages 77 and 78)

In this same hearing, "truncation of credit card account numbers on credit card receipts" was made part of the "Recommendations for Laws." (See Exhibit C, #1, page 180) This recommendation stated as follows:

> *Finding*: Many merchants print your entire credit card number on merchandise receipts. Unfortunately, this is an excellent way for thieves to gather information and enjoy a shopping spree at your expense. The scenario: It is a busy time, perhaps a white sale or during the holidays. As Mary wanders from store to store, she doesn't notice the gray-haired woman walking behind her. She also doesn't notice the woman slipping her hand into Mary's purchase bag and pulling out the receipt for the sweater she bought a few minutes ago. By the time Mary gets home a few hours later, this woman (minus the gray-haired wig) has hit two nearby shopping centers and charged about $3,000 in merchandise to Mary's account.
>
> *Recommendation*: Legislation that states that a person or an entity that accepts credit cards for the transaction of business may not print more than the last 5 digits of the credit card account number or the expiration date upon any receipt provided to consumers. A 2-year phase out deadline can be included to allow stores to adjust programs as they replace or alter machines and software programs.
> (See Exhibit C, #1, page 180)

In his Press Release and online article, Senator Schumer explained the background basis for his concerns and proposals to enact laws regarding truncation of credit card account numbers. (See Exhibit C, #2 and #3)

The Federal Trade Commission's prepared statement on the Fair Credit Reporting Act on July 10, 2003 appears to indicate that the legislative proposal regarding truncation of credit and debit card receipts may have come also from the U.S. Treasury Department. (See Exhibit C, #7, page 13) The Federal Trade Commission offered the following discussion:

> In many instances, identity theft results from thieves obtaining access to card numbers on receipts. This source of fraud could be reduced by requiring merchants to truncate (*i.e.*, print less than the full card number on the receipt). The use of truncation technology is becoming widespread, and some card issuers already require merchants to truncate. The Commission supports requiring truncation, but recommends that the law be phased in over a period of time to allow for the replacement of existing equipment.
> (See Exhibit C, #7, page 13)

Another hearing on identity theft and "assessing the problem and efforts to combat it," that was held on December 15, 2003 by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, provided discussion on the topic of truncation that you might find helpful. (See Exhibit C, #12, pages 36, et seq.)

There were two significant congressional measures that proposed truncation: H.R. 2622, the enacting bill for Public Law 108-159, and its competitor, S. 1753. We

enclose copies of pages from the *Congressional Record* regarding the subject or this specific proposal being offered by either of the two bills. (See Exhibit C, #4a through #4e) For example, the *Congressional Record* reported the following of Assembly member John Shadegg's comments on H.R. 2622:

> Importantly, as the author of our Nation's first identity theft legislation, I am very pleased with the provisions in this bill that deal with identity theft. It makes some important strides in improving our fight against identity theft. For example, the bill requires that anytime a transaction is made and information is transmitted using a credit card number, that number has to be truncated so that someone who wants to steal your identity by grabbing a hold of your credit card number will not have the full number. While some companies currently do that, no all do. This will protect them very much.
> (See Exhibit C, #4a, page H8128)

With specific reference to the drafting of the legislation in conference, the following was provided in the *Congressional Record* on November 21, 2003 by Representative Oxley:

> In drafting the House bill, we were careful to stipulate—and to clarify in a colloquy on the House floor among the gentlemen from Massachusetts, Mr. FRANK, the gentleman from Alabama, Mr. BACHUS, and myself—that the uniform national standards for identity theft were limited to the subject matters that the bill's provisions actually address, such as fraud alerts, blocking bad credit information, and truncating credit card account numbers at the point of sale. Thus, for example, this national uniformity would not affect State criminal statutes, or State laws governing the public display of social security numbers.
> (See Exhibit C, #4d, page H12215)

The Senate Committee on Banking, Housing and Urban Affairs' Report to accompany S. 1753 noted that this competitor bill "requires the truncation of credit and debit card account numbers on electronically printed receipts to prevent criminals from obtaining easy access to such key information." (See Exhibit C, #10, page 3; *see also* pages 13 and 29)

Members of the credit card industry also weighed in on this topic. (See, for example, Exhibit C, #5, #8, #9, #15 and #16)

Your own more careful review of the documents enclosed may reveal helpful discussion on the issue before you as it relates to the specific amendments adding subdivision (g) to section 1681c by H.R. 2622 under section 113 of the Public Law regarding truncation of credit card numbers. (See generally, Exhibit C)

You should also be able to draw some conclusions based upon the assumption that the new language amended by section 113 of the Public Law was intended to be consistent with the overall goal of the legislation. If you are unable to find specific

discussion regarding your particular research question, the analyses contained in the *Congressional Record* of *Proceedings and Debates*, the Senate and House Committees' Reports, and the *Congressional Quarterly* may provide you with an arguable assessment of the goals and purpose that could be applicable to your particular situation. (See Exhibit A, #4a through #4e, #5, #6, #7, and #12 and Exhibit B, #5 and #6; *see also* Exhibit C)

As we indicated earlier in this Report, we will provide complete copies of any documents at your direction after a review of the materials we provide, especially from the *CIS/Annual*. (See Exhibit A, #2) We normally charge reproduction expenses, such as pdf or copying and delivery, for any further documentation sent. If this additional research is lengthy, it may necessitate further research charges; we will discuss this with you at the time of your call requesting more information to be gathered if this is the case.

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.

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DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the amendment of Title 15, United States Code sections 1681c(g), 1681n and 1681s, by United States House of Representatives Bill No. 2622 of 2003 [hereinafter referred to as "H.R. 2622"]. H.R. 2622 was enacted by Congress as Public Law 108-159, December 4, 2003, 117 United States Statutes, 1952.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on H.R. 2622 of 2003 as it relates to Title 15, United States Code sections 1681c(g), 1681n and 1681s. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc.

EXHIBIT A - PUBLIC LAW 108-159, H.R. 2622 (BACHUS-2003):

1. Excerpt regarding sections 1681c(g), 1681n and 1681s of Title 15 of the United States Code from Public Law 108-159, December 4, 2003, 117 United States Statutes 1952;
2. Excerpt regarding the Fair Credit Reporting Act and on Public Law 108-159 from the 2003 *CIS Index Annual*, Legislative Histories of U.S. Public Laws;
3. Excerpts of 15 U.S.C. sections 1681c(g), 1681n and 1681s from all available versions of H.R. 2622 (Bachus-2003);

4. Excerpts regarding H.R. 2622 from the *Congressional Record of Proceedings and Debates*, as follows:
   a. House, September 10, 2003, Vol. 149, No. 124;
   b. House, November 5, 2003, Vol. 149, No. 159;
   c. House, November 6, 2003, Vol. 149, No. 160;
   d. House, November 21, 2003, Vol. 149, No. 170;
   e. Extensions of Remarks, December 8, 2003, Speech of Representative Michael G. Oxley;
5. House Report No. 108-263 entitled "Fair and Accurate Credit Transactions Act of 2003," dated September 4, 2003, prepared by the House Committee on Financial Services, to accompany H.R. 2622;
6. House SUPPLEMENTAL Report No. 108-263, Part 2, entitled "Fair and Accurate Credit Transactions Act of 2003," dated September 9, 2003, prepared by the House Committee on Financial Services, to accompany H.R. 2622;
7. House CONFERENCE Report No. 108-396, entitled "Fair and Accurate Credit Transactions Act," dated November 21, 2003, prepared by the Conference Committee, to accompany H.R. 2622;
8. Transcript of hearing before the House Committee on Financial Services on "The Role of FCRA in Employee Background Checks and the Collection of Medical Information," June 17, 2003, available at: http://financialservices.house.gov;
9. Transcript of hearing before the House Committee on Financial Services, July 9, 2003, on H.R. 2622, available at: http://financialservices.house.gov;
10. Excerpt regarding H.R. 2622 from the *Weekly Compilation of Presidential Documents*, Vol. 39, December 4, 2003
11. Excerpt regarding Spencer T. Bachus, III, from the *Biographical Directory of the United States Congress*, 1774-Present, available at: http://bioguide.congress.gov/scripts/bio;
12. Eleven on-line excerpts regarding the Fair and Accurate Credit Transactions Act and H.R. 2622 published by the *Congressional Quarterly Weekly*, available at: http://library2.cqpress.com/cqweekly;
13. CRS Report for Congress, entitled "Fair Credit Reporting Act: A Side-By-Side Comparison of House, Senate and Conference Versions," updated December 11, 2003, published by Congressional Research Service, received through the CRS Web site.

*** EXHIBIT B - COMPETITOR MEASURES FROM THE 108TH CONGRESS:**

1. All available versions of H.R. 2617 (Shadegg-2003);
2. Excerpt regarding Representative John B. Shadegg from the *Biographical Directory of the United States Congress*, 1774-Present, available at: http://bioguide.congress.gov/scripts/bio;
3. All available versions of House Resolution No. 360 (Sessions-2003);
4. Excerpt regarding T. 15 U.S.C. sections 1681c(g), 1681n and 1681s from all available versions of Senate Bill 1753 [hereinafter referred to as "S. 1753"] (Shelby-2003);
5. Excerpts regarding S. 1753 from the *Congressional Record of Proceedings and Debates*, as follows:
   a. Senate, October 28, 2003, Vol. 149, No. 153;
   b. Senate, November 4, 2003, Vol. 149, No. 158;
   c. Senate, November 6, 2003, Vol. 149, No. 160;
6. Senate Report No. 108-166 entitled "Amending Fair Credit Report Act," October 17, 2003, to accompany S. 1753, prepared by the Senate Committee on Banking, Housing and Urban Affairs;
7. Excerpt regarding Senator Richard C. Shelby, chair of the Senate Committee on Banking, Housing and Urban Affairs, from the *Biographical Directory of the United States Congress*, 1774-Present, available at: http://bioguide.congress.gov/scripts/bio.

*** EXHIBIT C – 108TH CONGRESS BACKGROUND HEARINGS AND DOCUMENTS REGARDING "TRUNCATION":**

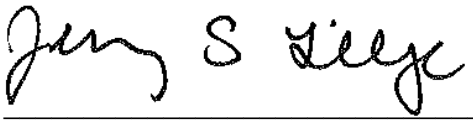
1. Senate Hearing No. 108-579, entitled "The Fair Credit Reporting Act and Issues Presented by Reauthorization of the Expiring Preemption Provisions," hearings before the Senate Committee on Banking, Housing, and Urban Affairs, May 20, June 19, 26, July 10, 29, and 31, 2003, excerpted for "truncation";
2. Press Release of Senator Charles E. Schumer of New York, dated December 1, 2002, entitled "*New York is the Identity Theft Capital of Country*";
3. "*The Growing Menace of Identity Theft to New York Consumers*," by Senator Charles E. Schumer, available online;

4. Excerpts regarding "truncation" in H.R. 2622 and Senate Bill No. 1753 [hereinafter referred to as "S. 1753", competitor to H.R. 2622] from the *Congressional Record of Proceedings and Debates*, 108th Congress, First Session, as follows:
    a. Regarding H.R. 2622, in the House, September 10, 2003, Vol. 149, No. 124;
    b. Regarding S. 1753, in the Senate, November 4, 2003, Vol. 149, No. 158;
    c. Regarding S. 1753, in the Senate, November 6, 2003, Vol. 149, No. 160;
    d. Regarding H.R. 2622, in the House, November 21, 2003, Vol. 149, No. 170;
    e. Regarding H.R. 2622, Extension of Remarks, December 6, 2003; Vol. 149;
5. Written Statement of L. Richard Fischer on Behalf of VISA U.S.A., Inc. before the House Committee on Financial Services, July 9, 2003;
6. Prepared Statement of the Federal Trade Commission on the Fair Credit Reporting Act before the House Committee on Financial Services, July 9, 2003;
7. Prepared Statement of the Federal Trade Commission on the Fair Credit Reporting Act before the Senate Committee on Banking, Housing, and Urban Affairs, July 10, 2003;
8. Congressional Budget Office Private-Sector Mandates Statement on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, as reported by the House Committee on Financial Services on September 4, 2003;
9. Report by the Federal Trade Commission, "Overview of the Identity Theft Program," October 1998 – September 2003, dated September, 2003;
10. Senate Report No. 108-166, entitled "Amending Fair Credit Reporting Act," to accompany S. 1753, dated October 17, 2003, prepared by the Senate Committee on Banking, Housing and Urban Affairs;
11. Serial No. 108-59, entitled "Enhancing Social Security Number Privacy," hearing before the Subcommittee on Social Security of the House Committee on Ways and Means, June 15, 2004, excerpted for "truncation";
12. Serial No. 108-60, entitled "Identity Theft: Assessing the Problem and Efforts to Combat It," hearing before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, December 15, 2003;
13. "*S. 1753, the National Consumer Credit Reporting System Improvement Act*," prepared by the Democratic Policy Committee;

14. "*Overview*" of the Fair and Accurate Credit Transactions Act of 2003, published by the American Bankers Association, dated November 24, 2003;
15. "*Lawmakers Hope to Address ID Theft as Part of FCRA Reauthorization*," by Catherine Hubbard, CCH Washington Staff Writer, published online by Commerce Clearinghouse on July 21, 2003;
16. "*Covering it up; Truncation regulations are taking effect, but who's responsible for implementation?*" by Julie Ritzer Ross, published online by Transaction Trends on July, 2004.

* These documents are available but are not included with this sample.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of July, 2015 at Woodland, California.



JENNY S. LILLGE

PUBLIC LAW 108–159—DEC. 4, 2003

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Public Law 108–159
108th Congress

An Act

Dec. 4, 2003
[H.R. 2622]

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fair and Accurate Credit Transactions Act of 2003.
15 USC 1601 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS.

15 USC 1681 note.

As used in this Act—

(1) the term "Board" means the Board of Governors of the Federal Reserve System;

(2) the term "Commission", other than as used in title V, means the Federal Trade Commission;

(3) the terms "consumer", "consumer report", "consumer reporting agency", "creditor", "Federal banking agencies", and "financial institution" have the same meanings as in section 603 of the Fair Credit Reporting Act, as amended by this Act; and

(4) the term "affiliates" means persons that are related by common ownership or affiliated by corporate control.

SEC. 3. EFFECTIVE DATES.

15 USC 1681 note.

Except as otherwise specifically provided in this Act and the amendments made by this Act—

Regulations.

(1) before the end of the 2-month period beginning on the date of enactment of this Act, the Board and the Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act; and

(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible, while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall any such effective date be later than 10 months after the date of issuance of such regulations in final form.

TITLE I—IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

Subtitle A—Identity Theft Prevention

SEC. 111. AMENDMENT TO DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following:

"(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

"(1) ACTIVE DUTY MILITARY CONSUMER.—The term 'active duty military consumer' means a consumer in military service who—

"(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

"(B) is assigned to service away from the usual duty station of the consumer.

"(2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms 'fraud alert' and 'active duty alert' mean a statement in the file of a consumer that—

"(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and

"(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

"(3) IDENTITY THEFT.—The term 'identity theft' means a fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation.

"(4) IDENTITY THEFT REPORT.—The term 'identity theft report' has the meaning given that term by rule of the Commission, and means, at a minimum, a report—

"(A) that alleges an identity theft;

"(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and

"(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

"(5) NEW CREDIT PLAN.—The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.

"(r) CREDIT AND DEBIT RELATED TERMS—

"(1) CARD ISSUER.—The term 'card issuer' means—

"(A) a credit card issuer, in the case of a credit card; and

"(i) notification that the consumer does not authorize the establishment of any new credit plan or extension of credit described in clause (i), other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B); and

"(ii) a telephone number or other reasonable contact method designated by the consumer.

"(B) LIMITATION ON USERS.—No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended fraud alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method described in subparagraph (A)(ii) to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.".

(b) RULEMAKING.—The Commission shall prescribe regulations to define what constitutes appropriate proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the Fair Credit Reporting Act, as amended by this Act. 15 USC 1681c–1 note.

SEC. 113. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

"(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card. Applicability.

"(3) EFFECTIVE DATE.—This subsection shall become effective—

"(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

"(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine

or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.".

SEC. 114. ESTABLISHMENT OF PROCEDURES FOR THE IDENTIFICATION OF POSSIBLE INSTANCES OF IDENTITY THEFT.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) by striking "(e)" at the end; and

(2) by adding at the end the following:

"(e) RED FLAG GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621—

"(A) establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

"(B) prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A), to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers; and

"(C) prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer, in accordance with reasonable policies and procedures—

"(i) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

"(ii) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

"(iii) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subparagraph (B).

"(2) CRITERIA.—

"(A) IN GENERAL.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

"(B) INACTIVE ACCOUNTS.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall consider including reasonable guidelines providing that when a transaction occurs with respect

"(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

"(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.".

(e) LIABILITY AND ENFORCEMENT.—

(1) CIVIL LIABILITY.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended by striking subsections (c) and (d) and inserting the following:

"(c) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

"(1) subsection (a) of this section, including any regulations issued thereunder;

"(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; or

"(3) subsection (e) of section 615.

"(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.".

(2) STATE ACTIONS.—Section 621(c) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)) is amended—

(A) in paragraph (1)(B)(ii), by striking "of section 623(a)" and inserting "described in any of paragraphs (1) through (3) of section 623(c)"; and

(B) in paragraph (5)—

(i) in each of subparagraphs (A) and (B), by striking "of section 623(a)(1)" each place that term appears and inserting "described in any of paragraphs (1) through (3) of section 623(c)"; and

(ii) by amending the paragraph heading to read as follows:

"(5) LIMITATIONS ON STATE ACTIONS FOR CERTAIN VIOLATIONS.—".

(f) RULE OF CONSTRUCTION.—Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act. 15 USC 1681n note.

SEC. 313. FTC AND CONSUMER REPORTING AGENCY ACTION CONCERNING COMPLAINTS.

(a) IN GENERAL.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following:

"(e) TREATMENT OF COMPLAINTS AND REPORT TO CONGRESS.—

"(1) IN GENERAL.—The Commission shall—

Records.

"(A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 603(p) contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or otherwise utilized the procedures provided by subsection (a); and

"(B) transmit each such complaint to each consumer reporting agency involved.

"(2) EXCLUSION.—Complaints received or obtained by the Commission pursuant to its investigative authority under the Federal Trade Commission Act shall not be subject to paragraph (1).

"(3) AGENCY RESPONSIBILITIES.—Each consumer reporting agency described in section 603(p) that receives a complaint transmitted by the Commission pursuant to paragraph (1) shall—

"(A) review each such complaint to determine whether all legal obligations imposed on the consumer reporting agency under this title (including any obligation imposed by an applicable court or administrative order) have been met with respect to the subject matter of the complaint;

"(B) provide reports on a regular basis to the Commission regarding the determinations of and actions taken by the consumer reporting agency, if any, in connection with its review of such complaints; and

Records.

"(C) maintain, for a reasonable time period, records regarding the disposition of each such complaint that is sufficient to demonstrate compliance with this subsection.

"(4) RULEMAKING AUTHORITY.—The Commission may prescribe regulations, as appropriate to implement this subsection.

"(5) ANNUAL REPORT.—The Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report regarding information gathered by the Commission under this subsection.".

15 USC 1681i note.

(b) PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.—

(1) STUDY REQUIRED.—The Board and the Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

Deadline.

(2) REPORT REQUIRED.—Before the end of the 12-month period beginning on the date of enactment of this Act, the

Board and the Commission shall jointly submit a progress report to the Congress on the results of the study required under paragraph (1).

(3) CONSIDERATIONS.—In preparing the report required under paragraph (2), the Board and the Commission shall consider information relating to complaints compiled by the Commission under section 611(e) of the Fair Credit Reporting Act, as added by this section.

(4) RECOMMENDATIONS.—The report required under paragraph (2) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or administrative action, to ensure that—

(A) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

(B) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act; and

(C) consumer reporting agencies establish and maintain appropriate internal controls and management review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

SEC. 314. IMPROVED DISCLOSURE OF THE RESULTS OF REINVESTIGATION.

(a) IN GENERAL.—Section 611(a)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(5)(A)) is amended by striking "shall" and all that follows through the end of the subparagraph, and inserting the following: "shall—

"(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

"(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.". Notification.

(b) FURNISHER REQUIREMENTS RELATING TO INACCURATE, INCOMPLETE, OR UNVERIFIABLE INFORMATION.—Section 623(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end; and

(2) in subparagraph (D), by striking the period at the end and inserting the following: "; and

"(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes

"(B) the provision of health care to an individual; or

"(C) the payment for the provision of health care to an individual.

"(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.".

15 USC 1681a note.

(d) EFFECTIVE DATES.—This section shall take effect at the end of the 180-day period beginning on the date of enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as amended by subsection (a) of this section) shall take effect on the later of—

(1) the end of the 90-day period beginning on the date on which the regulations required under paragraph (5)(B) of such section 604(g) are issued in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

SEC. 412. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CONSUMER REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)), as amended by this Act, is amended by adding at the end the following:

"(9) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding at the end the following:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

15 USC 1681b note.

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s), as amended by this Act, is amended by adding at the end the following:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (9) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures, as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)), as amended by section 411 of this Act, is amended—

(1) in paragraph (1), by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2), by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of enactment of this Act.

TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

Financial Literacy and Education Improvement Act.
20 USC 9701 note.

SEC. 511. SHORT TITLE.

This title may be cited as the "Financial Literacy and Education Improvement Act".

20 USC 9701.

SEC. 512. DEFINITIONS.

As used in this title—

(1) the term "Chairperson" means the Chairperson of the Financial Literacy and Education Commission; and

(2) the term "Commission" means the Financial Literacy and Education Commission established under section 513.

20 USC 9702.

SEC. 513. ESTABLISHMENT OF FINANCIAL LITERACY AND EDUCATION COMMISSION.

(a) IN GENERAL.—There is established a commission to be known as the "Financial Literacy and Education Commission".

(b) PURPOSE.—The Commission shall serve to improve the financial literacy and education of persons in the United States through development of a national strategy to promote financial literacy and education.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of—

(A) the Secretary of the Treasury;

(B) the respective head of each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development,

Trading Commission, and any futures association registered with such Commission.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 603(d)(2)(D) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(D)) is amended by inserting "or (x)" after "subsection (o)".

TITLE VII—RELATION TO STATE LAWS

SEC. 711. RELATION TO STATE LAWS.

Section 625 of the Fair Credit Reporting Act (15 U.S.C. 1681t), as so designated by section 214 of this Act, is amended—

(1) in subsection (a), by inserting "or for the prevention or mitigation of identity theft," after "information on consumers,";

(2) in subsection (b), by adding at the end the following:

"(5) with respect to the conduct required by the specific provisions of—

"(A) section 605(g);
"(B) section 605A;
"(C) section 605B;
"(D) section 609(a)(1)(A);
"(E) section 612(a);
"(F) subsections (e), (f), and (g) of section 615;
"(G) section 621(f);
"(H) section 623(a)(6); or
"(I) section 628."; and

(3) in subsection (d)—

(A) by striking paragraph (2);

(B) by striking "(c)—" and all that follows through "do not affect" and inserting "(c) do not affect"; and

(C) by striking "1996; and" and inserting "1996.".

TITLE VIII—MISCELLANEOUS

SEC. 811. CLERICAL AMENDMENTS.

(a) SHORT TITLE.—Section 601 of the Fair Credit Reporting Act (15 U.S.C. 1601 note) is amended by striking "the Fair Credit Reporting Act." and inserting "the 'Fair Credit Reporting Act'.".

(b) SECTION 604.—Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended in paragraphs (1) through (5), other than subparagraphs (E) and (F) of paragraph (3), by moving each margin 2 ems to the right.

(c) SECTION 605.—

(1) Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended by striking "(1) cases" and inserting "(1) Cases".

(2)(A) Section 5(1) of Public Law 105–347 (112 Stat. 3211) is amended by striking "Judgments which" and inserting "judgments which". 15 USC 1681c.

(B) The amendment made by subparagraph (A) shall be deemed to have the same effective date as section 5(1) of Public Law 105–347 (112 Stat. 3211). 15 USC 1681c note.

(d) SECTION 609.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended—

(1) in paragraph (2), by moving the margin 2 ems to the right; and

(2) in paragraph (3)(C), by moving the margins 2 ems to the left.

(e) SECTION 617.—Section 617(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681o(a)(1)) is amended by adding "and" at the end.

(f) SECTION 621.—Section 621(b)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(1)(B)) is amended by striking "25(a)" and inserting "25A".

(g) TITLE 31.—Section 5318 of title 31, United States Code, is amended by redesignating the second item designated as subsection (l) (relating to applicability of rules) as subsection (m).

(h) CONFORMING AMENDMENT.—Section 2411(c) of Public Law 104–208 (110 Stat. 3009–445) is repealed.

15 USC 1681m.

Approved December 4, 2003.

LEGISLATIVE HISTORY—H.R. 2622 (S. 1753):

HOUSE REPORTS: Nos. 108–263 and Pt.2 (Comm. on Financial Services) and 108–396 (Comm. of Conference).

SENATE REPORTS: No. 108–166 accompanying S. 1753 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Sept. 10, considered and passed House.

Nov. 5, considered and passed Senate, amended, in lieu of S. 1753.

Nov. 21, House agreed to conference report.

Nov. 22, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):

Dec. 4, Presidential remarks.

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LEGISLATIVE HISTORIES
OF US PUBLIC LAWS

Public Law 108-159

Fair and Accurate Credit Transactions Act of 2003

December 4, 2003

Public Law

1.1 Public Law 108-159, approved Dec. 4, 2003. (H.R. 2622)

(CIS03:PL108-159 61 p.)

"To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes."

Amends the Fair Credit Reporting Act and the Consumer Credit Protection Act to establish procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and to facilitate the ability of consumers who are victims of identity fraud to repair their credit.

Requires credit bureaus to include a "fraud alert" in consumer files if requested by the consumer.

Requires individuals and businesses that accept credit or debit cards to truncate the card account numbers by including no more than the last five numbers on an electronically printed cardholder receipt.

Require Federals banking agencies to issue guidelines and regulations concerning identity theft and credit reporting by financial institutions.

Requires FTC to prepare a model summary of rights for consumers who believe that they may be the victims of fraud or identity theft and for consumers who want to obtain or dispute information contained in consumer reports.

Requires national credit reporting agencies to provide a credit report without charge at the consumer's request, once per year.

Prohibits consumer reporting agencies from providing credit reports that contain medical information without the consumer's affirmative consent.

Establishes the Financial Literacy and Education Commission to improve public awareness of financial matters, including availability and significance of credit reports and credit scores.

Excludes certain investigative reports involving alleged misconduct by an employee from the definition of consumer reports.

Title V is cited as the Financial Literacy and Education Improvement Act.

P.L. 108-159 Reports

108th Congress

2.1 H. Rpt. 108-263 on H.R. 2622, "Fair and Accurate Credit Transactions Act of 2003," Sept. 4, 2003.

(CIS03:H373-21 92 p.)
(Y1.1/8:108-263.)

Recommends passage, with an amendment in the nature of a substitute, of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, to amend the Fair Credit Reporting Act to establish procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and facilitate the ability of consumers who are victims of identity fraud to repair their credit.

Includes provisions to:

a. Require credit card companies to implement procedures to confirm a consumer's old and new address whenever they are requested to change the address for an account.
b. Require credit bureaus to include a "fraud alert" in consumer files if requested by the consumer.
c. Restrict credit bureaus from disclosing certain consumer identifying information.
d. Require credit bureaus to provide an annual consumer report without charge at the consumer's request.
e. Prohibit consumer reporting agencies from providing credit reports that contain medical information without the consumer's affirmative consent.

Includes additional and supplemental views (p. 79-92).
H.R. 2622 is related to H.R. 1543.

2.2 H. Rpt. 108-263, pt. 2 on H.R. 2622, "Fair and Accurate Credit Transactions Act of 2003," Sept. 9, 2003.

(CIS03:H373-22 3 p.)
(Y1.1/8:108-263/PT.2.)

Supplemental report on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, to amend the Fair Credit Reporting Act to establish procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and facilitate the ability of consumers who are victims of identity fraud to repair their credit. (For complete summary, see H373-21.)

2.3 S. Rpt. 108-166 on S. 1753, "Amending Fair Credit Reporting Act," Oct. 17, 2003.

(CIS03:S243-3 32 p.)
(Y1.1/5:108-166.)

Recommends passage of S. 1753, the National Consumer Credit Reporting System Improvement Act of 2003, to amend the Fair Credit Reporting Act to establish procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and to facilitate the ability of consumers who are victims of identity fraud to repair their credit.

Includes provisions to:

a. Require FTC to prepare a model summary of rights for consumers who believe that they may be the victims of fraud or identity theft and for consumers who want to obtain or dispute information contained in consumer reports.
b. Require Federal banking agencies to issue guidelines and regulations concerning identity theft, credit reporting, and use of consumers' medical information by financial institutions.
c. Establish the Financial Literacy and Education Commission to improve public awareness of financial matters, including availability and significance of credit reports and credit scores.
d. Require credit bureaus to provide an annual free credit report without charge at the consumer's request.
e. Require credit bureaus to include a "fraud alert" in consumer files if requested by the consumer.

f. Require individuals and businesses that accept credit or debit cards to truncate the card account numbers by including no more than the last five numbers on an electronically printed cardholder receipt.

g. Prohibit consumer reporting agencies from providing credit reports that contain medical information without the consumer's affirmative consent.

S. 1753 is related to H.R. 2622.

2.4 H. Rpt. 108-396, conference report on H.R. 2622, "Fair and Accurate Credit Transactions Act, 2003," Nov. 21, 2003.

(CIS03:H373-27 67 p.)
(Y1.1/8:108-396.)

Conference report on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, to amend the Fair Credit Reporting Act and the Consumer Credit Protection Act to establish procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and to facilitate the ability of consumers who are victims of identity fraud to repair their credit.

Title V is cited as the Financial Literacy and Education Improvement Act.

H.R. 2622 is related to S. 1753.

Related Reports

108th Congress

2R.1 H. Rpt. 108-267 on H. Res. 360, "Providing for Consideration of H.R. 2622, Fair and Accurate Credit Transactions Act of 2003," Sept. 9, 2003.

(CIS03:H683-72 1 p.)
(Y1.1/8:108-267.)

Recommends adoption of H. Res. 360, to provide for consideration of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.

P.L. 108-159 Bills

106th Congress

HOUSE BILLS

3.1 H.R. 2856 as introduced.

3.2 H.R. 3408 as introduced.

3.3 H.R. 4311 as introduced.

3.4 H.R. 4644 as introduced.

107th Congress

HOUSE BILLS

3.5 H.R. 3053 as introduced.

3.6 H.R. 5424 as introduced.

SENATE BILLS

3.7 S. 1399 as introduced.

3.8 S. 1742 as introduced Nov. 29, 2001; as reported by the House Judiciary Committee May 21, 2002; as passed by the Senate Nov. 14, 2002.

108th Congress

ENACTED BILL

3.9 H.R. 2622 as introduced June 26, 2003; as reported by the House Financial Services Committee Sept. 4, 2003; as passed by the House Sept. 10, 2003; as passed by the Senate Nov. 5, 2003.

COMPANION BILL

3.10 S. 1753 an original bill, as reported by the Senate Banking, Housing, and Urban Affairs Committee Oct. 17, 2003.

OTHER HOUSE BILLS

3.11 H.R. 1543 as introduced.

3.12 H.R. 2035 as introduced.

3.13 H.R. 2617 as introduced.

OTHER SENATE BILLS

3.14 S. 223 as introduced.

3.15 S. 660 as introduced.

3.16 S. 1633 as introduced.

Related Bills

108th Congress

HOUSE BILLS

3R.1 H. Res. 360 an original resolution, as reported by the House Rules Committee Sept. 9, 2003; as passed by the House Sept. 10, 2003.

P.L. 108-159 Debate

148 Congressional Record
107th Congress, 2nd Session - 2002

4.1 Nov. 14, Senate consideration and passage of S. 1742, p. S11052.

149 Congressional Record
108th Congress, 1st Session - 2003

4.2 Sept. 10, House consideration and passage of H. Res. 360 and H.R. 2622, p. H8111.

4.3 Nov. 4, Senate consideration of S. 1753, p. S13848.

4.4 Nov. 5, Senate consideration of S. 1753, consideration and passage of H.R. 2622 with an amendment, and return to the calendar of S. 1753. Senate insistence on its amendments to H.R. 2622, request for a conference, and appointment of conferees, p. S13980.

4.5 Nov. 6, House disagreement to the Senate amendment to H.R. 2622, agreement to a conference, and appointment of conferees, p. H10514.

4.6 Nov. 21, Submission in the House of the conference report on H.R. 2622. House agreement to the conference report on H.R. 2622, p. H12198, H12247.

4.7 Nov. 22, Senate agreement to the conference report on H.R. 2622, p. S15570.

P.L. 108-159 Hearings

106th Congress

5.1 "H.R. 3408: The Fair Credit Reporting Amendments Act of 1999," hearings before the Subcommittee on Financial Institutions and Consumer Credit, House Banking and Financial Services Committee, May 4, 2000.

(CIS00:H241-31 iv+242 p.)
(Y4.B22/1:106-57.)

Committee Serial No. 106-57. Hearing before the *Subcom on Financial Institutions and Consumer Credit* to consider H.R. 3408, the Fair Credit Reporting Amendments Act of 1999, to amend the Fair Credit Reporting Act (FCRA) to exclude certain investigative reports involving alleged illegal conduct by an employee from the definition of consumer reports.

Bill responds to FTC 1999 opinion letter which concluded that outside consultants who investigate alleged employee misconduct are credit reporting agencies subject to FCRA notice and disclosure requirements.

H.R. 3408 removes FCRA procedural requirements that interfere with workplace investigations into employee misconduct, including requirements that the employer must provide notice to and obtain written authorization from an employee prior to initiating an investigation.

Supplementary material (p. 41-242) includes witnesses' written statements and written replies to Subcom questions, submitted statements, and correspondence.

May 4, 2000. p. 4-7.
Witness: **Sessions, Pete,** (Rep, R-Tex)

108th Congress, 1st Session

Statement: Merits of sponsored H.R. 3408.

May 4, 2000. p. 7-23, 57-90.
Witnesses: **Castro, Ida L.,** Chairwoman, EEOC.
Valentine, Debra A., General Counsel, FTC.
Statements and Discussion: Objections to application of FCRA requirements to workplace discrimination investigations; concerns regarding certain H.R. 3408, with recommendations.

May 4, 2000. p. 24-40, 91-242.
Witnesses: **McClain, Eddy L.,** Chairman, Krout & Schneider, Inc.; representing National Council of Investigation and Security Services.
Seymour, Richard T., Director, Employment Discrimination Project, Lawyers' Committee for Civil Rights Under Law.
Bokat, Stephen A., Senior Vice President, Chamber of Commerce of the U.S.
Lotito, Michael J., Board Chairman, Society for Human Resource Management.
Bashen, Janet E., President and CEO, S.J. Bashen Corp.
Dichter, Mark S., Chair-Elect, Section on Labor and Employment Law, ABA.
Saunders, Margot, Managing Attorney, National Consumer Law Center; also representing U.S. Public Interest Research Group.
Statements and Discussion: Support for H.R. 3408, citing need to amend FCRA to enhance ability of employers to engage outside experts to investigate employee misconduct; need to retain certain FCRA protections for targets of employment investigations, with review of case law; importance of exempting employment investigations from FCRA requirements (related materials, p. 160-185, 198-209).

Analysis of and objections to FTC opinion imposing FCRA requirements on employment investigations (related materials, p. 219-226); importance of FCRA application to third-party investigation of employees, with opposition to H.R. 3408 (related statement, p. 238-242).

5.2 "H.R. 4311: The Identity Theft Prevention Act of 2000," hearings before the House Banking and Financial Services Committee, Sept. 13, 2000.

(CIS01:H241-12 iv+423 p.)
(Y4.B22/1:106-70.)

Committee Serial No. 106-70. Hearing to consider H.R. 4311, the Identity Theft Prevention Act of 2000, to amend the Truth in Lending Act and the Fair Credit Reporting Act to establish procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and facilitate the ability of consumers who are victims of identity fraud to repair their credit.

Includes provisions to:

a. Require credit card companies to provide written confirmation to both a consumer's old and new address whenever they are requested to change the address for an account.
b. Require credit bureaus to include a "fraud alert" in consumer files if requested by the consumer.
c. Restrict credit bureaus from disclosing certain consumer identifying information, including social security numbers.
d. Require credit bureaus to provide an annual consumer report without charge at the consumer's request.

Supplementary material (p. 79-423) includes witnesses' written statements, a report, and submitted statements.

Sept. 13, 2000. p. 4-8.
Witnesses: **Hooley, Darlene,** (Rep, D-Oreg)
LaTourette Steven C., (Rep, R-Ohio)
Statements: Need for H.R. 4311.

Sept. 13, 2000. p. 9-28, 105-170.
Witnesses: **Broder, Betsy,** Assistant Director, Division of Planning and Information, Bureau of Consumer Protection, FTC.
Townsend, Bruce A., Special Agent in Charge, Financial Crimes Division, Secret Service.

Statements and Discussion: Explanation of FTC efforts to collect and disseminate identity theft information, with details on Identity Theft Data Clearinghouse; views on H.R. 4311; Secret Service law enforcement efforts to combat identity theft; issues relating to identity theft problem.

Insertion:

- FTC, individual reference services marketing of personal identifying information, report (p. 124-164).

Sept. 13, 2000. p. 28-47, 171-195.

Witnesses: **Douglas, Robert**, Co-Founder and CEO, American Privacy Consultants.

Boulden, Shon, victim of identity theft.

Statements and Discussion: Examples of advertisements offering services to obtain and sell personal financial information; recommendations to combat identity theft; personal experience with identity theft involving a stolen social security number; views on and issues related to H.R. 4311.

Sept. 13, 2000. p. 47-77, 196-398.

Witnesses: **Plesser, Ronald L.**, Coordinator, Individual Reference Services Group.

Harvey, Richard H., Jr., Vice President, Chevy Chase Bank; representing American Bankers Association.

Pratt, Stuart K., Vice President, Government Relations, Associated Credit Bureaus.

Benner, Janine, Consumer Associate, California Public Interest Research Group (CALPIRG); also representing U.S. Public Interest Research Group and Privacy Rights Clearinghouse.

Hulme, Bruce H., President, Special Investigations, Inc.; representing National Council of Investigation and Security Services.

Statements and Discussion: Differing views on H.R. 4311, with recommendations; feared adverse impact of H.R. 4311 on legitimate individual reference services, consumer reporting agencies, and private investigator services; efforts of banking industry to combat identity theft; issues related to H.R. 4311.

Insertions:

a. American Bankers Association, "Identity Theft Communications Kit" July 2000 (p. 229-249).

b. American Bankers Association, "Financial Privacy Toolbox" 2000 (p. 256-325).

c. CALPIRG; and Privacy Rights Clearinghouse, "Nowhere To Turn: Victims Speak Out on Identity Theft" survey, May 2000 (p. 366-387).

5.3 "H.R. 2856: Fair Credit Full Disclosure Act," hearings before the Subcommittee on Financial Institutions and Consumer Credit, House Banking and Financial Services Committee, Sept. 21, 2000.

(CIS01:H241-14 iii+143 p.)
(Y4.B22/1:106-72.)

Committee Serial No. 106-72. Hearing before the *Subcom on Financial Institutions and Consumer Credit* to examine H.R. 2856, the Fair Credit Full Disclosure Act, and other proposals to provide for disclosure to consumers of personal credit scores, which are generated by statistical models used to rank individuals according to credit risk for the purpose of assisting lenders in the credit eligibility and rate determination process.

Supplementary material (p. 47-143) includes a press release, correspondence, and witnesses' written statements.

Sept. 21, 2000. p. 6-16.

Witnesses: **Schumer, Charles E.** (Sen, D-NY)
Cannon, Chris, (Rep, R-Utah)
Ford, Harold E., Jr., (Rep, D-Tenn)

Statements and Discussion: Overview of proposals to require disclosure of personal credit scores to consumers.

Sept. 21, 2000. p. 16-21, 63-83.

Witness: **Twohig, Peggy L.**, Assistant Director, Financial Practices Division, FTC.

Statement and Discussion: Support for disclosure of personal credit scores to consumers.

Sept. 21, 2000. p. 22-46, 84-143.

Witnesses: **St. John, Cheryl**, Senior Vice President and General Manager, Global Data Repository and Processor Alliances, Fair, Isaac and Co.

Pratt, Stuart K., Vice President, Government Relations, Associated Credit Bureaus.

Barnes, Jan N., Associate Broker, Century 21 New Millennium; representing National Association of Realtors.

Mierzwinski, Edmund, Consumer Program Director, U.S. Public Interest Research Group.

Larsen, Chris, CEO, E-Loan, Inc.

Arader, Alexander J., President, Arader & O'Rourke, Inc.

Statements and Discussion: Perspectives on credit score disclosure to consumers; differing views on H.R. 2856 and other proposed legislation, with recommendations; importance of credit score disclosure to consumers during mortgage lending process; issues related to credit score disclosure to consumers.

Insertion:

- Fair, Isaac and Co., "Understanding Your Credit Score" consumer booklet (p. 90-107).

107th Congress

5.4 "State of Financial Literacy and Education in America," hearings before the Senate Banking, Housing, and Urban Affairs Committee, Feb. 5, 6, 2002.

(CIS03:S241-26 iv+213 p.)
(Y4.B22/3:S.HRG.107-969.)

Hearings to examine status of and recommendations to promote financial education in the U.S., in order to improve financial decisionmaking by consumers and investors.

Supplementary material (p. 40-75, 113-213) includes witnesses' written statements and written replies to Committee questions, and submitted statements.

Feb. 5, 2002. p. 2-7, 46-53.

Witness: **O'Neill, Paul H.**, Secretary, Department of Treasury.

Statement and Discussion: Views on importance of financial education, with recommendations.

Feb. 5, 2002. p. 18-39, 54-67.

Witnesses: **Greenspan, Alan**, Chairman, Federal Reserve Board.
Pitt, Harvey L., Chairman, SEC.

Statements and Discussion: Perspectives on importance of financial education for consumers and related issues, including financial literacy initiatives of represented agencies.

Feb. 6, 2002. p. 81-112, 114-147.

Witnesses: **Mollnari, Susan**, National Chairperson, Americans for Consumer Education and Competition.

Brobeck, Stephen, Executive Director, Consumer Federation.

Swygert, H. Patrick, President, Howard University.

Blandin, Don M., President, American Savings Education Council.

Canja, Esther, President, AARP.

Yzaguirre, Raul, President and CEO, National Council of La Raza.

Crawford, Denise V., Commissioner, Texas Securities Board; also representing North American Securities Administrators Association.

Statements and Discussion: Views on need for financial education and approaches to promoting financial literacy; review of issues and initiatives relating to financial education for minorities; findings of various studies and surveys about financial literacy among U.S. citizens; elaboration on financial education issues.

108th Congress

5.5 "Importance of the National Credit Reporting System to Consumers and the U.S. Economy," hearings before the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee, May 8, 2003.

(CIS04:H371-11 v+212 p.)
(Y4.F49/20:108-26.)

Committee Serial No. 108-26. Hearing before the *Subcom on Financial Institutions and Consumer Credit* to examine issues relating to the Fair Credit Reporting Act (FCRA).

Reviews current national consumer credit reporting system under FCRA, and examines merits of extending certain 1996 amendments to FCRA that exempted some elements of credit reporting from coverage under State laws and established uniform national standards for some aspects of credit reporting.

Supplementary material (p. 67-212) includes witnesses' written statements and written replies to Subcom questions, submitted statements, correspondence, and:

- Consumer Federation; and National Credit Reporting Association, "Credit Score Accuracy and Implications for Consumers" Dec. 17, 2002, with tables and graphs (p. 151-201).

May 8, 2003. p. 12-31.
Witness: Abernathy, Wayne A., Assistant Secretary, Financial Institutions, Department of Treasury.
Statement and Discussion: Perspectives on uniform national standards and other FCRA issues.

May 8, 2003. p. 32-65, 85-150.
Witnesses: Uffner, Michael S., President, Chairman, and CEO, Auto-Team Delaware; representing Chamber of Commerce of the U.S.
Sheaffer, Dean E., Senior Vice President, Credit and Customer Relationship Management, Boscov's Department Stores; representing National Retail Federation.
Turner, Michael A., President and Senior Scholar, Information Policy Institute.
Reidenberg, Joel R., Professor, Law, Fordham University.
Swire, Peter P., Professor, Law, Moritz College of Law, Ohio State University.
Staten, Michael E., Director, Credit Research Center, McDonough School of Business, Georgetown University.
Statements and Discussion: Merits of FCRA uniform national standards, focusing on implications for the retail industry; preliminary findings of Information Policy Institute research on the national credit reporting system; perspectives on privacy matters, State law exemptions, and other FCRA issues; benefits and risks of abandoning the existing national credit reporting system.

5.6 Hearings on the Fair Credit Reporting Act before the Senate Banking, Housing, and Urban Affairs Committee, May 20, 2003. (Abstract not yet available.)

5.7 Hearings on Fair Credit Reporting Act before the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee, June 4, 2003. (Abstract not yet available.)

5.8 Hearings on Fair Credit Reporting Act and the credit granting process before the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee, June 12, 2003. (Abstract not yet available.)

5.9 Hearings on Fair Credit Reporting Act, employee background checks and collection of medical information before the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee, June 17, 2003. (Abstract not yet available.)

5.10 Hearings on identity theft and the Fair Credit Reporting Act before the Senate Banking, Housing, and Urban Affairs Committee, June 19, 2003. (Abstract not yet available.)

5.11 Hearings on Fair Credit Reporting Act and identity theft before the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee, June 24, 2003. (Abstract not yet available.)

5.12 Hearings on Fair Credit Reporting Act and affiliate sharing practices before the Senate Banking, Housing, and Urban Affairs Committee, June 26, 2003. (Abstract not yet available.)

5.13 Hearings on H.R. 2622 before the House Financial Services Committee, July 9, 2003. (Abstract not yet available.)

5.14 Hearings on the accuracy of credit report information and the Fair Credit Reporting Act before the Senate Banking, Housing, and Urban Affairs Committee, July 10, 2003. (Abstract not yet available.)

5.15 Hearings on consumer understanding of the credit granting process before the Senate Banking, Housing, and Urban Affairs Committee, July 29, 2003. (Abstract not yet available.)

5.16 Hearings on the Fair Credit Reporting Act before the Senate Banking, Housing, and Urban Affairs Committee, July 31, 2003. (Abstract not yet available.)

Related Hearings

107th Congress

5R.1 "Importance of Financial Literacy Among College Students," hearings before the Senate Banking, Housing, and Urban Affairs Committee, Sept. 5, 2002.

(CIS04:S241-5 iii+110 p. il.)
(Y4.B22/3:S.HRG.107-987.)

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5R.2 Hearings on financial literacy before the Subcommittee on Education Reform, House Education and the Workforce Committee, Oct. 28, 2003. (Abstract not yet available.)

P.L. 108-159 Miscellaneous

8.1 Weekly Compilation of Presidential Documents, Vol. 39 (2003): Dec. 4, Presidential remarks.

I

108TH CONGRESS
1ST SESSION

H. R. 2622

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2003

Mr. BACHUS (for himself, Ms. HOOLEY of Oregon, Mrs. BIGGERT, Mr. MOORE, Mr. LATOURETTE, Mr. KANJORSKI, Mr. CASTLE, Mrs. MALONEY, Mr. SHADEGG, Mr. FORD, Mr. TIBERI, Mr. HINOJOSA, Mr. HENSARLING, Mr. CROWLEY, Mr. SESSIONS, Mr. ROSS, Mr. MATHESON, Mr. DAVIS of Alabama, Mr. BAKER, Mr. KING of New York, Mr. LUCAS of Oklahoma, Mr. LUCAS of Kentucky, Mr. NEY, Mrs. KELLY, Mr. JONES of North Carolina, Mr. ISRAEL, Ms. HART, Mr. MILLER of North Carolina, Mrs. CAPITO, Mrs. MCCARTHY of New York, Mr. BARRETT of South Carolina, Mr. FEENEY, and Ms. HARRIS) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act are as follows:

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following new subsections:

"(r) RESELLER.—The term 'reseller' means a consumer reporting agency that—

"(1) acts as a reseller of information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies; and

"(2) does not maintain a permanent database of the assembled or merged information from which new consumer reports are produced.

"(s) OTHER DEFINITIONS.—

"(1) BOARD; CREDIT; CREDITOR.—The terms 'Board', 'credit' and 'creditor' have the same meanings as in section 103 of the Truth in Lending Act.

"(2) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' has the same meaning as in section 903 of the Electronic Fund Transfer Act.

"(3) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(4) IDENTITY THEFT.—The term 'identity theft' includes a violation of section 1028, 1029, or 1030 of title 18, United States Code.".

TITLE I—UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS

SEC. 101. UNIFORM NATIONAL CONSUMER PROTECTIONS STANDARDS MADE PERMANENT.

Section 624(d) of the Fair Credit Reporting Act (15 U.S.C. 1681t(d)) is amended—

(1) by striking "Subsections (b) and (c)" and all that follows through "do not affect any settlement," and inserting "Subsections (b) and (c) do not affect any settlement,"; and

(2) by striking "Consumer Credit Reporting Reform Act of 1996" and all that follows through the period at the end of paragraph (2) and inserting "Consumer Credit Reporting Reform Act of 1996.".

TITLE II—IDENTITY THEFT PREVENTION

SEC. 201. INVESTIGATING CHANGES OF ADDRESS.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (f), the following new subsection:

"(g) INVESTIGATION OF CHANGES OF ADDRESS.—If a credit card issuer receives a request for an additional credit card with respect to an existing credit card account

"(i) a check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or

"(ii) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.".

SEC. 203. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

(a) IN GENERAL.—Except as provided in this section, no person, firm, partnership, association, corporation, or limited liability company that accepts credit cards or debit cards for the transaction of business shall print more than the last 4 digits of the card account number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(b) LIMITATION.—This section applies only to receipts that are electronically printed, and does not apply to transactions in which the sole means of recording the person's credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) CREDIT CARD.—The term "credit card" has the same meaning as in section 103(k) of the Truth in Lending Act.

(2) DEBIT CARD.—The term "debit card" means any card issued by a financial institution to a consumer for use in initiating electronic fund transfers (as defined in section 903(6) of the Electronic Fund Transfer Act) from the account (as defined in such Act) of the consumer at such financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(d) EFFECTIVE DATE.—This section shall become effective on—

(1) January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card

transactions that is in use before January 1, 2005; and

(2) January 1, 2005, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after such date.

SEC. 204. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

"(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—A consumer reporting agency shall establish reasonable policies and procedures for providing consumers who have reason to believe they are the victims of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution with a summary of the rights of consumers under the Consumer Credit Protection Act and other provisions of Federal law and procedures for remedying the effects of any such alleged offense.".

(b) BEST PRACTICES.—The Federal Trade Commission shall develop guidelines for model policies and model

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

SEC. 301. COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following new subsections:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.— Not later than 365 days after the date of enactment of the Fair and Accurate Credit Transactions Act of 2003, the Federal Trade Commission shall prescribe rules in accordance with section 553 of title 5, United States Code—

"(1) to develop procedures for referral of consumer complaints under this title about identity theft and fraud alerts between and among the consumer reporting agencies and the Commission; and

"(2) to develop a model form and model procedures to be used by consumers who are victims of identity fraud for contacting and informing creditors and consumer reporting agencies of the fraud.".

SEC. 302. NOTICE OF DISPUTE THROUGH RESELLER.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by inserting

SEC. 402. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(1)) is amended by adding at the end the following new subparagraph:

"(D) INFORMATION KNOWN TO INCLUDE IDENTITY THEFT ACTIVITY.—A person may not furnish information to any consumer reporting agency that the person knows or has reason to believe has resulted from fraudulent activity, including identity theft.".

SEC. 403. NOTICE BY USERS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

"(e) NOTICE OF FRAUDULENT INFORMATION RELATING TO IDENTITY THEFT.—Any assignee or agent, including a debt collector (as defined in title VIII), of a person who uses a consumer report on any consumer, who learns that any information in such consumer report is fraudulent and may be the result of identity theft shall notify the person of such fraudulent information.".

agency, or department of a unit of general local government;

"(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

"(iv) as otherwise required by law; or

"(v) pursuant to section 608.

"(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

"(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term 'self-regulatory organization' includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under Title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Com-

modity Futures Trading Commission, and any futures association registered with such Commission.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 603(d)(2)(D) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(D)) is amended by inserting ''or (p)'' after ''subsection (o)''.

○

Union Calendar No. 150

108TH CONGRESS
1ST SESSION

H. R. 2622

[Report No. 108–263]

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2003

Mr. BACHUS (for himself, Ms. HOOLEY of Oregon, Mrs. BIGGERT, Mr. MOORE, Mr. LATOURETTE, Mr. KANJORSKI, Mr. CASTLE, Mrs. MALONEY, Mr. SHADEGG, Mr. FORD, Mr. TIBERI, Mr. HINOJOSA, Mr. HENSARLING, Mr. CROWLEY, Mr. SESSIONS, Mr. ROSS, Mr. MATHESON, Mr. DAVIS of Alabama, Mr. BAKER, Mr. KING of New York, Mr. LUCAS of Oklahoma, Mr. LUCAS of Kentucky, Mr. NEY, Mrs. KELLY, Mr. JONES of North Carolina, Mr. ISRAEL, Ms. HART, Mr. MILLER of North Carolina, Mrs. CAPITO, Mrs. MCCARTHY of New York, Mr. BARRETT of South Carolina, Mr. FEENEY, and Ms. HARRIS) introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 4, 2003

Additional sponsors: Mr. KENNEDY of Minnesota, Mr. SCOTT of Georgia, Mr. BOYD, Mr. WELDON of Florida, Mr. ROGERS of Michigan, Mr. FROST, Mr. RAMSTAD, Mr. MURPHY, Mr. SMITH of Washington, Mr. CANTOR, Mr. BLUNT, Mr. ADERHOLT, Mr. TERRY, Mr. DAVIS of Florida, Mr. MICA, Mr. SHAYS, Mr. STRICKLAND, Mr. BURTON of Indiana, Mr. KIND, Mr. DEAL of Georgia, Mr. SCHROCK, Mr. REYNOLDS, Ms. PRYCE of Ohio, Mr. EMANUEL, Mr. BEAUPREZ, and Mr. BOEHLERT

SEPTEMBER 4, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 26, 2003]

A BILL

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act are as follows:

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following new subsections:

"(r) RESELLER.—The term 'reseller' means a consumer reporting agency that—

"(1) assembles and merges information contained in the database of another consumer reporting agency

SEC. 203. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (k) (as added by section 206 of this title) the following new subsection:

"(l) TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print the expiration date or more than the last 5 digits of the card number upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply after the end of—

(1) the 3-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically

prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(2) the 1-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

SEC. 204. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

"(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

"(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

"(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—If any consumer contacts a consumer re-

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

SEC. 301. COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following new subsection:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

"(1) IN GENERAL.—The consumer reporting agencies described in section 603(p) shall develop and maintain procedures for the referral, to each such agency, of any consumer complaint received by any such agency alleging any identity theft or requesting a block or a fraud alert.

"(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

"(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.".

SEC. 302. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.—Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended—

(1) in subparagraph (A) of paragraph (1)—

(A) by striking "If the completeness" and inserting "Subject to subsection (e), if the completeness";

(B) by inserting ", or indirectly through a reseller," after "notifies the agency directly"; and

(C) by inserting "or reseller" before the period at the end of such subparagraph;

(2) in subparagraph (A) of paragraph (2)—

(A) by inserting "or a reseller" after "dispute from any consumer"; and

(B) by inserting "or reseller" before the period at the end of such subparagraph; and

(3) in subparagraph (B) of paragraph (2), by inserting "or the reseller" after "from the consumer".

(b) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following new subsection:

"(e) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—

"(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.—Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

"(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.—If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice and free of charge—

"(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

"(B) if—

"(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of

the reseller, correct the information in the consumer report or delete it; or

"(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute.

"(3) RESELLER REINVESTIGATIONS.—No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The heading for paragraph (2)(B) of section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(2)(B)) is amended by striking "FROM CONSUMER".

SEC. 303. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking "shall reinvestigate free of charge" and inserting "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate".

SEC. 304. DUTIES OF FURNISHERS OF INFORMATION.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended—

(1) in paragraph (1)(A), by striking "knows or consciously avoids knowing that the information is inaccurate" and inserting "knows or has reasonable cause to believe that the information is inaccurate";

(2) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(B) by inserting after subparagraph (A), the following new subparagraph:

"(B) REASONABLE PROCEDURES TO ENSURE ACCURACY.—A person that regularly furnishes information relating to consumers to a consumer reporting agency described in section 603(p) shall maintain reasonable procedures designed to ensure that the information furnished is accurate."; and

(C) by adding at the end the following new subparagraph:

"(F) DEFINITION.—For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means, based on the procedures described in subpara-

graph (B), has knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."; and

(3) by adding at the end the following new paragraph:

"(6) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

"(A) IN GENERAL.—A consumer may dispute directly with a person the accuracy of information that—

"(i) is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p); and

"(ii) was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B).

"(B) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information with a person under subparagraph (A) shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

"(i) identifies the specific information that is being disputed; and

"(ii) explains the basis for the dispute.

"(C) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (B), the person that provided the information in dispute to a consumer reporting agency referred to in subparagraph (A) shall—

"(i) conduct an investigation with respect to the disputed information;

"(ii) review all relevant information provided by the consumer with the notice;

"(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

"(iv) if the investigation finds that the information reported was inaccurate, promptly thereafter report correct informa-

tion to each consumer reporting agency described in section 603(p) to which the person furnished the inaccurate information.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 621(c)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)(A)) is amended by striking "section 623(a)(1)" and inserting "paragraph (1) or (6) of section 623(a)".

(2) The heading for section 621(c)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)) is amended by striking "VIOLATION OF SECTION 623(a)(1)" and inserting "CERTAIN VIOLATIONS OF SECTION 623(a)".

SEC. 305. PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or de-

letion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(b) REPORT REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly submit a progress report to the Congress on the results of the study required under subsection (a).

(c) RECOMMENDATIONS.—The report under subsection (b) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or administrative action to ensure that—

(1) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

(2) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act; and

(3) consumer reporting agencies establish and maintain appropriate internal controls and manage-

ment review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(d) DEFINITIONS.—For purposes of this section, the terms "consumer", "consumer report", and "consumer reporting agency" have the same meaning as in the Fair Credit Reporting Act.

TITLE IV—IMPROVING ACCURACY OF CONSUMER RECORDS

SEC. 401. RECONCILING ADDRESSES.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (g) (as added by section 201 of this Act) the following new subsection.

"(h) NOTICE OF DISCREPANCY.—

"(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that

substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

"(2) REGULATIONS.—

"(A) REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall jointly prescribe regulations providing guidance regarding reasonable policies and procedures a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

"(B) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

"(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

"(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary

course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.".

SEC. 402. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(1)) is amended by inserting after subparagraph (D) (as so redesignated by section 304(2)(A)) the following new subparagraph:

"(E) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits a police report to a person who furnishes information to a consumer reporting agency that states that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agen-

(1) by striking "DISCLOSED.—Any consumer reporting agency" and inserting "DISCLOSED.—

"(1) TITLE 11 INFORMATION.—Any consumer reporting agency"; and

(2) by adding at the end the following new paragraph:

"(2) KEY FACTOR IN CREDIT SCORE INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(e)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score.".

SEC. 503. SIMPLER AND EASIER METHOD FOR CONSUMERS TO USE NOTIFICATION SYSTEM.

(a) IN GENERAL.—Section 604(e)(5)(A)(i) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)(5)(A)(i)) is amended by inserting "in a simple and easy manner and" after "notify the agency,".

(b) SIMPLIFIED NOTICE AND RESPONSE FORMAT FOR USERS.—Section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)) is amended—

(1) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4) and (5); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) SIMPLE AND EASY NOTIFICATION.—Any statement given the consumer under paragraph (1)(E) shall be in a simple and easy to understand format and shall describe the simple and easy method established under section 604(e)(5)(A)(i) for the consumer to respond.".

SEC. 504. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by inserting after paragraph (6) (as added by section 304(3)) the following new paragraph:

"(7) NEGATIVE INFORMATION.—

"(A) NOTICE TO CONSUMER REQUIRED.—

"(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the

any person related by common ownership or affiliated by corporate control if—

"(A) the information is medical information; or

"(B) the information is an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.".

SEC. 702. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CREDIT REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by inserting after paragraph (7) (as added by section 504(a)) the following new paragraph:

"(8) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for the purposes of this title and shall notify the agency of such status.".

bility of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by inserting after subsection (f) (as added by section 301 of this Act) the following new subsection:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (8) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) (as amended by section 701) is amended—

(1) in paragraph (1) by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2) by inserting "(other than medical information treated in the manner required

under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of the enactment of this Act.

Union Calendar No. 150

108TH CONGRESS
1ST SESSION

H. R. 2622

[Report No. 108–263]

A BILL

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

SEPTEMBER 4, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

108TH CONGRESS
1ST SESSION

H. R. 2622

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2003

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

AN ACT

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act are as follows:

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following new subsections:

"(r) RESELLER.—The term 'reseller' means a consumer reporting agency that—

"(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

"(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

101(a)(13) of title 10, United States Code; and

"(ii) is assigned to service away from the consumer's usual duty station.

"(B) NEW CREDIT PLAN.—The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of this Act) or a new credit transaction not under an open end credit plan.".

SEC. 203. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (k) (as added by section 206 of this title) the following new subsection:

"(l) TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print the expiration date or more than the last 5 digits of the card number upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply after the end of—

(1) the 3-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(2) the 1-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

SEC. 204. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

"(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

"(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

"(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—If any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution, the consumer reporting agency shall, in addition to any other action the agency may take, provide the consumer with a summary of rights, or other disclosure, that is the same as or substantially similar to the model summary of rights prepared by the Commission under paragraph (1) and information on how to contact the Commission to obtain more detailed information.".

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

SEC. 301. COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following new subsection:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

"(1) IN GENERAL.—The consumer reporting agencies described in section 603(p) shall develop and maintain procedures for the referral, to each such agency, of any consumer complaint received by any such agency alleging any identity theft or requesting a block or a fraud alert.

"(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

"(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.".

SEC. 302. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.—Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended—

(1) in subparagraph (A) of paragraph (1)—

(A) by striking "If the completeness" and inserting "Subject to subsection (e), if the completeness";

(B) by inserting ", or indirectly through a reseller," after "notifies the agency directly"; and

(C) by inserting "or reseller" before the period at the end of such subparagraph;

(2) in subparagraph (A) of paragraph (2)—

(A) by inserting "or a reseller" after "dispute from any consumer"; and

(B) by inserting "or reseller" before the period at the end of such subparagraph; and

(3) in subparagraph (B) of paragraph (2), by inserting "or the reseller" after "from the consumer".

(b) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following new subsection:

"(e) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—

"(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.—Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

"(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.—If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice and free of charge—

"(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

"(B) if—

"(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, correct the information in the consumer report or delete it; or

"(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.

"(3) RESELLER REINVESTIGATIONS.—No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The heading for paragraph (2)(B) of section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(2)(B)) is amended by striking "FROM CONSUMER".

SEC. 303. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking "shall reinvestigate free of charge" and inserting "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate".

SEC. 304. DUTIES OF FURNISHERS OF INFORMATION.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended—

(1) in paragraph (1)(A), by striking "knows or consciously avoids knowing that the information is inaccurate" and inserting "knows or has reasonable cause to believe that the information is inaccurate";

(2) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(B) by inserting after subparagraph (A), the following new subparagraph:

"(B) REASONABLE PROCEDURES TO ENSURE ACCURACY.—A person that regularly furnishes information relating to consumers to a consumer reporting agency described in section 603(p) shall maintain reasonable procedures designed to ensure that the information furnished is accurate."; and

(C) by adding at the end the following new subparagraph:

"(F) DEFINITION.—For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means, based on the procedures described in subparagraph (B), has knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."; and

(3) by adding at the end the following new paragraph:

"(6) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

"(A) IN GENERAL.—A consumer may dispute directly with a person the accuracy of information that—

"(i) is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p); and

"(ii) was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B).

"(B) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information with a person under subparagraph (A) shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

"(i) identifies the specific information that is being disputed; and

"(ii) explains the basis for the dispute.

"(C) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (B), the person that provided the information in dispute to a consumer reporting agency referred to in subparagraph (A) shall—

"(i) conduct an investigation with respect to the disputed information;

"(ii) review all relevant information provided by the consumer with the notice;

"(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer

reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

"(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency described in section 603(p) to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

"(D) FRIVOLOUS OR IRRELEVANT DISPUTE.—

"(i) IN GENERAL.—The requirements of this paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

"(I) by reason of the failure of a consumer to provide sufficient infor-

mation to investigate the disputed information; or

"(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person under this paragraph or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

"(ii) NOTICE OF DETERMINATION.—Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

"(iii) CONTENTS OF NOTICE.—A notice under clause (ii) shall include—

"(I) the reasons for the determination under clause (i); and

"(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 621(c)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)(A)) is amended by striking "section 623(a)(1)" and inserting "paragraph (1) or (6) of section 623(a)".

(2) The heading for section 621(c)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)) is amended by striking "VIOLATION OF SECTION 623(a)(1)" and inserting "CERTAIN VIOLATIONS OF SECTION 623(a)".

SEC. 305. PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines,

cies and procedures for use by a user of a consumer report—

"(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

"(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.".

SEC. 402. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(1)) is amended by inserting after subparagraph (D) (as so redesignated by section 304(2)(A)) the following new subparagraph:

"(E) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits a police report to a person who furnishes information to a consumer reporting agency that states that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.".

SEC. 403. NOTICE BY USERS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

"(e) NOTICE OF FRAUDULENT INFORMATION RELATING TO IDENTITY THEFT.—If an agent acting as a debt collector (as defined in title VIII) of a person who furnishes information to any consumer reporting agency uses information contained in a consumer report on any consumer and learns that any such information so used is the result of identity theft or otherwise is fraudulent, the agent shall—

"(2) SIMPLE AND EASY NOTIFICATION.—Any statement given the consumer under paragraph (1)(E) shall be in a simple and easy to understand format and shall describe the simple and easy method established under section 604(e)(5)(A)(i) for the consumer to respond.".

SEC. 504. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by inserting after paragraph (6) (as added by section 304(3)) the following new paragraph:

"(7) NEGATIVE INFORMATION.—

"(A) NOTICE TO CONSUMER REQUIRED.—

"(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

"(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

"(B) TIME OF NOTICE.—

"(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

"(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

"(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

"(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

"(ii) must be clear and conspicuous.

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF BOARD TO PREPARE.—The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the fi-

nancial institution uses any such model form and rearranges its format.

"(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

"(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

"(G) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) NEGATIVE INFORMATION.—The term 'negative information' means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

"(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms 'customer' and 'financial institution' have the same meaning as in section 509 of the Gramm-Leach-Bliley Act.".

(b) MODEL DISCLOSURE FORM.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall adopt the model disclosure required under the amendment made by subsection (a) after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 505. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.

(a) STUDY REQUIRED.—The Federal Trade Commission, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of—

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, in-

(1) in paragraph (2), by striking "The term" and inserting "Except as provided in paragraph (3), the term"; and

(2) by adding at the end the following new paragraph:

"(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control if—

"(A) the information is medical information; or

"(B) the information is an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.".

SEC. 702. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CREDIT REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by inserting after

paragraph (7) (as added by section 504(a)) the following new paragraph:

"(8) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for the purposes of this title and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding the following new paragraph:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by inserting after subsection (f) (as added by section 301 of this Act) the following new subsection:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (8) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or

prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) (as amended by section 701) is amended—

(1) in paragraph (1) by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2) by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of the enactment of this Act.

Passed the House of Representatives September 10, 2003.

Attest: JEFF TRANDAHL,

Clerk.

108TH CONGRESS
1ST SESSION

H. R. 2622

AN ACT

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act are as follows:

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following new subsections:

"(r) RESELLER.—The term 'reseller' means a consumer reporting agency that—

"(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

"(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

101(a)(13) of title 10, United States Code; and

"(ii) is assigned to service away from the consumer's usual duty station.

"(B) NEW CREDIT PLAN.—The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of this Act) or a new credit transaction not under an open end credit plan.".

SEC. 203. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (k) (as added by section 206 of this title) the following new subsection:

"(l) TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print the expiration date or more than the last 5 digits of the card number upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply after the end of—

(1) the 3-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(2) the 1-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

SEC. 204. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

"(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

"(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

"(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—If any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution, the consumer reporting agency shall, in addition to any other action the agency may take, provide the consumer with a summary of rights, or other disclosure, that is the same as or substantially similar to the model summary of rights prepared by the Commission under paragraph (1) and information on how to contact the Commission to obtain more detailed information.".

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

SEC. 301. COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following new subsection:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

"(1) IN GENERAL.—The consumer reporting agencies described in section 603(p) shall develop and maintain procedures for the referral, to each such agency, of any consumer complaint received by any such agency alleging any identity theft or requesting a block or a fraud alert.

"(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

"(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.".

SEC. 302. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.—Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended—

(1) in subparagraph (A) of paragraph (1)—

(A) by striking "If the completeness" and inserting "Subject to subsection (e), if the completeness";

(B) by inserting ", or indirectly through a reseller," after "notifies the agency directly"; and

(C) by inserting "or reseller" before the period at the end of such subparagraph;

(2) in subparagraph (A) of paragraph (2)—

(A) by inserting "or a reseller" after "dispute from any consumer"; and

(B) by inserting "or reseller" before the period at the end of such subparagraph; and

SEC. 303. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking "shall reinvestigate free of charge" and inserting "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate".

SEC. 304. DUTIES OF FURNISHERS OF INFORMATION.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended—

(1) in paragraph (1)(A), by striking "knows or consciously avoids knowing that the information is inaccurate" and inserting "knows or has reasonable cause to believe that the information is inaccurate";

(2) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(B) by inserting after subparagraph (A), the following new subparagraph:

"(B) REASONABLE PROCEDURES TO ENSURE ACCURACY.—A person that regularly furnishes information relating to consumers to a consumer reporting agency described in section 603(p) shall maintain reasonable procedures designed to ensure that the information furnished is accurate."; and

(C) by adding at the end the following new subparagraph:

"(F) DEFINITION.—For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means, based on the procedures described in subparagraph (B), has knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."; and

(3) by adding at the end the following new paragraph:

"(6) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

"(A) IN GENERAL.—A consumer may dispute directly with a person the accuracy of information that—

"(i) is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p); and

"(ii) was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B).

"(B) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information with a person under subparagraph (A) shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

"(i) identifies the specific information that is being disputed; and

"(ii) explains the basis for the dispute.

"(C) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (B), the person that provided the information in dispute to a consumer reporting agency referred to in subparagraph (A) shall—

"(i) conduct an investigation with respect to the disputed information;

"(ii) review all relevant information provided by the consumer with the notice;

"(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer

reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

"(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency described in section 603(p) to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

"(D) FRIVOLOUS OR IRRELEVANT DISPUTE.—

"(i) IN GENERAL.—The requirements of this paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

"(I) by reason of the failure of a consumer to provide sufficient infor-

mation to investigate the disputed information; or

"(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person under this paragraph or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

"(ii) NOTICE OF DETERMINATION.—Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

"(iii) CONTENTS OF NOTICE.—A notice under clause (ii) shall include—

"(I) the reasons for the determination under clause (i); and

"(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 621(c)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)(A)) is amended by striking "section 623(a)(1)" and inserting "paragraph (1) or (6) of section 623(a)".

(2) The heading for section 621(c)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)) is amended by striking "VIOLATION OF SECTION 623(a)(1)" and inserting "CERTAIN VIOLATIONS OF SECTION 623(a)".

SEC. 305. PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines,

cies and procedures for use by a user of a consumer report—

"(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

"(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.".

SEC. 402. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(1)) is amended by inserting after subparagraph (D) (as so redesignated by section 304(2)(A)) the following new subparagraph:

"(E) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits a police report to a person who furnishes information to a consumer reporting agency that states that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.".

SEC. 403. NOTICE BY USERS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

"(e) NOTICE OF FRAUDULENT INFORMATION RELATING TO IDENTITY THEFT.—If an agent acting as a debt collector (as defined in title VIII) of a person who furnishes information to any consumer reporting agency uses information contained in a consumer report on any consumer and learns that any such information so used is the result of identity theft or otherwise is fraudulent, the agent shall—

"(2) SIMPLE AND EASY NOTIFICATION.—Any statement given the consumer under paragraph (1)(E) shall be in a simple and easy to understand format and shall describe the simple and easy method established under section 604(e)(5)(A)(i) for the consumer to respond.".

SEC. 504. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by inserting after paragraph (6) (as added by section 304(3)) the following new paragraph:

"(7) NEGATIVE INFORMATION.—

"(A) NOTICE TO CONSUMER REQUIRED.—

"(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

"(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

"(B) TIME OF NOTICE.—

"(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

"(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

"(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

"(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

"(ii) must be clear and conspicuous.

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF BOARD TO PREPARE.—The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the fi-

nancial institution uses any such model form and rearranges its format.

"(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

"(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

"(G) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) NEGATIVE INFORMATION.—The term 'negative information' means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

"(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms 'customer' and 'financial institution' have the same meaning as in section 509 of the Gramm-Leach-Bliley Act.".

(b) MODEL DISCLOSURE FORM.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall adopt the model disclosure required under the amendment made by subsection (a) after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 505. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.

(a) STUDY REQUIRED.—The Federal Trade Commission, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of—

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, in-

(1) in paragraph (2), by striking "The term" and inserting "Except as provided in paragraph (3), the term"; and

(2) by adding at the end the following new paragraph:

"(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control if—

"(A) the information is medical information; or

"(B) the information is an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.".

SEC. 702. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CREDIT REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by inserting after

paragraph (7) (as added by section 504(a)) the following new paragraph:

"(8) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for the purposes of this title and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding the following new paragraph:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by inserting after subsection (f) (as added by section 301 of this Act) the following new subsection:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (8) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or

prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) (as amended by section 701) is amended—

(1) in paragraph (1) by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2) by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of the enactment of this Act.

Passed the House of Representatives September 10, 2003.

Attest:

Clerk.

108TH CONGRESS
1ST SESSION

H. R. 2622

AN ACT

To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

In the Senate of the United States,

November 5, 2003.

Resolved, That the bill from the House of Representatives (H.R. 2622) entitled "An Act to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.", do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Consumer Credit Reporting System Improvement Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

Subtitle A—Identity Theft Prevention

SEC. 111. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following:

"(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

"(1) ACTIVE DUTY MILITARY CONSUMER.—The term 'active duty military consumer' means a consumer in military service who—

"(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call

agencies described in section 603(p), in accordance with procedures developed under section 621(f).

"(d) PROCEDURES.—Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with this section, including procedures that allow consumers and active duty military consumers to request temporary, extended, or active duty alerts (as applicable) in a simple and easy manner, including by telephone.

"(e) REFERRALS OF FRAUD ALERTS.—Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert or active duty alert from another consumer reporting agency pursuant to this section shall, as though the agency received the request from the consumer directly, follow the procedures required under—

"(1) paragraphs (1)(A) and (2) of subsection (a), in the case of a referral under subsection (a)(1)(B);

"(2) paragraphs (1)(A), (1)(B), and (3) of subsection (b), in the case of a referral under subsection (b)(1)(C); and

"(3) paragraphs (1) and (2) of subsection (c), in the case of a referral under subsection (c)(3).

"(f) DUTY OF RESELLER TO RECONVEY ALERT.—A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.

"(g) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.—If a consumer contacts any consumer reporting agency that is not described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Federal Trade Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this section.".

SEC. 113. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

"(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.—

"(1) IN GENERAL.—Except as otherwise specifically provided in this subsection, no person that accepts credit cards or debit cards for the transaction

of business shall print more than the last 5 digits of the card account number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This subsection applies only to receipts that are electronically printed, and does not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

"(3) EFFECTIVE DATE.—This subsection shall become effective—

"(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

"(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.".

SEC. 114. ESTABLISHMENT OF PROCEDURES FOR THE IDENTIFICATION OF POSSIBLE INSTANCES OF IDENTITY THEFT.

(a) IN GENERAL.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) by striking "(e)" at the end; and

(2) by adding at the end the following:

"(e) RED FLAG GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2)—

"(A) establish and maintain guidelines for use by each financial institution and each other person that is a creditor or other user of a consumer report regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

"(B) prescribe regulations requiring each financial institution and each other person that is a creditor or other user of a consumer report to establish reasonable policies and procedures

Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

"(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Federal Trade Commission on consumer complaints received by the agency on identity theft or fraud alerts.".

SEC. 154. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

(a) PREVENTION OF REINSERTION OF ERRONEOUS INFORMATION.—

(1) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED DISPUTES.—Section 623(b) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)) is amended—

(A) by redesignating paragraph (2) as paragraph (3);

(B) by inserting after paragraph (1) the following:

"(2) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED DISPUTES.—A person that furnishes information to any consumer reporting agency shall—

"(A) have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information; and

"(B) take the actions described in subparagraphs (A) through (D) of paragraph (1), if such person receives directly from a consumer, an identity theft report or a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission."; and

(C) in paragraph (3), as redesignated, by striking "paragraph (1)" and inserting "this subsection".

(2) CONFORMING AMENDMENTS RELATING TO NOTICE OF IDENTITY THEFT DIRECTLY FROM CONSUMERS.—Section 623(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)(1)) is amended—

(A) in the matter preceding subparagraph (A), by inserting "or as described in paragraph (2)(B)," after "agency,";

(B) subparagraph (B), by inserting before the semicolon the following: ", and by the consumer, and other documentation reasonably available to the person that is necessary to conduct a reasonable investigation"; and

(C) in subparagraph (C), by inserting before the semicolon at the end the following: ", and to the consumer, if notice of the dispute was received directly from the consumer, as described in paragraph (2)(B)".

(b) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

"(g) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—

"(1) IN GENERAL.—No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 605B has resulted from identity theft.

"(2) APPLICABILITY.—The prohibitions of this subsection shall apply to all persons collecting a debt

described in paragraph (1) after the date of a notification under paragraph (1).

"(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit—

"(A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

"(B) the securitization of a debt; or

"(C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.".

SEC. 155. NOTICE BY DEBT COLLECTORS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

"(h) DEBT COLLECTOR COMMUNICATIONS CONCERNING IDENTITY THEFT.—If a person acting as a debt collector (as that term is defined in title VIII) on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be

(c) CONTRACTUAL LIABILITY.—Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681n) is amended by adding at the end the following:

"(d) USE OF CREDIT SCORES.—Any provision of any contract that prohibits the disclosure of a credit score by a consumer reporting agency or a person who makes or arranges extensions of credit to the consumer to whom the credit score relates is void. A user of a credit score shall not have liability under any such contractual provision for disclosure of a credit score.".

(d) RELATION TO STATE LAWS.—Section 624(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1), regarding relation to State laws) is amended—

(1) in subparagraph (E), by striking "or" at the end; and

(2) by adding at the end the following:

"(G) subsections (a)(6) and (f) of section 609, relating to the disclosure of credit scores by consumer reporting agencies in connection with an application for an extension of credit that is to be secured by a dwelling;

"(H) section 615(i), relating to the duties of users of credit scores to disclose credit score information to consumers in connection with an

application for an extension of credit that is to be secured by a dwelling; or".

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective 180 days after the date of enactment of this Act.

SEC. 213. ENHANCED DISCLOSURE OF THE MEANS AVAILABLE TO OPT OUT OF PRESCREENED LISTS.

(a) NOTICE AND RESPONSE FORMAT FOR USERS OF REPORTS.—Section 615(d)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)(2)) is amended to read as follows:

"(2) DISCLOSURE OF ADDRESS AND TELEPHONE NUMBER; FORMAT.—A statement under paragraph (1) shall—

"(A) include the address and toll-free telephone number of the appropriate notification system established under section 604(e); and

"(B) be presented in such format and in such type size and manner as is established by the Federal Trade Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.".

(b) RULEMAKING SCHEDULE.—Regulations required by section 615(d)(2) of the Fair Credit Reporting Act, as

cy to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.".

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after the item relating to section 605 the following new items:

"605A. Identity theft prevention; fraud alerts and active duty alerts.
"605B. Block of information resulting from identity theft.".

SEC. 153. COORDINATION OF IDENTITY THEFT COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

"(1) IN GENERAL.—Each consumer reporting agency described in section 603(p) shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the agency alleging identity theft, or requesting a fraud alert under section 605A or a block under section 605B.

"(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Federal Trade

"(iv) a model notice that may be used to comply with this subsection.".

(b) RELATION TO STATE LAWS.—Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1), regarding relation to State laws), as so designated and amended by this Act, is amended by adding at the end the following:

"(I) section 615(j), relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;".

SEC. 312. PROCEDURES TO ENHANCE THE ACCURACY AND COMPLETENESS OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES.

(a) ACCURACY GUIDELINES AND REGULATIONS.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 15 U.S.C. 1681s–2) is amended by adding at the end the following:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective en-

forcement authority under section 621, and in coordination as described in paragraph (2)—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and completeness of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

"(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

"(3) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and completeness of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to provide complete and accurate information to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.".

(b) FURNISHER LIABILITY EXCEPTION.—Section 623(a)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(5)) is amended—

(1) by striking "A person" and inserting the following:

"(A) IN GENERAL.—A person";

(2) by inserting "date of delinquency on the account, which shall be the" before "month";

(3) by inserting "on the account" before "that immediately preceded"; and

(4) by adding at the end the following:

"(B) RULE OF CONSTRUCTION.—For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

"(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

"(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the

creditor or another reliable source and reports that date as the date of delinquency; or

"(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.".

(c) LIABILITY AND ENFORCEMENT.—

(1) CIVIL LIABILITY.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended by striking subsections (e) and (d) and inserting the following:

"(e) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

"(1) subsection (a) of this section;

"(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section;

"(3) subsection (e) or (f) of section 615; or

"(4) subparagraph (A) of subsection (b)(2) of this section that is based on the development of procedures required by that subparagraph, except that refurnishing information otherwise in violation of subsection (b) shall be subject to liability under sections 616 and 617, as applicable, to the same extent as such a refurnishing violation was subject to such liability on the day before the date of enactment of the National Consumer Credit Reporting System Improvement Act of 2003.

"(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (4) of subsection (c) (other than with respect to the exceptions described in paragraphs (2) and (4) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.".

(2) STATE ACTIONS.—Section 621(c) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)) is amended—

(A) in paragraph (1)(B)(ii), by striking "of section 623(a)" and inserting "described in any of paragraphs (1) through (4) of section 623(c) (other than with respect to the exception described in paragraph (4) of section 623(c))"; and

(B) in paragraph (5)—

(i) in each of subparagraphs (A) and (B), by inserting after "section 623(a)(1)" each place that term appears the following: "or a violation described in any of paragraphs (2) through (4) of section 623(c) (other than with respect to the exception described in paragraph (4) of section 623(c))"; and

(ii) by amending the paragraph heading to read as follows:

"(5) LIMITATIONS ON STATE ACTIONS FOR CERTAIN VIOLATIONS.—".

(d) RULE OF CONSTRUCTION.—Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liabil-

ity under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.

SEC. 313. FEDERAL TRADE COMMISSION AND CONSUMER REPORTING AGENCY ACTION CONCERNING COMPLAINTS.

Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following:

"(e) TREATMENT OF COMPLAINTS AND REPORT TO CONGRESS.—

"(1) IN GENERAL.—The Federal Trade Commission shall—

"(A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 603(p) contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or otherwise utilized the procedures provided by subsection (a); and

"(B) transmit each such complaint to each consumer reporting agency involved.

SEC. 315. IMPROVED DISCLOSURE OF THE RESULTS OF RE-INVESTIGATION.

(a) IN GENERAL.—Section 611(a)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by striking "shall" and all that follows through the end of the subparagraph, and inserting the following: "shall—

"(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

"(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.".

(b) FURNISHER REQUIREMENTS RELATING TO INACCURATE, INCOMPLETE, OR UNVERIFIABLE INFORMATION.—Section 623(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end; and

(2) in subparagraph (D), by striking the period at the end and inserting the following: "; and

"(E) if an item of any information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any re-

investigation under paragraph (1), promptly delete that item of information from the furnisher's records or modify that item of information, as appropriate, based on the results of the reinvestigation.".

SEC. 316. RECONCILING ADDRESSES.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c), as amended by this Act, is amended by adding at the end the following:

"(h) NOTICE OF DISCREPANCY IN ADDRESS.—

"(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

"(2) REGULATIONS.—

"(A) REGULATIONS REQUIRED.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective enforcement

(d) EFFECTIVE DATES.—This section shall take effect at the end of the 180-day period beginning on the date of enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as amended by subsection (a)) shall take effect on the later of—

(1) the end of the 90-day period beginning on the date on which the regulations required under paragraph (5)(B) of such section 604(g) (as added by subsection (a) of this section) are issued in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

SEC. 412. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CONSUMER REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by adding at the end the following:

"(6) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered

a medical information furnisher for purposes of this title, and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding at the end the following:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s), as amended by this Act, is amended by adding at the end the following:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Federal Trade Commission determines that a person described in paragraph (6) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)), as amended by section 411 of this Act, is amended—

(1) in paragraph (1), by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a con-

sumer report that contains medical information"; and

(2) in paragraph (2), by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of enactment of this Act.

TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

SEC. 511. SHORT TITLE.

This title may be cited as the "Financial Literacy and Education Improvement Act".

SEC. 512. DEFINITIONS.

As used in this title—

(1) the term "Chairperson" means the Chairperson of the Financial Literacy and Education Commission; and

(2) the term "Commission" means the Financial Literacy and Education Commission established under section 513.

TITLE VII—MISCELLANEOUS

SEC. 711. CLERICAL AMENDMENTS.

(a) SHORT TITLE.—Section 601 of the Fair Credit Reporting Act (15 U.S.C. 1601 note) is amended by striking "the Fair Credit Reporting Act." and inserting "the 'Fair Credit Reporting Act'.".

(b) SECTION 604.—Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended in paragraphs (1) through (5), other than subparagraphs (E) and (F) of paragraph (3), by moving each margin 2 ems to the right.

(c) SECTION 605.—

(1) Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended by striking "(1) cases" and inserting "(1) Cases".

(2)(A) Section 5(1) of Public Law 105–347 (112 Stat. 3211) is amended by striking "Judgments which" and inserting "judgments which".

(B) The amendment made by subparagraph (A) shall be deemed to have the same effective date as section 5(1) of Public Law 105–347 (112 Stat. 3211).

(d) SECTION 609.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended—

(1) in paragraph (2), by moving the margin 2 ems to the right; and

(2) in paragraph (3)(C), by moving the margins 2 ems to the left.

(e) SECTION 617.—Section 617(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681o(a)(1)) is amended by adding "and" at the end.

(f) SECTION 621.—Section 621(b)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(1)(B)) is amended by striking "25(a)" and inserting "25A".

(g) TITLE 31.—Section 5318 of title 31, United States Code, is amended by redesignating the second item designated as subsection (l) (relating to applicability of rules) as subsection (m).

(h) CONFORMING AMENDMENT.—Section 2411(c) of Public Law 104–208 (110 Stat. 3009–445) is repealed.

Attest:

Secretary.

108TH CONGRESS
1ST SESSION

H. R. 2622

AMENDMENT

United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, WEDNESDAY, SEPTEMBER 10, 2003 No. 124

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. SHAW).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 10, 2003.

I hereby appoint the Honorable E. CLAY SHAW, Jr., to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Dr. Kathryn A. Towne, President, Life in Faith and Truth Ministries, Lakewood, Colorado, offered the following prayer:

Let us bow our hearts before the Lord.

Our Lord God, the Sovereign over this great and wonderful Nation in which we live, we come to You humbly today. Thank You for the opportunity to lead the people of the United States of America. Be present, O God of Wisdom, and direct the councils of this honorable United States House of Representatives. Give insight, understanding, and discernment to each Member so they can exercise their duties for the betterment of their districts and this Nation.

May we all be reminded that righteousness exalts a nation. As these dedicated legislators meet in this Chamber or elsewhere, may their every decision, their every judgment, and their every action be said and done in righteousness. Their job is great; but You, the Almighty, give grace and direction as we ask for help.

Be pleased to grant strength and comfort to these leaders and their families. We ask in Your name. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from California (Ms. LORETTA SANCHEZ) come forward and lead the House in the Pledge of Allegiance.

Ms. LORETTA SANCHEZ of California led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment a bill of the House of the following title:

H.R. 1668. An act to designate the United States courthouse located at 101 North Fifth Street in Muskogee, Oklahoma, as the "Ed Edmondson United States Courthouse".

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain ten 1-minutes on each side.

RESOLVE TO SEE IT THROUGH

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, hours before President Bush's speech Sunday night, the top U.S. commander in Iraq summed up in a single sentence the importance of creating a free and democratic Iraq. Lieutenant General Ricardo Sanchez said, "The only way we will fail in this country is if we decide to walk away in Iraq and fight the next battle in the war on terrorism in the United States of America." That is a stark assessment.

The President said the United Nations not only has an opportunity but a responsibility to assume a broader role in assuring that Iraq becomes a free and democratic nation. Nations that enjoy the richness of freedom have a moral obligation, when possible, to share their political and spiritual assets with countries that suffer from the poverty of totalitarianism.

Mr. Speaker, that has been the creed of this country. The American people must have the resolve to see this through.

U.S. STRETCHED TOO THIN

(Ms. LORETTA SANCHEZ of California asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I rise today to express my great concern over the direction the Bush administration is leading our country. Simply put, we are spread too thin on every front. As a whole, our military is dangerously overextended. Just yesterday, our National Guard and Reservists were informed that their tours in Iraq have now been extended to 1 year, months longer than many initially anticipated.

Deficits are at a record high, homeland security spending is grossly inadequate, and the true cost of our military campaigns in Iraq and Afghanistan is becoming more apparent every day. Just this past week, President Bush requested an additional $87 billion from Congress, an emergency spending request not seen since the early months of World War II.

I believe that the provisions in this legislation will go a long ways towards helping our consumers fight identity theft. This legislation is long overdue, and I urge all of my colleagues to support this bill and help protect American consumers against the threat of identity theft. Please support this legislation to help our consumers and protect against identity theft.

The CHAIRMAN. The Committee will rise informally.

The SPEAKER pro tempore (Mr. ISAKSON) assumed the Chair.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

The Committee resumed its sitting.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from the First State of Delaware (Mr. CASTLE), a valuable member of the Committee on Financial Services.

Mr. CASTLE. Mr. Chairman, I thank the distinguished chairman of the committee and both the ranking member from Massachusetts for this good piece of legislation. Obviously I support the bill before us.

This bipartisan legislation passed the House Committee on Financial Services by a vote of 61 to 3 in July of this year. We do not have a lot of votes with those kinds of numbers in it, an overwhelming endorsement which should obviously be noted by all of us.

The legislation is a good, bipartisan bill. It is a result of six hearings, nearly 100 witnesses and months of deliberations. Through this very thorough process, the Committee on Financial Services has produced a bill that will protect the financial privacy and access to credit for all consumers, and it will help our economic recovery by ensuring businesses have access to accurate information which provides prompt credit to American consumers.

As my colleagues know, one of the forces that has helped sustain our economy in recent years is consumer spending. A critical factor in enabling American consumers to purchase products when they need them and want them is our strong system of consumer credit. That system is supported by the Fair Credit Reporting Act which ensures the factual information is available on which to base the extension of credit. Virtually every business in this Nation and every consumer that has ever used credit depends on this system.

One of my constituents, Michael Uffner, president, chairman and CEO of AutoTeam Delaware, testified before the committee this year. Mike Uffner stressed the importance of access to accurate credit information to serve customers in a timely and fair manner. Americans want to be able to walk into an automobile showroom and purchase an automobile that day based on a prompt approval of a loan based on their credit.

In December, the national uniform consumer protection standards in the Fair Credit Reporting Act will expire. Without this legislation, there would be no national standards for consumer protections and credit availability. This will negatively affect consumer access to credit and the economy as a whole. A failure to pass this legislation would mean higher costs to consumers, who will be paying more for their credit without this legislation. In today's economy, in which we rely on instant credit available to us across the country, we need to have this legislation. This is uniformity, not a state-by-sate issue; and as Congress we must protect the consumers.

Mr. Chairman, again, I want to express my strong support for this bill and urge my colleagues on both sides of the aisle to join the 63 bipartisan members of the House Committee on Financial Services who worked together to craft the bill to protect consumers and give confidence to businesses. This is a proper step to ensure that all of our constituents have access to fair and reasonable credit information.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), the second-ranking member of the committee, the ranking member of our Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, and one of the leaders in shaping this legislation.

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks.)

Mr. KANJORSKI. Mr. Chairman, I rise in strong support of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.

If we fail to extend the expiring provisions of the Fair Credit Reporting Act before the end of this year, conflicting State laws could place financial institutions in a difficult compliance position, and the current efficiencies in obtaining credit could significantly decrease. We would, moreover, create more difficulties for our already-struggling economy. For example, according to a recent report commissioned by the Financial Services Roundtable, the loss of national uniform credit reporting standards would produce a 2 percent drop in the gross domestic product of this Nation.

The Fair Credit Reporting Act in its 1996 amendments, in my view, have created a nationwide consumer credit system that works increasingly well. This law has expanded access to credit, lowered the price of credit, and accelerated decisions to grant credit. One reason that the law works so well is the establishment of the uniform system that preempts States from enacting miscellaneous and potentially conflicting requirements regarding credit reporting.

As my colleagues may recall, Mr. Chairman, I strongly supported creating these preemptions in the 102nd, 103rd and 104th Congresses. I also believe that we should extend them now. I do not, however, think that they should be made permanent. Consequently, I will offer an amendment later today to address this issue.

In addition to extending the expiring preemptions of State law, H.R. 2622 will make a number of important improvements in current law with respect to consumer protection. These provisions, among other things, will improve the accuracy of and correction process for credit reports and establish strong privacy protections for consumers' sensitive medical information.

Furthermore, identity theft is a growing problem in our country. A recent report by the Federal Trade Commission found that 27.3 million Americans have been victims of identity theft in the last 5 years. I am, therefore, particularly pleased that H.R. 2622 includes several provisions designed to combat these crimes and aid consumers.

Mr. Chairman, I think this legislation is a high mark for this Congress, and I want to compliment the gentleman from Ohio (Mr. OXLEY), chairman of the committee; the gentleman from Massachusetts (Mr. FRANK), the ranking member of the committee; the gentleman from Alabama (Mr. BACHUS), the chairman of the Subcommittee of the Financial Institutions and Consumer Credit; and the gentleman from Vermont (Mr. SANDERS), our ranking member on that subcommittee.

This legislation is a perfect example that good, spirited, bipartisan activity can accomplish much for this Congress and for this Nation. We have worked to try and work out all the efforts of so many individuals who would like favoritism or special interest reports and, in fact, have worked for the common good of both industry and the consumer; and I think, Mr. Chairman, we have accomplished that.

So I congratulate my several Members that I mentioned and the full committee and this Congress. This is an extraordinarily successful piece of legislation that we should be proud of on a bipartisan basis.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. ISAKSON).

Mr. ISAKSON. Mr. Chairman, I thank the chairman for yielding me the time, and I want to commend the gentleman from Ohio (Mr. OXLEY), the chairman, and the gentleman from Massachusetts (Mr. FRANK), the ranking member, for the outstanding work they have done on a bill that is critical to American business and enterprise and American consumers.

I want to particularly thank the chairman for incorporating within the

manager's amendment a provision that directs the FTC and the Treasury to promulgate rules and regulations for an orderly implementation and transition to the free credit reports called for in section 501.

Mr. Chairman, the Fair Credit Reporting Act is critical to business in America. Identity theft and the protection of consumers from identity theft is critical, but time is also critical.

By allowing the provision of free credit reports without an orderly transition for their seeking and a safe way for them to be sought could spike demand on the crediting reporting agencies and delay the reports of credit on those consumers seeking credit. For example, 2 weeks ago when home loans spiked in one day by a half a percent, a delay in the receipt of a credit report by a prospective home buyer seeking a mortgage could have cost them 10, 20, $50,000 over the life of the loan.

I encourage the chairman to continue work with the Members and then later as this is implemented with the FTC to ensure that we have a safe way for the free credit report to be sought specifically either by the Internet or in writing, and secondly, for us to manage the flow so that the spikes in those requests do not damage the timeliness with which paying customers seeking credit in this country can receive an orderly report on their credit.

The committee is doing America's consumers and the consistency of credit reporting in this country a great service by the bill. I commend the chairman for the manager's amendment, and I intend to support the bill fully.

Mr. KANJORSKI. Mr. Chairman, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman very much for yielding me the time, and I rise to add my appreciation to the chairman of this committee and the ranking member. The chairman and the ranking member have truly evidenced the importance of the Committee on Financial Services and its bipartisan effort. These are issues I believe that really cross partisan lines and, more particularly, impact the humanity of those who may be facing some of the disasters that may come through the lack of fair credit reporting and as well the whole issue of identity theft.

I thank both the ranking member and the chairman of the subcommittees that were relevant to this particular legislation; and I rise to support it and to highlight a particular aspect of the legislation that I am very proud of, and I want to congratulate the committee for its astuteness and wisdom on this very important issue.

Title VI, protecting employees' misconduct and investigation, tracks the legislation that I cosponsored along with the gentleman from Texas (Mr. SESSIONS), the gentleman from Massachusetts (Mr. FRANK), and other Members of this body that frankly deals with a question that is minute maybe but is large in terms of the needs that it covers.

The legislation was called the Civil Rights and Employee Investigation Clarification Act, and I am very delighted that title VI in this legislation really responds to the concerns that are raised, and that is, that the Fair Credit Reporting Act, as interpreted by the Federal Trade Commission, sometimes impedes investigations of workplace misconduct.

Mr. Chairman, in particular, it deals with or undermines or did undermine the ability of employers to use experienced, outside organizations or individuals to investigate allegations of drug use or sales, violence, sexual harassment, other types of harassment, employment discrimination, job safety and health violations, as well as criminal activity, including theft, fraud, embezzlement, sabotage or arson, patient or elder abuse, child abuse and other types of misconduct related to employment. This was not the intention of the Fair Credit Reporting Act, but by its interpretation this is what occurred.

Employers have been advised by agencies and courts to utilize such experienced outside organizations and individuals in many cases to assure compliance with civil rights laws and other laws, as well as written workplace policies. That was crafted in order to give privacy to the employees and to the relationships that would help cure the problem so that there was a bridge or a firewall between the employers and the employees that might be caught up in the malfeasance or might be caught up in providing some insight in how do we correct these problems.

Employees and consumers are put at risk because the Fair Credit Reporting Act frustrates or impedes employers in their efforts to maintain a safe and productive workforce and to create that firewall in order to protect those who would tell and those who would help remedy versus those who were creating the problem.

This is an important piece of legislation, and title VI is particularly important in creating that firewall to ensure that not only do we have fair credit reporting, not only do we provide a protection for those suffering from identity theft, but we also provide the opportunity for truth and clarity in making sure that we have safe workforces and using the right kind of talent to do so.

Mr. Chairman, I rise in support of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), only insofar as its adoption includes the full and unamended text of Title VI: "Protecting Employee Misconduct Investigations."

OVERBROAD PROVISION

On April 5, 1999, the Federal Trade Commission (FTC) issued an opinion letter (the Vail letter), which stated that if an employer used experienced outside organizations to investigate employee misconduct, the investigation must comply with the notice and disclosure requirements of the Fair Credit Reporting Act (FCRA). Because it is virtually impossible to conduct an investigation while complying with these requirements, and because employers and investigators face unlimited liability, including punitive damages, for failing to comply with FCRA, the Vail letter effectively deters employers from using experienced and objective outside organizations to investigate workplace misconduct. Yet, in many cases, an employer must do so in order to comply with obligations under other laws. Thus, the Vail letter often places employers in the untenable position of having to choose between two legal obligations.

FCRA REQUIREMENTS

The pertinent FCRA requirements include:

(1) Notice to the consumer (in this case, the employee) of the investigation;

(2) The employee's consent prior to the investigation;

(3) A description of the nature and scope of the proposed investigation, if the employee requests it;

(4) A release of a full, un-redacted investigative report to the employee; and

(5) Notice to the employee of his or her rights under FCRA prior to taking any adverse employment action.

Any mistake in compliance with these or any of the FCRA's other numerous technical requirements may expose employers and investigators to unlimited liability for compensatory and punitive damages.

However, Title VI of H.R. 2622, remedies this problem without tampering with FCRA's consumer credit protections. Title VI of H.R. 2622 is an incorporation of a bill that I cosponsored, along with Representatives SESSIONS, BAKER, PAUL, MOORE, SHAYS, FRANK, and ROYCE, H.R. 1543, to amend the FCRA to exempt certain communications from the definition of "consumer report," and for other purposes.

The Vail letter places many businesses in an extremely difficult position. While an employer may avoid running afoul of Vail by performing the investigation itself, there are many instances where a company has no choice but to use an outside investigator. For example, the technical nature of the alleged misconduct may require an expert investigator, such as where the misconduct involves securities fraud. In other instances, such as corporate governance cases, the investigation may involve misconduct by a high-level official and outside objectivity is necessary. In other cases, the employer may simply lack the resources to conduct an in-house investigation. Even where outside investigators are not necessary, they may be preferred. Indeed, both the courts and administrative agencies have strongly encouraged employers to use experienced outside organizations to investigate suspected workplace violence, employment discrimination and harassment, securities violations. theft or other workplace misconduct. As Assistant Attorney General James K. Robinson said in his May 4, 2000 Congressional Testimony, "[t]he Department [of Justice] and other agencies often strongly encourage companies, as part of their compliance programs to retain outsider counsel to conduct certain internal investigations, on the theory that an outsider is less subject to retaliation or intimidation by supervisors or co-workers and is less likely to be biased by concerns for the company's business with existing or future customers."

While the letter impacts all businesses, it is particularly damaging to small and medium sized companies that do not have the in-house resources to conduct their own investigations. Even the FTC has recognized that "there is considerable tension between [the FCRA requirements] and certain public policy aims of statutes and regulations that, directly or indirectly compel or encourage investigations of various forms of workplace misconduct . . . [and the situation is] particularly troubling for small employers."

Although the FTC recognizes the problem it, nonetheless, has refused to reverse its position and rescind the letter, claiming that a legislative fix is necessary. Title VI of H.R. 2622 is that legislative fix. It remedies the problems created by FTC's letter by excluding employment investigations that are not for the purpose of investigating the employee's credit worthiness from the FCRA requirements. The bill is essentially a narrow technical correction that does not tamper with FCRA protections for any investigations into credit-worthiness. In addition, the bill does not leave those suspected of misconduct without protection: it still requires that employers who take adverse action against an employee based on information from an investigation provide the employee with a summary of the nature and substance of any investigative report.

BENEFITS OF H.R. 2622

This bill, along with an intact Title VI exclusion of workplace investigations, will preserve the continuity of our credit system and will include comprehensive identity theft, dispute resolution, and credit report accuracy provisions. Additionally, this legislation proposes to take the important step of providing all Americans with access to a free credit report every year in order to empower consumers to take control of their financial records.

This legislation will prove crucial to the protection of consumers from the dangers of identity theft, the fastest growing white-collar crime in America. The following important steps toward protecting our consumers from identity theft are proposed within relevant provisions:

Creating a duty for furnishers to investigate change of addresses, which can be indicators of identity theft;

Creating a multi-level fraud alert system for victims of identity theft to protect their credit information;

Requiring all credit and debit card receipts to be truncated to protect these valuable identifiers;

Providing a summary of rights for all potential victims of identity theft;

Allowing consumers to block all credit information resulting from identity theft;

Establishing "Red Flag" procedures so that government regulators may help furnishers to eradicate identity theft before it occurs (preventative); and

Requiring a study on how technology can help solve identity theft.

In addition, this legislation will take steps to improve dispute resolution procedures and improve the accuracy of credit reports. The legislation proposes to take the following steps towards these goals:

Require a reasonable reinvestigation of disputes and requires a prompt reinvestigation;

Require CRA's and furnishers to reconcile differences in addresses on requests;

Prevent repollution of data that is a result of identity theft; and

Require credit reports to disclose contact information of furnishers to resolve disputes.

This legislation will also provide consumers with more access than ever before to their credit information in order to empower these consumers with the information to protect themselves. The legislation proposes to create this access by:

Providing free credit reports annually to all consumers; and

Disclosing credit scores for a reasonable fee, as well as important factors that make the score.

Finally, this legislation also contains important provisions to protect medical information that is present in financial services' systems and provide for confidentiality of medical data in all credit reports.

Taken together, the above "facts" as to the FACT Act will protect the privacy rights of Americans; however, in crafting this bill, the Committee on Financial Services failed to put a limitation on the scope of the notice and disclosure requirements with respect to investigations into workplace misconduct. In 1999 and 2000, the Federal Trade Commission (FTC) issued several staff opinion letters which concluded that if an employer hires an experienced and objective outside organization to investigate suspected workplace misconduct, i.e., sexual or racial harassment, workplace violence, theft, fraud, SEC violations, or other improprieties, the investigation would qualify as a "consumer report" subject to the Fair Credit Reporting Act (FCRA). As such, employers and the investigators hired by them to handle alleged harassment cases would be subject to the cumbersome and over-reaching notice and disclosure requirements of FCRA.

Mr. Chairman and Ranking Member, I therefore support this bill only insofar as it is accepted with the inclusion of Title VI in its entirety and as drafted.

□ 1515

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York (Mrs. KELLY), the chairwoman of the Subcommittee on Oversight and Investigations of the Committee on Financial Services.

Mrs. KELLY. Mr. Chairman, I thank the gentleman for yielding me this time, and I want to applaud both the chairman and the ranking member of the Committee on Financial Services for acting on this important legislation with the kind of thoroughness and deliberation that they did take.

The legislation before us, the FACT Act, is the result of half a dozen hearings, 75 witnesses, and months of deliberation by my colleagues from both sides of the aisle. The construction of the legislation is the permanent reauthorization of the Fair Credit Reporting Act, or the FCRA. It has provided a national uniform reporting system that has effectively lowered the cost of credit and increased choices and convenience for consumers across the country.

In our hearings, we heard extensive testimony from many diverse witnesses with different interests. But there was a common message that the FCRA has lowered the cost of credit and helped fuel our economy. And this extension of low-cost credit has created new opportunities for populations who have never before had access to credit. That is why this legislation has overwhelming bipartisan support.

The Fair Credit Reporting Act has also helped address other important security provisions, such as combating identity theft and the blocking of terrorist financing under the USA PATRIOT Act, both issues which I have held a number of hearings on in my oversight subcommittee. Combating identity theft and drying up terrorist financing requires the collaborative effort of law enforcement and regulatory agencies, consumers and financial institutions, all with access to appropriate information.

FCRA improves our ability to combat identity theft and help law enforcement officials track down illicit money under the PATRIOT Act. The information sharing under this legislation is essential to protecting the American people by detecting suspicious activity and weeding out wrongdoers.

The national reform standards under FCRA have also facilitated the financial institution's ability to utilize additional authentications and identity verifications to protect consumer security. And the increased protections incorporated in this legislation are critically important in enabling victims to correct the damage to their credit histories created by identity thefts. This legislation will further help law enforcement combat financial fraud and track down criminals and terrorists. It adds new protections that are important to achieving these goals.

We have also made other important improvements to the FCRA in order to protect the sanctity of privacy of the American people throughout the credit-granting process. I believe that medical information of consumers should be kept private and does not need to be shared or distributed to others by creditors listed on credit reports. Individuals should know their personal medical information belongs to them and is not released for other purposes, whether it is for the credit-granting process or employee background checks. And we have done this with our legislation by coding this information.

Mr. Chairman, I would like to thank the gentleman from North Carolina (Mr. WATT) and the gentleman from Arkansas (Mr. ROSS) for working with me on an amendment in full committee that will protect the medical information of individuals without disrupting access to low-cost credit and the security of information. By allowing consumers to benefit from reporting the financial aspects of their transactions to credit bureaus while maintaining the sanctity of their medical privacy, this legislation is a real win for Americans.

Mr. Chairman, I strongly support this legislation. It is crucial to the economy and the security of the American people. I thank the chairman for addressing these important issues, and I urge my colleagues to vote for this legislation.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. HINOJOSA), another diligent member of the committee who made a great contribution to this bill.

Mr. HINOJOSA. Mr. Chairman, I am an original cosponsor of the Fair and Accurate Credit Transactions Act, and I support it strongly. H.R. 2622, known as the FACT Act, provides for a strong national credit system. It preserves consumers access to affordable credit, enhances consumer protections, and will ensure that Hispanics will continue to have access to credit.

From the beginning of this process, my new Democrat colleagues and I have been deeply involved in crafting this bipartisan bill, which passed the Committee on Financial Services by a 61 to 3 vote. The bill preserves the continuity of our credit system and includes comprehensive identity theft, dispute resolution, and credit report accuracy provisions that will increase and strengthen people's control over their own financial records.

Identity theft is one of the fastest growing white collar crimes in the United States, especially in my State of Texas. This legislation, H.R. 2622, will help reduce those crimes and help the victims of identity theft regain their identity and restore their credit. The FACT Act addresses all these important issues and more. It will benefit consumers in our economy, and it will help improve financial literacy in the United States.

I commend my Republican colleagues, especially the chairman, the gentleman from Ohio (Mr. OXLEY), and the subcommittee chairman, the gentleman from Alabama (Mr. BACHUS), for working with us in a bipartisan manner to develop this legislation. I also applaud the ranking member, the gentleman from Massachusetts (Mr. FRANK), and another ranking member, the gentleman from Vermont (Mr. SANDERS), for guiding us through this process.

Finally, Mr. Chairman, I want to give special thanks to the gentlewoman from Oregon (Ms. HOOLEY), the gentleman from Kansas (Mr. MOORE), and the other 10 new Democrats who worked so diligently to compromise and help us forge this bipartisan compromise. I strongly encourage my colleagues to support this important legislation, H.R. 2622.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from Alabama (Mr. BACHUS), the author of this important legislation and the chairman of the Subcommittee on Financial Institutions and Consumer Credit.

Mr. BACHUS. Mr. Chairman, I thank the chairman of the committee, the gentleman from Ohio (Mr. OXLEY), for yielding me this time and who was certainly instrumental in making this a priority and in allowing the committee to take as much time as it did to consider this issue, because it was an important issue.

We have received a statement from the Executive Office of the President, which arrived here today, concerning this legislation; and I want to read from it. It says the administration strongly supports House passage of H.R. 2622. The bill includes many of the administration's proposed consumer protections, including new tools to help fight identity theft. The national credit reporting system has proven critical to the resilience of consumer spending and the overall economy.

That is one thing we heard over and over, that the national credit reporting system was essential to maintain the overall economy and consumer spending. So I am pleased that Chairman OXLEY has received this important endorsement from the President.

It has been said that I was the author of this legislation, and, in fact, I would sort of like to claim that, but it is truly a bipartisan bill. We had a blueprint to start with, however, on our ID theft provision, and I would like to recognize at this time and thank the gentleman from Ohio (Mr. LATOURETTE) for all his work on identifying the theft provision that needed to be in this legislation.

Actually, he introduced, with the gentlewoman from Oregon (Ms. HOOLEY), the original number of provisions which were taken and put in this bill verbatim. So we did not have to start from scratch. It was a big help that we had a bipartisan bill that the gentleman from Ohio and the gentlewoman from Oregon had worked on. What he brought to the table from the start was a piece of legislation that has since evolved over time, been updated, and I think improved with the help of consumers and the industries and the administration and Members of this Congress to serve as a valuable protection against identity theft, and I commend him on that.

I want to run over some of those protections if time permits. Here are some of the important consumer protection tools. It allows consumers to place fraud alerts in their credit reports to prevent identity thieves from opening accounts in their names, including a special provision to protect active duty military personnel, who we found, sadly, had been particularly susceptible to ID theft. It allows consumers to block fraudulent information from being given to a credit bureau and from being reported by a credit bureau if that information results from identity theft. It provides ID theft victims with a summary of their rights. It gives consumers the right to see not only their credit reports but their credit scores.

Now, that is an important new right which will help people. And I think there was unanimous agreement on this from industry, from consumers, and Members of Congress. This will actually help people save money with lower interest rates. One estimate I have read is $21 billion in savings in home mortgages alone.

It restricts access to consumer-sensitive health information. That is something people said: we do not want our health information to be shared without our permission. It empowers consumers by making it easier to limit unsolicited marketing offers. And it ensures improved accuracy of credit report procedures. It is very important that the information that is shared between creditors and credit bureaus is accurate. It provides consumers with a one-call-for-all protection by requiring credit bureaus to share consumer calls on ID theft, including reporting fraud alerts with other credit bureaus. One call does it all. Important suggestion.

With that, Mr. Chairman, I would also like to commend Wayne Abernathy, Assistant Secretary of the Treasury, and Secretary of Treasury Snow. And once again, I wish to commend the chairman, the gentleman from Ohio (Mr. LATOURETTE), the gentleman from Massachusetts (Mr. FRANK), and all of the 58 cosponsors of this original legislation.

Mr. HINOJOSA. Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to my good friend, the gentleman from the great Buckeye State of Ohio (Mr. LATOURETTE), a former prosecutor, and one of the real leaders in the identity theft provisions, along with the gentlewoman from Oregon (Ms. HOOLEY).

(Mr. LATOURETTE asked and was given permission to revise and extend his remarks.)

Mr. LATOURETTE. Mr. Chairman, I thank both the gentleman from Ohio (Mr. OXLEY) and the gentleman from Alabama (Mr. BACHUS) for their very kind words.

Mr. Chairman, when I travel back to Ohio, I have to admit that folks up there are not telling me how important it is that we reauthorize the Fair Credit Reporting Act. They are not telling me how this legislation helped them drive home the new minivan the same day they went to the dealership, or how the convenience of the national credit granting system allowed them to charge a trip with the kids to Disneyland on their MasterCard. What is ironic, Mr. Chairman, is that this lack of interest from the average American consumer demonstrates to me very clearly that the amendments the Congress passed in 1996 to create the national credit system that we all take for granted today is working exceptionally well and it is a perfect illustration of why we need to support this legislation.

The bill before us today not only makes that system of the national standard for our country, but it also, as has been mentioned, tackles the problem of identity theft. During the committee's extensive hearing process on this legislation, we heard from a number of experts on the issue. We also heard from a number of victims. One of them came from my hometown, a woman by the name of Maureen Mitchell. And it was the severity of Maureen's case that inspired me to

work with my friend, the gentlewoman from Oregon (Ms. HOOLEY), who has really been dogged in the pursuit of this part of the legislation for years, and my hat's off to the gentlewoman from Oregon.

It was the severity of that case, and, basically, she and her husband had their identities stolen, and they racked up $100,000 in bills. In Chicago, the thieves went and got $45,000 in loans in the span of 2 hours, and they were horrified to learn that they were the "proud owners" of two sport utility vehicles that they, of course, did not purchase.

Anytime the Congress debates the issue of preempting State law, we have to question whether or not the Federal Government knows better than the States on how to pass a law that affects our citizens. When the question relates to access to credit and identity theft, I strongly believe the answer is in this legislation. Creating a set of uniform national standards will benefit people across the economic spectrum and is the perfect vehicle to fight the crime of identity theft.

I would urge my colleagues on both sides of the aisle to think of all the times we take for granted the ability to gain fast access to credit in our day-to-day activities. As a parent, it was terrifying when my daughter got her first credit card in the mail. But when that envelope arrived and she proudly stuck that piece of plastic in her wallet, she began building a credit history that will one day allow her to buy a home or take that vacation to Disneyland.

□ 1530

Mr. Chairman, I would like to thank very much the gentleman from Ohio (Chairman OXLEY), the gentleman from Massachusetts (Mr. FRANK), and the gentleman from Alabama (Chairman BACHUS) for this nice piece of legislation.

Mr. Chairman, when I travel back home to Madison, Ohio, I'll admit it—the folks up there aren't telling me how important reauthorizing the Fair Credit Reporting Act is to them. They're not telling me how this legislation helped them drive a new minivan home the same day they went to the dealership, or how the convenience of our national credit granting system allowed them to charge a trip with the kids to Disneyland on their Matercard. What's ironic, Mr. Chairman, is that this lack of interest from average American consumers demonstrates to me very clearly that the amendments Congress passed in 1996 to create the national credit system that we all take for granted today is working exceptionally well, and is a perfect illustration of why we need to support this legislation.

The bill before us today not only makes that system the national standard for our country, but also tackles the issue of identity theft. During the Committee's extensive hearing process on this legislation, we heard from a number of experts on this issue, and we also heard the testimony of a number of victims, one of whom—Maureen Mitchell—is from my hometown. The severity of Maureen's case is what inspired me in the 106th Congress to work with my friend Congresswoman DARLEEN HOOLEY to draft what have now become the critical ID theft provisions in the bill before us today. To give you some idea of the enormity and extent of the Mitchell family's identity theft saga, all told, Maureen and her husband Ray have been victimized to the tune of well over $100,000. Their identities have been used to apply in a two-hour period for $45,000 worth of personal loans at three different banks in Chicago. And they are the "owners" of two luxury Sport Utility Vehicles that they never purchased.

Any time Congress debates the issue of pre-empting State law, we have to question whether or not the Federal Government knows better than the States how to pass a law that affects our citizens. When the question relates to access to credit and identity theft, I strongly believe that the answer is in this legislation: creating a set of uniform national standards will benefit people across the economic spectrum, and is the perfect vehicle to fight the crime of identity theft.

That said, it would be wrong of us to tie consumers and industry down with very specific operating guidelines and regulations. It would be foolish to believe that there is one cure-all that will completely prevent cases of identity theft, but with the options and flexibility provided by this legislation, consumers, creditors, and law enforcement will be able to stay ahead of the identity thieves as they find new technologies and methods of carrying out this crime.

Again, I urge my colleagues on both sides of the aisle to consider all the times we take for granted the ability to get fast access to credit in our day-to-day activities. As a parent, yes, it was a terrifying thing when my oldest daughter got her first credit card. But what that envelope arrived in the mail and she proudly stuck that piece of plastic in her wallet, she began building a credit history that will one day allow her to buy a home and take that vacation to Disneyland with her family. With the Fair Credit Reporting Act set to expire at the end of the year, this Congress is in a unique position to have a tremendous impact on every American consumer. If we do not act today and support this legislation, we will be denying future generations of Americans the same financial luxuries we have all enjoyed for the last eight years.

Finally, I would like to thank Chairman OXLEY and Subcommittee Chairman BACHUS for their strong leadership on this legislation.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume to engage in a colloquy with the chairmen of the full committee and the subcommittee.

Mr. Chairman, as part of this colloquy, I would say to my friends the chairmen of the full committee and subcommittee that many Members are concerned about the scope of the preemption that was just referred to, particularly with regards to identity theft.

So I want to clarify with the author of the bill, the committee chairman, what we are intending and how we have underscored that intention in the manager's amendment which will be coming forward.

Does this bill or this amendment allow the preemption of any State law on identity theft, such as limits on Social Security number use, criminal penalties for identity theft perpetrators, or other identity theft protections that are not specific subject matters addressed by this bill.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Chairman, the answer is no. The Member from Massachusetts is correct. The identity theft protections in this bill amend section 605 of the Fair Credit Reporting Act. The uniform standard for section 605 is contained in section 624(b)(1)(e) which states that, "No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under section 605."

The section goes on to describe section 605 saying that it relates to information contained in consumer reports, and now to identity theft prevention. That means that 605 is the section for identity theft protections, but the uniform standard requirement is still limited to the subject matters that our provisions actually address such as investigating address changes, fraud alerts, truncating credit card account numbers, blocking bad credit information, establishing red flag guidelines for identity theft prevention, and reconciling address changes.

State identity theft laws that address different issues such as limiting Social Security number use or criminal penalties on identity theft perpetrators are not preempted. We have agreed with the gentleman from Massachusetts (Mr. FRANK) to clarify this in the manager's amendment to underscore in the uniform standards provision that describes section 605 that it only relates to the specific identity theft prevention subjects covered and not to other identity theft issues outside of the subject matters covered in the uniform standard.

Mr. BACHUS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Chairman, I would like to affirm the understanding between the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK).

In this bill we built upon the amendments that the gentleman from Ohio (Mr. LATOURETTE) and the gentlewoman from Oregon (Ms. HOOLEY) had first offered along with the gentleman from New York (Mr. ACKERMAN) and also the gentleman from Massachusetts (Mr. FRANK) to flesh out existing uniform standards.

The bill of the gentleman from Ohio (Mr. LATOURETTE) and the gentlewoman from Oregon (Ms. HOOLEY) that we used as our base text expanded on the uniform standards for identity theft. But in that bill, as in ours, there is no intent to go beyond the specific subjects identified in the bill.

So, for example, we do create uniform standards for opening new credit accounts when there are allegations of potential identity theft under our fraud alert and blocking provisions. Because you need a consistent rule that consumers and businesses can rely on when there has been a fraud alert, when there has been an allegation of identity theft. We do not address other subject matters that are not covered such as limits on Social Security number use or criminal penalties for identifying theft perpetrators.

These are issues that we expect the States to continue to work out solutions to. Hopefully we can return to work on those ourselves with Members like the gentleman from Florida (Mr. SHAW) or the gentleman from Arizona (Mr. SHADEGG), the gentleman from California (Mr. OSE), the gentleman from Illinois (Mr. EMANUEL). And I think the gentlewoman from Oregon (Ms. HOOLEY) also wants to address some of those issues. Many of them will have to be addressed either in the Committee on Ways and Means or in the Committee on the Judiciary. And they have valid concerns, but it is just from a jurisdictional standpoint.

Mr. FRANK of Massachusetts. Reclaiming my time, I thank the gentleman from Alabama (Mr. BACHUS). Let me say I appreciate the affirmations from both gentlemen.

Mr. Chairman, let me say now, I want to transition from the colloquy where we were in agreement as to what it says to express my view that I think even with these agreements the bill is, with regard to some existing law in California and elsewhere, more preemptive than it needs to be.

I recognize the value of this colloquy in making clear what those limits are. The gentlewoman from California (Ms. WATERS) who has been very concerned about this and who, indeed, alerted me to it earlier, and I unfortunately did not pay as much attention as I should have at the time, she is concerned and I share her concerns, so she will be pursuing this further.

So I just want to say while I am pleased to have this colloquy and to have these understandings, my own personal view, which I realize is not shared by the gentleman of Ohio (Mr. OXLEY) and the gentleman from Alabama (Mr. BACHUS) is that even with these understandings, there is more preemptive language here than need be. I intend to work with the gentleman from California and other Californians in various ways to try and further reduce that preemption.

Mr. BACHUS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Chairman, just to make a clarification, it has been said that this bill will preempt the new California legislation.

Mr. FRANK of Massachusetts. Mr. Chairman, let me take back my time. There were two different California issues here. Of course, one would not expect California to settle for only one controversy. The gentleman from Alabama (Mr. BACHUS) is correctly alluding to the future issue of so-called SB1. But what the gentleman from California had identified to me before that had passed was preemption of existing California where it predates the recent enactment. And that is the concern that I was alluding to.

Mr. BACHUS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Chairman, as we have said, we need a national standard just like we need a national interstate highway system or other national uniform standards. California saw fit, when they passed this law, to exempt local statutes.

Mr. FRANK. Mr. Chairman, I will have to take back my time. I have one more speaker. The gentleman is again talking about the language going forward in SB1. The gentlewoman from Los Angeles and I are now addressing a different set of laws, laws that had already been on the books prior to that, laws passed subsequent to 1996, some of which I think are unnecessarily preempted, although this colloquy has helped.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a valuable member of our committee from the Keystone State.

Ms. HART. Mr. Speaker, I rise in support of the FACT Act, the Fair and Accurate Credit Transactions Act. Fortunately, today we appear to have bipartisan support of the Act, and it is for a clear reason, our credit system in the United States is the envy of the world. Our uniform national standards have helped to make the United States a world leader, and have continued to spur on our economy, even in times that have been difficult in the last year or so.

The bill makes these national standards that have been in effect permanent. This is important to ensure continuity in our credit system, and also to maintain continued access to the best credit markets in the world. This is especially important because two-thirds of our economy depends very heavily on consumer spending. Consumers will not spend without access to credit, and to get access to credit, consumers and lenders need consistent, uniform standards for credit reports. Broader access is the result. National and worldwide access is also the result.

According to the Federal Reserve Board, in fact, since the Fair Credit Reporting Act was enacted, the overall percentage of families with general purpose credit cards increased from 16 to 73 percent and the largest increase was among lower-income families.

Homeownership levels have also grown approximately 10 percent, again with low income and minority families receiving the largest gains.

According to some estimates, these improvements have saved consumers nearly $100 billion annually. Many of my colleagues have mentioned the benefits also regarding fighting identity theft. This bill allows each consumer to get a copy of their credit report annually, and that will help to avoid a lot of the problems we have been having with ID theft and use of credit by those not authorized. It helps the consumer to identify charges that are not theirs, it helps to identify and clear them from the credit report keeping the consumers' credit clear.

Every year a consumer would have access to a free copy of that credit report, see their credit scores which help them understand whether they are going to be able to get access to a mortgage or new credit.

Finally, I ask my colleagues to support this Act because it will create continuity, it will continue the dynamic American system, and it will help us keep access to safe credit and flexibility for the American consumer.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from Vermont (Mr. SANDERS), the ranking member of the subcommittee who worked very hard to make the bill better, but still obviously has some concerns with it. But from the consumer standpoint, the gentleman worked as hard as anyone.

Mr. SANDERS. Mr. Chairman, I thank the gentleman for yielding me this time.

Unfortunately, I rise in opposition to this legislation. While this bill does include important consumer protection provisions, such as the provision that I and other members of the committee fought for, which would provide free annual credit reports to consumers who request them, and would also allow consumers to receive more information about their credit scores identical to a very good law in the State of California, there are major flaws in this legislation.

For a start, even in terms of that pro-consumer provision, we are not quite sure when that will go into effect, and I fear it will not go into effect as soon as it should.

Secondly, I think the major concern that I and consumer organizations all across this country have is that this legislation would permanently preempt the States from passing stronger consumer protection laws in order to aggressively punish identity thieves and to improve the accuracy of consumers' credit reports.

I may be the conservative on the committee, but it has long been my belief when we are dealing with an issue of protecting consumer rights, we cannot take away the ability of the States to pass stronger consumer protection laws. I find it very ironic from day one of this discussion that conservatives who have told us over and over again how much they dislike the big bad Federal Government stepping on States' rights, in fact have brought that provision into this legislation.

So if the State of Vermont or the State of California or the State of Ohio wants to go further in this area, well, my goodness, that big bad Federal Government, which we have heard so much about, is able to say sorry, you cannot do it. Attorneys general, governors, State legislators, you cannot do that, and I think that is wrong.

During the course of the debate on the committee, there was a very interesting discussion over an amendment that I and the gentleman from Alabama (Mr. BACHUS) brought forth which deals with the issue of what I call credit card switch and bait, and I will be bringing forth an amendment to win support of it. It is not included in this bill, and it should be.

Mr. Chairman, what is going on in this country is that people who pay off their credit card debts on time every single month nonetheless are seeing huge increases in the interest rates that they are paying. How does that happen? It happens because maybe 3 years ago they took out a loan which is still outstanding, or maybe they had an emergency medical bill and they had to borrow money, and arbitrarily the credit card company has determined they are a greater financial risk and their rates can double or triple. I think that is wrong.

This bill has some positive provisions, but we can do much better, and I would urge a "no" vote on it.

□ 1545

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Arizona (Mr. SHADEGG).

Mr. SHADEGG. Mr. Chairman, I thank the gentleman for yielding me this time. I rise in strong support of this carefully balanced legislation. I want to compliment the authors and the committee chairman for doing what I think is a superb bill that will in fact help consumers across America. Indeed, I think this is a key component in protecting our credit structure and enabling Americans to get the credit that they need. I am very pleased that the legislation does what it does.

Importantly, as the author of our Nation's first identity theft legislation, I am very pleased with the provisions in this bill that deal with identity theft. It makes some important strides in improving our fight against identity theft. For example, the bill requires that anytime a transaction is made and information is transmitted using a credit card number, that number has to be truncated so that someone who wants to steal your identity by grabbing ahold of your credit card number will not have the full number. While some companies currently do that, not all do. This will protect them very much.

There are a number of other key provisions dealing with the issue of identity theft, and that is a critical issue because, for example, it was just reported last week that in America last year, 10 million people became the victims of identity theft. Those individuals themselves, as individuals, suffered $5 billion in damages. But on top of that, businesses in America sustained $47 billion of losses as a result of identity theft. And so the ID theft provisions in this bill I think are very, very important. But it could go further.

The General Accounting Office testified in July of this year that Social Security numbers are often the identifier of choice among individuals seeking false identities; and perhaps to the shock and amazement of people in this room and across the country, just last month, an organization engaged in consumer advocacy, to prove that Social Security numbers are too available, purchased the Social Security number of Attorney General John Ashcroft and CIA Director George Tenet off the Internet for a mere $26. The problem is that Social Security numbers are too available.

In 2002, the FBI testified that possession of someone else's Social Security number is key to laying the groundwork to take over that individual's identity and obtain a driver's license, loans, credit cards, and merchandise. It is also key to taking over an individual's existing account and wiring money from the account, charging expenses to an existing credit line, writing checks on the account or simply withdrawing money.

It is absolutely critical that this Congress this year enact legislation to prohibit the purchase and sale of Social Security numbers in a fashion that allows identity thieves to get ahold of those numbers. This legislation does not yet do that. Hopefully, either in an amendment yet offered this afternoon or in the conference committee, we can do that. There is bipartisan support for this idea. I know the gentleman from Illinois (Mr. EMANUEL) on the other side supports doing it as well as a number of others. I have been helped by many, including the gentleman from Massachusetts. We can deal with this problem, but we must do so in legislation that will pass this year. Anyone who blocks that legislation or seeks to keep it from happening and happening very, very quickly, I think, is doing a disservice to the victims of identity theft across this country.

It is important to note that the second greatest concern of Americans when it comes to privacy is that their identity might be stolen by an identity thief and that they might be victimized by that and undergo that pain. Again, I would reiterate that this is very important legislation. It goes a long way toward stopping identity theft. It can go a little further if we prohibit the purchase and sale of Social Security numbers.

I urge my colleagues to vote for the legislation.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. CROWLEY), one of those who had a major input into this bill.

Mr. CROWLEY. Mr. Chairman, first I want to take this opportunity to thank the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK), as well as the gentleman from Alabama (Mr. BACHUS) and the gentleman from Vermont (Mr. SANDERS), for their work together in what I believe is truly a bipartisan effort and manner to craft, in my opinion, a well-balanced bill, understanding that there is a deadline looming in the not-too-distant future as pertains to many of these issues.

This bill ensures the continued flow of credit for American consumers by allowing for the permanent protection of credit availability. Our economy and our credit-granting industry should not have to continually look over its shoulder at potentially burdensome regulations, regulations that could hinder the availability of credit for millions of Americans. But this legislation is not just about protecting consumer credit options. It is about protecting consumers' identity and their health information. This bill strengthens the rules to protect consumers from identity theft.

The Committee on Financial Services, which I am a member of, heard from a woman who originally lived in my district, someone who I grew up just seven doors away from. Her name was Maureen Sullivan. Now it is Maureen Mitchell. She grew up in Woodside, Queens, New York, who was a victim herself, and her husband, of identity theft. It cost her not only money but it cost her an enormous amount of time, not to mention mental anguish. This quite frankly happens all too often in this country. This bill addresses many of these issues and works for increased protections for honest Americans and honest people. Most importantly, this bill ensures the strict prohibition of medical and health information from being used in the credit-granting or denial process. No longer can the information used in hospitals and in doctors' offices be used to decide one's creditworthiness.

I want to urge my colleagues to vote in favor of this legislation. Once again I want to thank the chairman and the ranking member for all their good and honest work on what I think is a worthy piece of legislation.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, let me say this. The body just heard from the gentleman from Arizona. He actually introduced in the 104th Congress the very first legislation dealing with identity theft. It was the Identity Theft and Deterrence Act, which had criminal penalties in it. Before most Americans, even most Members of Congress, knew of this problem, he knew about it.

We do have a continuing concern about Social Security numbers. If we are going to truncate them, this is a great example of why we need a uniform standard. We cannot have one

State truncating them into six numbers, another State into five numbers where we could not interchange them. I would encourage the gentleman from Arizona to continue to work with the Committee on Ways and Means in dealing with this problem, because it is something that we need to address in identity theft. I applaud and commend him for his effort and encourage him to continue with it.

The CHAIRMAN. Without objection, the gentleman from North Carolina (Mr. WATT) will control the time of the gentleman from Massachusetts (Mr. FRANK).

There was no objection.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentleman from Kansas (Mr. MOORE), a valued member of the committee who was chairman of the Democratic task force on this bill.

Mr. MOORE. Mr. Chairman, I thank the gentleman from North Carolina for yielding me this time. I also want to thank the gentleman from Ohio (Mr. OXLEY), the gentleman from Massachusetts (Mr. FRANK), also the gentleman from Vermont (Mr. SANDERS), and the gentleman from Alabama (Mr. BACHUS) for the great work that they did on this bill. I rise in strong support of this bill which passed out of committee 61 to 3. That is almost unheard of in this body where there is so much contentiousness, it seems, way too often. I think people out in the country wonder what is going on here. I think this is a splendid example of our ability to work together for something to benefit the American people and for business in this country.

I ask my colleagues to vote in support of the bill that is going to come up on the floor today because it does assure the availability of reasonably priced consumer credit to consumers, which is going to enhance their ability to purchase things that they want in the future as well as to protect our economy and business in this country.

I think it is very, very important that we pass this legislation intact. It increases consumer awareness of their rights. It protects against identity theft. It expands consumer access to credit information and gives a free credit report annually to consumers in this country. There are a number of consumer protections that the gentleman from Vermont and others worked for that are now built into this bill and if this bill is adopted will become in fact permanent.

I urge my colleagues and all the Members of this body to vote in support of this bill.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL) who has had such a tremendous impact on this bill, particularly the medical privacy portions of the bill. He has been a stalwart.

Mr. EMANUEL. Mr. Chairman, I would like to thank my colleague from North Carolina for his kind words. I would like to also congratulate the gentleman from Ohio (Mr. OXLEY), the gentleman from Massachusetts (Mr. FRANK), the gentleman from Alabama (Mr. BACHUS), the gentleman from Vermont (Mr. SANDERS), and the gentleman from California (Mr. OSE) for cosponsoring our amendment that deals with medical information and blacking out that information. This is a landmark bill that will help American consumers by giving them important new rights and protections.

Our economy benefits from a national credit reporting system like no other in the world, and this legislation strikes the right balance by safeguarding consumers while also ensuring continued access to our instant credit system. Medical information should have no place in employment decisions or credit determinations, and corporate affiliates should not be able to share it. This information deserves the strongest protection under the law, but beyond that it is important that we give consumers back some control over who can and cannot use this information. In fact, a recent Gallup poll showed 95 percent of consumers are worried that their health providers or insurers may be sharing their private medical information with others. Beyond this concern, however, they fear losing more control every day over sensitive medical information.

No longer will we ask whether you opt in or opt out. Your medical information, medical information in your family from here forward is blacked out. It protects you in the most sensitive area. It blacks out the use of medical information in the credit-granting process. It establishes strict limits on the use of medical information for employment purposes. It blacks out the indiscriminate sharing of medical information among corporate affiliates. It blacks out the use of medical information to create individualized or aggregate lists based on consumers' payment transactions for medical products; creates a new and higher standard for reporting by credit reporting agencies to others who have requested information; and establishes strict limits on the reuse of medical information.

This is both good for consumers and good for business. In a typical way when you have a win-win situation, it will also in my view garner great bipartisan support. Again I want to close by thanking the chairman and the ranking member for having a bill that brings together business interests and consumer interests not only throughout the bill but also in this particular area, by blacking out medical information and giving consumers again control over their own lives.

Mr. WATT. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, in 1996, or when the original fair credit reporting bill was passed, which I do think was 1996, there was quite a bit of controversy about whether the Federal Government should be the controlling entity with respect to these kinds of credit issues. You had your classic States rights versus Federal Government debate. That has been much less of a debate this time because over time we have come to realize that commerce, both intrastate and interstate, is substantially impacted by the availability of credit. Just about everybody is using credit in commerce. Nobody is paying cash anymore, or seldom are people paying cash. So the argument about whether the Federal Government has a legitimate role in this fair credit process kind of has gone by the board over the years and was less of an issue in this debate and gave the committee in my estimation the opportunity to focus on really creating a comprehensive kind of approach to dealing with credit in this country, dealing with some of the problems that people face when credit reporting agencies get the wrong information, dealing with identity theft and medical privacy, and the whole range of issues that can come into play when a credit transaction is about to take place.

□ 1600

I think the gentleman from Ohio (Chairman OXLEY) and the gentleman from Massachusetts (Mr. FRANK) have done just a magnificent job of hearing all of the input from all of the different sides and coming together on a bill that came out of committee with not unanimous support, but virtually unanimous support.

Now, there are some things that may be tweaked between the committee process and the floor, and there might be some need to change one or two things that have been agreed upon, but there are some amendments that I think could have a negative effect on this kind of bipartisan agreement that has characterized this bill.

So I hope that as we go forward into the amendment process, all of us will remember how hard we worked to keep this a bipartisan bill, to deliver a bill to the Senate that had just broad-based support so they would not sit there and not do anything and let the authorization run out. We need to maintain this bill in its current form as much as possible, unless the Chair and ranking member have agreed to amendments. I hope that my colleagues will keep that in mind.

Mr. Chairman, it is time for us to pass this bill, move it over to the Senate, and hope that they will produce a product that will keep credit available to people in this country on a set of fair and equitable rules.

Mr. Chairman, I yield the balance of my time to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I want to thank the gentleman from North Carolina for taking over for me temporarily and for his very effective leadership throughout the deliberations on this bill.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. OXLEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, in only 1 minute it will be difficult to thank everybody, but let me try. First, the chairman of the subcommittee, the gentleman from Alabama (Mr. BACHUS), who has shown enormous leadership, the main sponsor of this bill. He held over eight hearings with over 100 witnesses. The gentleman from North Carolina is right, everybody who wanted to be heard on this bill was heard, sometimes more than once.

I would like to express thanks to the gentleman from Massachusetts (Mr. FRANK) for his leadership and direction and for helping us all along the way; to the gentlewoman from Oregon (Ms. HOOLEY), and to the gentleman from Ohio (Mr. LATOURETTE), particularly on their efforts on identity theft; and to the gentlewoman from Illinois (Mrs. BIGGERT) for her contributions as well. It is a real honor roll of members on our committee.

Frankly, over the last 2½ years, our committee has established a pretty solid record of bipartisan cooperation and production, whether it was the Sarbanes-Oxley bill, or whether it was tourism risk insurance, and the list goes on. This, I think, is one more addition to that honor roll. For that I am extremely grateful to the members of the committee on both sides of the aisle. We have been clearly blessed with a cooperation, and I think it will be reflected in the final vote.

Mr. HOYER. Mr. Chairman, I urge all my colleagues to support this legislation—the Fair and Accurate Credit Transactions of 2003—which provides a national uniform standard on how consumer reporting agencies and other financial services entities may access and use consumer financial and medical data.

But before I discuss the substance of the underlying bill, I want to compliment the Chairman and Ranking Member of the Financial Services Committee (Mr. OXLEY and Mr. FRANK), who worked together in crafting this bipartisan legislation, which I believe will be passed by an overwhelming margin today.

This, Mr. Chairman, is how our legislative process should work. The Chairman and Ranking Member identified a need. They held hearings. And they crafted the bipartisan solution on the Floor today that is, nonetheless, open to amendment.

Mr. Chairman, the advent of the Internet and the Information Revolution has been a terrific boon for the American consumer. Millions have received quick credit decisions on financing a new car, on obtaining a credit card, and on taking out or refinancing a mortgage. This has clearly facilitated many of the most important financial decisions consumer make, and strengthened our economy.

However, it also illustrates the need for national uniform standards for financial information. And that is what this bill addresses.

Under this legislation, consumers can receive a free annual credit report that will disclose their credit score. In addition, the Act gives consumers new options for disputing and correcting inaccuracies in their credit reports, encourages prompt investigations of such disputes, and establishes new requirements to prevent corrected errors from being reintroduced into a credit report.

The Act also includes provisions to combat identify theft. A recent Federal Trade Commission survey indicated that more than 27 million Americans have been victims of identity theft in the last five years, including nearly 10 million people in the last year alone.

H.R. 2622 permits consumers to more easily place "fraud alerts" on their consumer reports; to require credit reporting agencies to block (or omit) information that is confirmed to have resulted from an identity theft, as long as the consumer has filed a police report concerning the ID theft; and to prohibit retailers from printing the expiration date and more than the last five digits of a consumer's credit or debit card number on electronic receipts.

Finally, the Act greatly expands the protections in the Fair Credit Reporting Act that govern the sharing and use of sensitive medical records and information, as well as information pertaining to medical-related payments and debts. These provisions will prohibit consumer reporting agencies from including medical information in a consumer's credit report unless the medical information is directly relevant to the consumer's attempts to obtain employment or credit and the consumer has explicitly consented to the release of the information.

Mr. Chairman, this legislation is not only substantively important, it is timely. As my colleagues may know, Congress must reauthorize the Fair Credit Reporting Act before the preemptions expire on December 31, 2003.

I urge my colleagues to vote for this legislation.

Mr. GILLMOR. Mr. Chairman, I rise today in strong support of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. Passage of this important legislation is essential to maintaining our current national credit reporting system. As Federal Reserve Board Chairman Alan Greenspan make clear to the Financial Services Committee in his testimony, if we do not act to extend the uniform national standard for consumer protections governing credit transactions first established in the Fair Credit Reporting Act "we will have great difficulty in maintaining the level of consumer credit currently available."

H.R. 2622 maintains the free flow of credit reporting information to lenders and other financial services providers while also creating powerful new consumer protections. Consumers will have the authority to place fraud alerts in their credit reports, preventing identity thieves from using their information and keeping negative information resulting from fraudulent activity from being reported to a credit bureau.

The Fair and Accurate Credit Transactions Act will also allow consumers to access annually a free copy of their credit score and credit report identifying the key factors affecting their credit worthiness with recommendations on ways to improve their score. A provision I authored in H.R. 2622 will also improve the transparency of credit scoring systems by mandating that if the number of credit enquiries on a consumer's account negatively affects their score it must be disclosed in their consumer report. This ensures the consumer and their prospective lenders are fully informed. This important requirement will allow conscientious consumers to shop around for the best rates on loans or mortgages without unknowingly harming their credit.

I would like to thank Financial Services Committee Chairman OXLEY and Subcommittee Chairman BACHUS for their hard work on this issue and urge my colleagues to join me in voting for this vital legislation. The consumer benefits afforded by our national credit system are too important to our nation's economy to be left at risk.

Mr. ACKERMAN. Mr. Chairman, I rise today in support of H.R. 2622, the Fair and Accurate Credit Transactions Act. Over the past several months, the Financial Services Committee has held numerous hearings, in addition to the subcommittee and full committee markup of this legislation. As a member of the committee, I am proud to have played a role in crafting this important legislation which achieves a number of goals important to consumers, as well as to the financial industry.

This legislation extends the expiring provisions of the Fair Credit Reporting Act, allows consumers to receive free annual credit reports, and protects consumers' sensitive medical information.

I am particularly pleased with the provisions that help consumers prevent and correct inadequacies in their credit reports. The bill provides that when a financial institution reports negative information, such as a consumer's delinquencies, the institution must notify the consumer of this in writing. This is a win-win for all parties involved. Financial institutions will stand a greater chance of collecting their money sooner if the consumer is warned that being reported to the credit bureau is imminent. A notice in writing stating you will be reported to the credit bureaus for this delinquency and that this will affect your credit rating is strong motivation for most consumers. For the consumer who wants to protect and improve his credit rating, this is essential information. For the consumer whose identity has been stolen, this may be a vital notification.

I have greatly appreciated the opportunity to collaborate with Chairman OXLEY, Ranking Member FRANK and their excellent staffs, all my colleagues on the Financial Services Committee, and representative of both the financial services industry and consumer groups to develop this historic bipartisan legislation. I ask my colleagues to join with me in supporting H.R. 2622.

Mr. BEREUTER. Mr. Chairman, this Member rises today to express his support for H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). This important legislation permanently extends those provisions in the Fair Credit Reporting Act (FCRA) which relate to the preemption of State laws. These provisions in the FCRA are set to expire on December 31, 2003. The FCRA is the Federal law which governs the furnishing of reports on the credit worthiness of consumers.

This Member would like to thank the distinguished gentleman from Alabama (Mr. BACHUS), the Chairman of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, for introducing this important legislation. Furthermore, this Member would like to thank both the distinguished gentleman from Ohio (Mr. OXLEY), the Chairman of the House Financial Services Committee, and the distinguished gentleman from Massachusetts (Mr. FRANK), the Ranking Member of this Committee, for their support in bringing this measure to the House floor.

This legislation, H.R. 2622, is essential since it ensures the continuity of the nationwide credit system while providing important consumer protections. This Member supports this legislation for many reasons. However, he would like to focus on the following three reasons.

First, this legislation provides for a free credit report annually for consumers. Typically, credit reporting agencies charge consumers up to $9 for the disclosure of the information in their credit files. Under current law, a consumer may receive a free consumer report from a reporting agency only under certain circumstances, such as when a consumer receives a notice of an adverse action by a reporting agency. The FACT Act would provide for a free credit report annually for consumers for any reason. This Member believes that this provision will promote consumer awareness of a person's credit history as well as provide an opportunity for the consumer to correct any inaccurate information on one's credit report.

Second, this legislation provides important provisions to curb identity theft. To illustrate the need for these provisions, the Federal Trade Commission (FTC) released a survey at the beginning of September of this year which showed that a staggering 27.3 million Americans had been victims of identity theft in the last 5 years, including 9.9. million people in the last year alone. This bill provides the following consumer protection tools against identity theft: Allows consumers to place "fraud alerts" in their credit reports to prevent identity thieves from opening accounts in their names; allows consumers to block information from being given to a credit reporting agency and from being reported by this agency if such information results from identity theft; and prohibits furnishers of credit information from forwarding to reporting agencies information on a consumer if the furnisher has substantial doubts as to its accuracy.

Lastly, this bill continues the Federal preemption of State laws as it relates to the corporate affiliate sharing of financial information. During the consideration of the 1996 amendments to the FCRA, this Member authored a provision, which was signed into law, that required a consumer opt-out nontransactional is shared among corporate affiliates. Examples of nontransaction information include data from a consumer credit report and information on an application such as a consumer's income or assets. This provision on consumer notice is very important as it was the first consumer "opt out" on the sharing of financial information that this Member is aware of that was signed into Federal law.

In conclusion, for the reasons stated above and many others, this Member encourages his colleagues to support H.R. 2622.

Mr. CASTLE. Mr. Chairman, I rise today to express my strong support for the Fair and Accurate Credit Transactions Act of 2003. This bipartisan legislation passed the House Financial Services Committee by a vote of 61–3 in July 2003. An overwhelming endorsement which should be noted today.

This legislation is a good bipartisan bill, it is the result of six hearings, nearly 100 witnesses, and months of deliberations. Through this very thorough process, the Financial Services Committee has produced a bill that will protect the financial privacy and access to credit for all consumers. Furthermore, it will help our economic recovery by ensuring that businesses have access to accurate information which provides prompt credit to American consumers.

As my colleagues know, one of the forces that has helped sustain our economy in recent years is consumer spending. A critical factor in enabling American consumers to purchase products when they need them and want them, is our strong system of consumer credit. That system is supported by the Fair Credit Reporting Act, which insures that factual information is available on which to base the extension of credit. Virtually every business in this Nation, and every consumer that has ever used credit, depends on this system.

One of my constituents, Michael Uffner, President, Chairman and CEO, of Auto Team Delaware, testified before the House Financial Services Committee this year. Mike Uffner stressed importance of access to accurate credit information to serve customers in a timely and fair manner. Americans want to be able to walk into an automobile showroom and purchase an automobile that day based on a prompt approval of a loan based on their credit.

In December, the national uniform consumer protection standards in the Fair Credit Reporting Act will expire. Without this legislation, there would be no national standards for consumer protections and credit availability. This will negatively affect consumer access to credit and the economy as a whole. A failure to pass this legislation means higher costs to consumers, who will be paying more for their credit without this legislation. In today's economy, rely on instant credit, available to us across the country. There is uniformity, this is not a state by state issue, as Congress we must protect consumers.

This legislation has a number of consumer protections, it helps protect consumer credit while providing access to greater opportunities of credit nationwide. This legislation provides consumers with the tools they need to fight identity theft and to ensure the accuracy of their credit reports.

Mr. Chairman, again, I want to express my strong support for this bill and urge my colleagues on both sides of the aisle to join the 61 bipartisan members of the House Financial Services Committee who worked together to craft this bill to protect consumers and give confidence to businesses. This is a proper step to ensure that all of our constituents have access to fair and reasonable credit and information.

Mr. SCHIFF. Mr. Chairman, I rise today to support the two amendments offered by my colleagues from California, Representatives SHERMAN, LEE, and WATERS which would protect California's consumer protection laws from being preempted by the base bill being debated today. First, let me express my appreciation to my colleagues who serve on the Financial Services Committee for bringing to this Floor such a strong bipartisan bill. H.R. 2622 is important legislation which is necessary to ensure the effectiveness of our nation's credit reporting system.

It is true, this legislation will extend consumer protections currently not afforded to millions of Americans. This is not true, however, for Californians. The California Legislature, with overwhelming bipartisan and consumer support, has adopted progressive and effective financial privacy laws which afford California residents the most far reaching consumer protections in the nation.

Under California law, Californians can correct erroneous credit reporting through the filing of police reports, can request a fraud alert to be posted on their personal credit reports, have access to contact information for those who placed information on their credit report, and have the right to remove their names from credit card solicitation lists furnished by credit bureaus.

Most recently, California adopted legislation which requires financial institutions to obtain a consumer's affirmative consent before sharing information with most third parties and prevents, except under certain circumstances, the affiliate sharing of a consumer's nonpublic personal information.

Should this legislation be adopted in its current form and without these amendments, perhaps fifteen consumer protections, including those which I have just listed, will be preempted. As I said, while many Americans will enjoy additional consumer protections through the adoption of H.R. 2622, Californian's will lose many of the consumer protections which they have come to depend on.

We should not punish Californians for adopting far reaching consumer protections. In fact we should learn form California's example and extend these protections to the rest of the nation. And while this legislation will help millions of Americans it will be detrimental to all Californians.

All Members should support the amendments offered by Representatives SHERMAN, LEE and WATERS to ensure the protection of California law and protect a state's right to enact and enforce effective consumer protection laws. However, should these amendments not be agreed to today, I urge my colleagues to ensure that this issue is corrected in the House—Senate Conference Committee on this legislation.

Finally, H.R. 2622 is necessary and important legislation which would only be made better with the adoption of these amendments.

Mr. RUPPERSBERGER. Mr. Chairman, I have interest in a company that does business with a financial institution that one way or another might be impacted by this legislation, so I have decided to vote present on H.R. 2622, the Fair & Accurate Credit Transactions Act and the accompanying amendments on September 10, 2003. This includes all roll call votes starting at #495 until the end of the consideration of this measure. It also includes any motion to recommit and final passage on H.R. 2622, the Fair & Accurate Credit Transaction Act.

I do support the efforts of this legislation in combating identity theft and applaud authors of this measure.

Mr. OXLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

The text is the amendment in the nature of a substitute is as follows:

H.R. 2622

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.- This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.- The table of contents for this Act are as follows:

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following new subsections:

''(r) RESELLER.- The term 'reseller' means a consumer reporting agency that-

''(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

''(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

''(s) OTHER DEFINITIONS.-

''(1) BOARD; CREDIT; CREDITOR; CREDIT CARD.- The terms 'Board', 'credit', 'creditor', and 'credit card' have the same meanings as in section 103 of the Truth in Lending Act.

''(2) COMMISSION.- The term 'Commission' means the Federal Trade Commission.

''(3) DEBIT CARD.- The term 'debit card' means any card issued by a financial institution to a consumer for use in initiating electronic fund transfers (as defined in section 903(6) of the Electronic Fund Transfer Act) from the account (as defined in such Act) of the consumer at such financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

''(4) ELECTRONIC FUND TRANSFER.- The term 'electronic fund transfer' has the same meaning as in section 903 of the Electronic Fund Transfer Act.

''(5) FEDERAL BANKING AGENCY.- The term 'Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(6) IDENTITY THEFT.- The term 'identity theft' means a fraud committed using another person's identifying information, subject to such further definition as the Commission and the Board may prescribe, jointly, by regulation.

''(7) POLICE REPORT.- The term 'police report' means a copy of any official valid report filed by a consumer with any appropriate Federal, State, or local government law enforcement agency, or any comparable official government document that the Board and the Commission shall jointly prescribe in regulations, that is subject to a criminal penalty for false statements.''.

SEC. 3. EFFECTIVE DATES.

(a) IN GENERAL.- Except as provided in subsections (b) and (c)-

(1) before the end of the 2-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act (except as otherwise specified); and

(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall the effective date be later than 10 months after the date of issuance of such regulations in final form.

(b) IMMEDIATE EFFECTIVE DATE.- The following provisions shall take effect on the date of the enactment of this Act:

(1) Title I.
(2) Section 201.
(3) Section 609(d)(1) of the Fair Credit Reporting Act (as added by the amendment in section 204(a)).
(4) Section 305.
(5) Section 505.
(6) Section 506.
(7) Title VI.

(c) EFFECTIVE DATE FOR PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM.- Section 701 shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as added by section 701) shall take effect on the later of-

(1) the end of the 90-day period beginning on the date the regulations required under paragraph (5)(B) of such section 604(g) (as added by section 701) are prescribed in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

TITLE I—UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS

SEC. 101. UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS MADE PERMANENT.

Section 624(d) of the Fair Credit Reporting Act (15 U.S.C. 1681t(d)) is amended-

(1) by striking ''Subsections (b) and (c)'' and all that follows through ''do not affect any settlement,'' and inserting ''Subsections (b) and (c) do not affect any settlement,''; and

(2) by striking ''Consumer Credit Reporting Reform Act of 1996'' and all that follows through the period at the end of paragraph (2) and inserting ''Consumer Credit Reporting Reform Act of 1996.''.

TITLE II—IDENTITY THEFT PREVENTION

SEC. 201. INVESTIGATING CHANGES OF ADDRESS AND INACTIVE ACCOUNTS.

(a) IN GENERAL.- Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (f), the following new subsection:

''(g) 'RED FLAG' PATTERNS OF POSSIBLE IDENTITY THEFT.-

''(1) INVESTIGATION OF CHANGES OF ADDRESS.- The Federal banking agencies and the National Credit Union Administration, in carrying out the responsibilities of such agencies and Administration under subsection (k), shall jointly prescribe regulations for credit card and debit card issuers to ensure that, if any such issuer receives a request for an additional or replacement card for an existing account within a short period of time after the issuer has received notification of a change of address for the same account, the issuer will follow reasonable policies and procedures that require, as appropriate, that the issuer not issue the additional or replacement card unless the issuer-

''(A) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

''(B) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

''(C) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subsection (k).

''(2) INACTIVE ACCOUNTS.- The Federal banking agencies and the National Credit Union Administration, in carrying out the responsibilities of such agencies and Administration under subsection (k), shall consider including, as a possible 'red flag' pattern, reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or depository institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.''.

(b) CLERICAL AMENDMENTS.-

(1) The heading for section 605 of the Fair Credit Reporting Act is amended to read as follows:

''§ 605. Requirements relating to information contained in consumer reports and to identity theft prevention.''.

(2) The table of sections for title VI of the Consumer Credit Protection Act is amended by striking the item relating to section 605 and inserting the following new item:

''605. Requirements relating to information contained in consumer reports and to identity theft prevention.''.

(3) Section 624(b)(1)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1)(E)) is amended

by inserting ''and to identity theft prevention'' after ''consumer reports''.

SEC. 202. FRAUD ALERTS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following new subsection:

''(i) ONE-CALL FRAUD ALERTS.-

''(1) INITIAL ALERTS.- Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts, in good faith, a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 603(p) shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer-

''(A) include a fraud alert in the file of that consumer for a period of not less than 90 days beginning on the date of such request, unless the consumer specifically requests that such fraud alert be removed before the end of such period;

''(B) disclose to the consumer that the consumer may request a free copy of the file of the consumer and provide the consumer, upon request, a free disclosure of the consumer's file (as described in section 609(a)) within 3 business days after such request;

''(C) for 2 years after the date of such request, exclude the consumer from any list of consumers prepared by the agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer subsequently requests that such exclusion be rescinded before the end of such period; and

''(D) refer the information regarding the fraud alert to each of the other consumer reporting agencies described in section 603(p), as required under section 621(f)(1).

''(2) EXTENDED ALERTS.- Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who contacts a consumer reporting agency described in section 603(p) to report details of an identity theft and submits evidence that provides the agency with reasonable cause to believe that such identity theft has occurred, the agency shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer-

''(A) include a fraud alert in the file of that consumer and provide an opportunity for the consumer to extend the alert for a period of up to 7 years from the date of such request, unless the consumer subsequently requests that such fraud alert be removed before the end of such period;

''(B) provide the consumer with the option of including more complete information in the consumer's file, including a telephone number or some other reasonable means of communication that any person who requests the consumer's report may utilize for authorization before establishing a new credit plan in the name of the consumer; and

''(C) provide the consumer with at least 2 free disclosures of the information described in section 609(a) during the 12-month period beginning on the date of such request.

''(3) ACTIVE DUTY ALERTS.- Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, who contacts a consumer reporting agency described in section 603(p), the agency shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer-

''(A) include an active duty alert in the file of that consumer during a period of not less than 12 months beginning on the date of the request, unless the consumer requests that such active duty alert be removed before the end of such period;

''(B) for 2 years after the date of such request, exclude the consumer from any list of consumers prepared by the agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer subsequently requests that such exclusion be rescinded before the end of such period; and

''(C) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), as required under section 621(f)(1).

''(4) PROCEDURES.- Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with the obligations of paragraphs (1), (2), and (3), including procedures that allow consumers to request initial, extended, or active duty alerts in a simple and easy manner, including by telephone.

''(5) NOTICE TO USERS.- No person who obtains any information that includes a fraud alert under this section from a file of any consumer from a consumer reporting agency may establish a new credit plan in the name of the consumer for a person other than the consumer without utilizing reasonable policies and procedures described in paragraph (9).

''(6) REFERRALS OF FRAUD ALERTS.- Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert from another such agency pursuant to paragraph (1)(D) or (3)(C) shall follow the procedures required under subparagraphs (A), (B), and (C) of paragraph (1), in the case of a referral under paragraph (1)(D), and subparagraphs (A) and (B), in the case of a referral under paragraph (3)(C), as if the agency received the request from the consumer directly.

''(7) DUTY OF RESELLER TO RECONVEY ALERT.- A reseller that is notified of the existence of a fraud alert in a consumer's consumer report shall communicate to each person procuring a consumer report with respect to such consumer the existence of a fraud alert in effect for such consumer.

''(8) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.- If a consumer contacts any consumer reporting agency that is not a consumer reporting agency described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide the consumer with information on how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this subsection.

''(9) FRAUD ALERT.-

''(A) DEFINITION.- For purposes of this subsection, the term 'fraud alert' means, at a minimum, a statement-

''(i) in the file of a consumer that the consumer may be a victim of fraud, including identity theft, or is a consumer described in paragraph (3); and

''(ii) that is transmitted in a manner that facilitates a clear and conspicuous view of the statement by any person requesting such file.

''(B) OTHER INFORMATION.- A fraud alert shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize establishing any new credit plan in the name of the consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person for whom such new plan is established, which may include obtaining authorization or preauthorization of the consumer at a telephone number designated by the consumer or by such other reasonable means agreed to.

''(10) OTHER DEFINITIONS.- For purposes of this subsection, the following definitions shall apply:

''(A) ACTIVE DUTY MILITARY CONSUMER.- The term 'active duty military consumer' means a consumer in military service who-

''(i) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

''(ii) is assigned to service away from the consumer's usual duty station.

''(B) NEW CREDIT PLAN.- The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of this Act) or a new credit transaction not under an open end credit plan.''.

SEC. 203. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

(a) IN GENERAL.- Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (k) (as added by section 206 of this title) the following new subsection:

''(l) TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.-

''(1) IN GENERAL.- Except as provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print the expiration date or more than the last 5 digits of the card number upon any receipt provided to the cardholder at the point of the sale or transaction.

''(2) LIMITATION.- This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.''.

(b) EFFECTIVE DATE.- The amendments made by subsection (a) shall apply after the end of-

(1) the 3-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(2) the 1-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

SEC. 204. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.- Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

''(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.-

''(1) IN GENERAL.- The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

''(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.- If any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution, the consumer reporting agency shall, in addition to any other action the agency may take, provide the consumer with the model summary of rights prepared by the Commission under paragraph (1) and information on how to contact the Commission to obtain more detailed information.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.- Section 624(b)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(3)) is amended by striking ''section 609(c)'' and inserting ''subsection (c) or (d) of section 609''.

SEC. 205. BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (i) (as added by section 202 of this title) the following new subsection:

''(j) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.-

''(1) BLOCK.- Except as provided in paragraph (3), a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft and confirms is not information relating to any transaction by the consumer not later than 5 business days after the date of receipt by such agency of-

''(A) appropriate proof of the identity of a consumer;

''(B) a police report evidencing the claim of the consumer of identity theft;

''(C) the identification of the information by the consumer; and

''(D) confirmation by the consumer that the information is not information relating to any transaction by the consumer.

''(2) NOTIFICATION.- A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)-

''(A) that the information may be a result of identity theft;

''(B) that a police report has been filed;

''(C) that a block has been requested under this subsection; and

''(D) of the effective date of the block.

''(3) AUTHORITY TO DECLINE OR RESCIND.-

''(A) IN GENERAL.- A consumer reporting agency may decline to block, or may rescind any block, of consumer information under this subsection if the consumer reporting agency reasonably determines that-

''(i) the information was blocked in error or a block was requested by the consumer in error;

''(ii) the information was blocked, or a block was requested by the consumer, on the basis of a misrepresentation of fact by the consumer relevant to the request to block; or

''(iii) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions.

''(B) NOTIFICATION TO CONSUMER.- If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 611(a)(5)(B).

''(C) SIGNIFICANCE OF BLOCK.- For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

''(4) EXCEPTIONS.-

''(A) VERIFICATION COMPANIES.- This subsection shall not apply to-

''(i) a check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or

''(ii) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

''(B) RESELLERS.-

''(i) NO RESELLER FILE.- This subsection shall not apply to a consumer reporting agency if the consumer reporting agency-

''(I) is a reseller;

''(II) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

''(III) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

''(ii) RESELLER WITH FILE.- The sole obligation of the consumer reporting agency under this subsection, with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if-

''(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

''(II) the consumer reporting agency is a reseller of the identified information.

''(iii) NOTICE.- In carrying out its obligation under clause (ii), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

''(5) ACCESS TO BLOCKED INFORMATION BY LAW ENFORCEMENT AGENCIES.- No provision of this subsection shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.''.

SEC. 206. ESTABLISHMENT OF PROCEDURES FOR DEPOSITORY INSTITUTIONS TO IDENTIFY POSSIBLE INSTANCES OF IDENTITY THEFT.

(a) IN GENERAL.- Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (j) (as added by section 205 of this title) the following new subsection:

''(k) 'RED FLAG' GUIDELINES REQUIRED.-

''(1) IN GENERAL.- The Federal banking agencies and the National Credit Union Administration, in consultation with the Commission, shall jointly establish and maintain guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft with respect to accounts, and update such guidelines as often as necessary.

''(2) REGULATIONS.- The Federal banking agencies and the National Credit Union Administration, in consultation with the Commission, shall jointly prescribe regulations requiring insured depository institutions to establish and adhere to reasonable policies and procedures for implementing the guidelines established pursuant to paragraph (1) to identify possible risks to customer accounts or to the safety and soundness of the institutions.

''(3) CONSISTENCY WITH VERIFICATION REQUIREMENTS.- Policies and procedures established pursuant to paragraph (2) shall not be inconsistent with, or duplicative of, the policies and procedures required under section 5318(l) of title 31, United States Code.

''(4) INSURED DEPOSITORY INSTITUTION DEFINED.- For purposes of this subsection, the term 'insured depository institution'-

''(A) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

''(B) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).''.

(b) EFFECTIVE DATE.- The amendment made by subsection (a) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

SEC. 207. STUDY ON THE USE OF TECHNOLOGY TO COMBAT IDENTITY THEFT.

(a) STUDY REQUIRED.- The Secretary of the Treasury shall conduct a study of the use of biometrics and other similar technologies to reduce the incidence and costs of identity theft by providing convincing evidence of who actually performed a given financial transaction.

(b) CONSULTATION.- The Secretary of the Treasury shall consult with Federal banking agencies, the Federal Trade Commission, and representatives of financial institutions, credit reporting agencies, Federal, State, and local government agencies that issue official forms or means of identification, State prosecutors, law enforcement agencies, and the biometric industry and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.- There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 2004 such sums as may be necessary to carry out the provisions of this section.

(d) REPORT REQUIRED.- Before the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary shall submit a report to Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative actions as may be appropriate.

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

SEC. 301. COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following new subsection:

''(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.-

''(1) IN GENERAL.- The consumer reporting agencies described in section 603(p) shall develop and maintain procedures for the referral, to each such agency, of any consumer complaint received by any such agency alleging any identity theft or requesting a block or a fraud alert.

''(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.- The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

''(3) ANNUAL SUMMARY REPORTS.- Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.''.

SEC. 302. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.- Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended-

(1) in subparagraph (A) of paragraph (1)-

(A) by striking ''If the completeness'' and inserting ''Subject to subsection (e), if the completeness'';

(B) by inserting '', or indirectly through a reseller,'' after ''notifies the agency directly''; and

(C) by inserting ''or reseller'' before the period at the end of such subparagraph;

(2) in subparagraph (A) of paragraph (2)-

(A) by inserting ''or a reseller'' after ''dispute from any consumer''; and

(B) by inserting ''or reseller'' before the period at the end of such subparagraph; and

(3) in subparagraph (B) of paragraph (2), by inserting ''or the reseller'' after ''from the consumer''.

(b) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.- Section 611 of the Fair

Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following new subsection:

''(e) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.-

''(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.- Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

''(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.- If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice and free of charge-

''(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

''(B) if-

''(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, correct the information in the consumer report or delete it; or

''(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute.

''(3) RESELLER REINVESTIGATIONS.- No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.- The heading for paragraph (2)(B) of section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(2)(B)) is amended by striking ''FROM CONSUMER''.

SEC. 303. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking ''shall reinvestigate free of charge'' and inserting ''shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate''.

SEC. 304. DUTIES OF FURNISHERS OF INFORMATION.

(a) IN GENERAL.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended-

(1) in paragraph (1)(A), by striking ''knows or consciously avoids knowing that the information is inaccurate'' and inserting ''knows or has reasonable cause to believe that the information is inaccurate'';

(2) in paragraph (1)-

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(B) by inserting after subparagraph (A), the following new subparagraph:

''(B) REASONABLE PROCEDURES TO ENSURE ACCURACY.- A person that regularly furnishes information relating to consumers to a consumer reporting agency described in section 603(p) shall maintain reasonable procedures designed to ensure that the information furnished is accurate.''; and

(C) by adding at the end the following new subparagraph:

''(F) DEFINITION.- For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means, based on the procedures described in subparagraph (B), has knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.''; and

(3) by adding at the end the following new paragraph:

''(6) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.-

''(A) IN GENERAL.- A consumer may dispute directly with a person the accuracy of information that-

''(i) is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p); and

''(ii) was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B).

''(B) SUBMITTING A NOTICE OF DISPUTE.- A consumer who seeks to dispute the accuracy of information with a person under subparagraph (A) shall provide a dispute notice directly to such person at the address specified by the person for such notices that-

''(i) identifies the specific information that is being disputed; and

''(ii) explains the basis for the dispute.

''(C) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.- After receiving a notice of dispute from a consumer pursuant to subparagraph (B), the person that provided the information in dispute to a consumer reporting agency referred to in subparagraph (A) shall-

''(i) conduct an investigation with respect to the disputed information;

''(ii) review all relevant information provided by the consumer with the notice;

''(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

''(iv) if the investigation finds that the information reported was inaccurate, promptly thereafter report correct information to each consumer reporting agency described in section 603(p) to which the person furnished the inaccurate information.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.-

(1) Section 621(c)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)(A)) is amended by striking ''section 623(a)(1)'' and inserting ''paragraph (1) or (6) of section 623(a)''.

(2) The heading for section 621(c)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)) is amended by striking ''VIOLATION OF SECTION 623(a)(1)'' and inserting ''CERTAIN VIOLATIONS OF SECTION 623(a)''.

SEC. 305. PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.

(a) STUDY REQUIRED.- The Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(b) REPORT REQUIRED.- Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly submit a progress report to the Congress on the results of the study required under subsection (a).

(c) RECOMMENDATIONS.- The report under subsection (b) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or administrative action to ensure that-

(1) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

(2) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act; and

(3) consumer reporting agencies establish and maintain appropriate internal controls and management review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(d) DEFINITIONS.- For purposes of this section, the terms ''consumer'', ''consumer report'', and ''consumer reporting agency'' have the same meaning as in the Fair Credit Reporting Act.

TITLE IV—IMPROVING ACCURACY OF CONSUMER RECORDS

SEC. 401. RECONCILING ADDRESSES.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (g) (as added by section 201 of this Act) the following new subsection.

''(h) NOTICE OF DISCREPANCY.-

''(1) IN GENERAL.- If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

''(2) REGULATIONS.-

''(A) REGULATIONS REQUIRED.- The Federal banking agencies and the National Credit Union Administration shall jointly prescribe regulations providing guidance regarding reasonable policies and procedures a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

''(B) POLICIES AND PROCEDURES TO BE INCLUDED.- The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report-

''(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

''(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.''.

SEC. 402. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)(1)) is amended by inserting after subparagraph (D) (as so redesignated by section 304(2)(A)) the following new subparagraph:

''(E) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.- If a consumer submits a police report to a person who furnishes information to a consumer reporting agency that states that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.''.

SEC. 403. NOTICE BY USERS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

''(e) NOTICE OF FRAUDULENT INFORMATION RELATING TO IDENTITY THEFT.- If an agent acting as a debt collector (as defined in title VIII) of a person who furnishes information to any consumer reporting agency uses information contained in a consumer report on any consumer and learns that any such information so used is the result of identity theft or otherwise is fraudulent, the agent shall-

''(1) if such information-

''(A) originated from the person for whom the debt collector is acting as agent, notify the person of the fraudulent information; or

''(B) originated from a person other than the person for whom the debt collector is acting as agent, notify the consumer reporting agency (that provided the consumer report) of the fraudulent information, either directly or through the person for whom the debt collector is acting as agent; and

''(2) upon the request of the consumer, provide the consumer with all information which the consumer would be entitled to receive if the information related to the consumer other than by reason of identity theft.''.

SEC. 404. DISCLOSURE TO CONSUMERS OF CONTACT INFORMATION FOR USERS AND FURNISHERS OF INFORMATION IN CONSUMER REPORTS.

Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended-

(1) in paragraph (2), by inserting '', including addresses of the sources, and (if provided by the sources of information) the telephone numbers identified for customer service for the sources of information'' after ''sources of information'' the 1st place such term appears in such paragraph; and

(2) in paragraph (3)(B) by striking clause (ii) and inserting the following new clause:

''(ii) the address and (if provided) the telephone numbers identified for customer service of the person.''.

SEC. 405. FTC STUDY OF THE ACCURACY OF CONSUMER REPORTS.

(a) STUDY REQUIRED.- Until the final report is submitted under subsection (b)(2), the Federal Trade Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

(b) BIENNIAL REPORTS REQUIRED.-

(1) INTERIM REPORTS.- The Federal Trade Commission shall submit an interim report to the Congress on the study conducted under subsection (a) at the end of the 6-month period beginning on the date of the enactment of this Act and biennially thereafter for 8 years.

(2) FINAL REPORT.- The Federal Trade Commission shall submit a final report to the Congress on the study conducted under subsection (a) at the end of the 2-year period beginning on the date the final interim report is submitted to the Congress under paragraph (1).

(3) CONTENTS.- Each report submitted under this subsection shall contain a detailed summary of the findings and conclusions of the Commission with respect to the study required under subsection (a) and such recommendations for legislative and administrative action as the Commission may determine to be appropriate.

TITLE V—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

SEC. 501. FREE REPORTS ANNUALLY.

(a) FREE REPORTS ANNUALLY FROM NATIONWIDE CONSUMER REPORTING AGENCIES.- Section 612 of the Fair Credit Reporting Act (15 U.S.C. 1681j) is amended by adding at the end the following new subsection:

''(e) FREE ANNUAL DISCLOSURE.- Upon the direct request of the consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 once during any 12-month period without charge to the consumer.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.- Section 612(c) of the Fair Credit Reporting Act (15 U.S.C. 1681j(c)) is amended by inserting ''that is not a consumer reporting agency described in section 603(p)'' after ''consumer reporting agency''.

SEC. 502. DISCLOSURE OF CREDIT SCORES.

(a) STATEMENT ON AVAILABILITY OF CREDIT SCORES.- Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding at the end the following new paragraph:

''(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.''.

(b) DISCLOSURE OF CREDIT SCORES.- Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by inserting after subsection (d) (as added by section 204 of this Act) the following new subsection:

''(e) DISCLOSURE OF CREDIT SCORES.-

''(1) IN GENERAL.- Upon the consumer's request for a credit score, a consumer reporting agency shall supply to a consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include the following information:

''(A) The consumer's current credit score or the consumer's most recent credit score that was previously calculated by the credit reporting agency for a purpose related to the extension of credit.

''(B) The range of possible credit scores under the model used.

''(C) All the key factors that adversely affected the consumer's credit score in the model used, the total number of which shall not exceed four, subject to paragraph (9).

''(D) The date the credit score was created.

''(E) The name of the person or entity that provided the credit score or credit file upon which the credit score was created.

''(2) DEFINITIONS.- For purposes of this section, the following definitions shall apply:

''(A) CREDIT SCORE.- The term 'credit score'-

''(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from this analysis may also be referred to as a 'risk predictor' or 'risk score'); and

''(ii) does not include-

''(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or a consumer's financial assets; or

''(II) any other elements of the underwriting process or underwriting decision.

''(B) KEY FACTORS.- The term 'key factors' means all relevant elements or reasons adversely affecting the credit score for the particular individual listed in the order of their importance based on their effect on the credit score.

''(3) TIMEFRAME AND MANNER OF DISCLOSURE.- The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).

''(4) APPLICABILITY TO CERTAIN USES.- This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not-

''(A) distribute scores that are used in connection with residential real property loans; or

''(B) develop scores that assist credit providers in understanding a consumer's general credit behavior and predicting the future credit behavior of the consumer.

''(5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.-

''(A) IN GENERAL.- This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

''(B) EXCEPTION.- This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

''(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.- This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

''(7) COMPLIANCE IN CERTAIN CASES.- In complying with this subsection, a consumer reporting agency shall-

''(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

''(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

''(8) REASONABLE FEE.- A consumer reporting agency may charge a reasonable fee for providing the information required under this subsection.

''(9) USE OF ENQUIRIES AS A KEY FACTOR.- If a key factor that adversely affects a consumer's credit score consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.''.

(c) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.- Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by inserting after subsection (e) (as added by subsection (b) of this section) the following new subsection:

''(f) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.-

''(1) IN GENERAL.- Any person who makes or arranges loans and who uses a consumer credit score as defined in subsection (e) in connection with an application initiated or sought by a consumer for a closed end loan or establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the 'lender') shall provide the following to the consumer as soon as reasonably practicable:

''(A) INFORMATION REQUIRED UNDER SUBSECTION(e).-

''(i) IN GENERAL.- A copy of the information identified in subsection (e) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

''(ii) NOTICE UNDER SUBPARAGRAPH (D).- In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

''(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.-

''(i) IN GENERAL.- If a person who is subject to this section uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

''(ii) NUMERICAL CREDIT SCORE.- However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

''(iii) ENTERPRISE DEFINED.- For purposes of this subparagraph, the term 'enterprise' shall have the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

''(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.- A person subject to the provisions of this subsection who uses a credit score other than a credit score provided by a consumer reporting agency may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

''(D) NOTICE TO HOME LOAN APPLICANTS.- A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

'' 'NOTICE TO THE HOME LOAN APPLICANT

'' 'In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

'' 'The credit score is a computer generated summary calculated at the time of the request and based on information a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

'' 'Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

'' 'If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

'' 'If you have questions concerning the terms of the loan, contact the lender.'.

''(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.- This subsection shall not require any person to do any of the following:

''(i) Explain the information provided pursuant to subsection (e).

''(ii) Disclose any information other than a credit score or key factor, as defined in subsection (e).

''(iii) Disclose any credit score or related information obtained by the user after a loan has closed.

''(iv) Provide more than 1 disclosure per loan transaction.

''(v) Provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

''(F) NO OBLIGATION FOR CONTENT.-

''(i) IN GENERAL.- Any person's obligation pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

''(ii) LIMIT ON LIABILITY.- No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

''(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.- As used in this subsection, the term 'person' does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

''(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.-

''(A) IN GENERAL.- Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

''(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.- A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.''.

(d) INCLUSION OF KEY FACTOR IN CREDIT SCORE INFORMATION IN CONSUMER REPORT.- Section 605(d) of the Fair Credit Reporting Act (15 U.S.C. 1681c(d)) is amended-

(1) by striking ''DISCLOSED.- Any consumer reporting agency'' and inserting ''DISCLOSED.-

''(1) TITLE II INFORMATION.- Any consumer reporting agency''; and

(2) by adding at the end the following new paragraph:

''(2) KEY FACTOR IN CREDIT SCORE INFORMATION.- Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(e)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score.''.

SEC. 503. SIMPLER AND EASIER METHOD FOR CONSUMERS TO USE NOTIFICATION SYSTEM.

(a) IN GENERAL.- Section 604(e)(5)(A)(i) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)(5)(A)(i)) is amended by inserting ''in a simple and easy manner and'' after ''notify the agency,''.

(b) SIMPLIFIED NOTICE AND RESPONSE FORMAT FOR USERS.- Section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)) is amended-

(1) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4) and (5); and

(2) by inserting after paragraph (1) the following new paragraph:

''(2) SIMPLE AND EASY NOTIFICATION.- Any statement given the consumer under paragraph (1)(E) shall be in a simple and easy to understand format and shall describe the simple and easy method established under section 604(e)(5)(A)(i) for the consumer to respond.''.

SEC. 504. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended by inserting after paragraph (6) (as added by section 304(3)) the following new paragraph:

''(7) NEGATIVE INFORMATION.-

''(A) NOTICE TO CONSUMER REQUIRED.-

''(i) IN GENERAL.- If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

''(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.- After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

''(B) TIME OF NOTICE.-

''(i) IN GENERAL.- The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

''(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.- If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

''(C) COORDINATION WITH OTHER DISCLOSURES.- The notice required under subparagraph (A)-

''(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

''(ii) must be clear and conspicuous.

''(D) MODEL DISCLOSURE.-

''(i) DUTY OF BOARD TO PREPARE.- The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

''(ii) USE OF MODEL NOT REQUIRED.- No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

''(iii) COMPLIANCE USING MODEL.- A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.

''(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.- No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

''(F) SAFE HARBOR.- A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph.

''(G) DEFINITIONS.- For purposes of this paragraph, the following definitions shall apply:

''(i) NEGATIVE INFORMATION.- The term 'negative information' means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

''(ii) CUSTOMER; FINANCIAL INSTITUTION.- The terms 'customer' and 'financial institution' have the same meaning as in section 509 of the Gramm-Leach-Bliley Act.''.

(b) MODEL DISCLOSURE FORM.- Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall adopt the model disclosure required under the amendment made by subsection (a) after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 505. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.

(a) STUDY REQUIRED.- The Federal Trade Commission, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of-

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

(2) the degree of causality between the factors considered by credit score systems and the quantifiable risks and actual losses experienced by

businesses, including the extent to which, if any, each of the factors considered or otherwise taken into account by such systems are accurate predictors of risk or loss, and where the means square error of a scoring model's predictions are considered in the evaluation of accuracy;

(3) the extent to which, if any, the use of credit scoring models, credit scores and credit-based insurance scores result in disparate impact by geography, income, ethnicity, race, color, religion, national origin, age, sex or marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in disparate effects and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less disparate impact; and

(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

(b) PUBLIC PARTICIPATION.- The Commission shall seek public input about the prescribed methodology and research design of the study required in subsection (a).

(c) REPORT REQUIRED.-

(1) IN GENERAL.- Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Trade Commission shall submit a detailed report on the study conducted pursuant to subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CONTENTS OF REPORT.- The report submitted under paragraph (1) shall include the findings and conclusions of the Commission, together with such recommendations for legislative or administrative action as the Commission may determine to be necessary to ensure that credit and credit-based insurances score are used appropriately and fairly to avoid disparate effects.

(d) CREDIT SCORE DEFINED.- For purposes of this section, the term ''credit score'' means a numerical value or a categorization derived from a statistical tool or modeling system used to predict the likelihood of certain credit or insurance behaviors, including default.

SEC. 506. GAO STUDY ON DISPARATE IMPACT OF CREDIT SYSTEM.

(a) STUDY REQUIRED.- The Comptroller General shall conduct a study of the credit system to determine the extent to which, if any, discrimination exists with regard to the availability and the terms of credit which has a disparate impact on the basis of race, color, income and education level, geographic location, age, sex, sexual orientation, national origin, or marital status and the nature of any such discriminatory effect.

(b) REPORT REQUIRED.- Before the end of the 2-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under subsection (a), together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

SEC. 507. ANALYSIS OF FURTHER RESTRICTIONS ON OFFERS OF CREDIT OR INSURANCE.

(a) IN GENERAL.- The Board of Governors of the Federal Reserve System shall conduct a study of-

(1) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

(2) the potential impact any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

(b) REPORT.- The Board of Governors of the Federal Reserve System shall submit a report summarizing the results of the study required under subsection (a) to the Congress no later than 12 months after the date of the enactment of this Act, together with such recommendatioons for legislative or administrative action as the Board may determine to be appropriate.

(c) CONTENT OF REPORT.- The report described in subsection (b) shall address the following issues:

(1) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

(2) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

(3) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

(4) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

(5) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect-

(A) the cost consumers pay to obtain credit or insurance;

(B) the availability of credit or insurance;

(C) consumers' knowledge about new or alternative products and services;

(D) the ability of lenders or insurers to compete with one another; and

(E) the ability to offer credit or insurance products to consumers who have been traditionally underserved.

SEC. 508. STUDY ON THE NEED AND THE MEANS FOR IMPROVING FINANCIAL LITERACY AMONG CONSUMERS.

(a) STUDY REQUIRED.- The Comptroller General shall conduct a study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy among consumers.

(b) FACTORS TO BE INCLUDED.- The study required under subsection (a) shall include the following issues:

(1) The number of consumers who view their credit reports.

(2) Under what conditions and for what purposes do consumers primarily obtain a copy of their consumer report (such as for the purpose of ensuring the completeness and accuracy of the contents, to protect against fraud, in response to an adverse action based on the report, or in response to suspected identity theft) and approximately what percentage of the total number of consumers who obtain a copy of their consumer report do so for each such primary purpose.

(3) The extent of consumers' knowledge of the data collection process.

(4) The extent to which consumers know how to get a copy of a consumer report.

(5) The extent to which consumers know and understand the factors that positively or negatively impact credit scores.

(c) REPORT REQUIRED.- Before the end of the 9-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under subsection (a), together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate, including recommendations on methods for improving financial literacy among consumers.

SEC. 509. DISCLOSURE OF INCREASE IN APR UNDER CERTAIN CIRCUMSTANCES.

Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by inserting after subsection (f) (as added by section 502(c) of this title) the following new subsection:

''(g) DISCLOSURE TO CONSUMER.-

''(1) IN GENERAL.- The ability of a credit card issuer to increase any annual percentage rate applicable to a credit card account, or to remove or increase any introductory annual percentage rate of interest applicable to such account, for reasons other than actions or omissions of the card holder that are directly related to such account shall be clearly and conspicuously disclosed to the consumer by the credit card issuer in any disclosure or statement required to be made to the consumer under this title in connection with a credit card solicitation that is not initiated by the consumer.

''(2) REGULATIONS AND MODEL STATEMENTS.- The Board, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop such guidelines in regulations as necessary to assure that the information to be disclosed to consumers pursuant to paragraph (1) is clearly and conspicuously provided in a prominent location in any credit card solicitation that is not initiated by the consumer, and shall include model disclosure statements to be used by credit card issuers in making the disclosures required to be provided to the consumer by paragraph (1).''.

TITLE VI—PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

SEC. 601. CERTAIN EMPLOYEE INVESTIGATION COMMUNICATIONS EXCLUDED FROM DEFINITION OF CONSUMER REPORT.

(a) IN GENERAL.- Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by inserting after subsection (p) the following new subsection:

''(q) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.-

''(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.- A communication is described in this subsection if-

''(A) but for subsection (d)(2)(D), the communication would be a consumer report;

''(B) the communication is made to an employer in connection with an investigation of-

''(i) suspected misconduct relating to employment; or

''(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

''(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

''(D) the communication is not provided to any person except-

''(i) to the employer or an agent of the employer;

''(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

''(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

''(iv) as otherwise required by law; or

''(v) pursuant to section 608.

''(2) SUBSEQUENT DISCLOSURE.- After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

''(3) SELF-REGULATORY ORGANIZATION DEFINED.- For purposes of this subsection, the term 'self-regulatory organization' includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.- Section 603(d)(2)(D) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(D)) is amended by inserting "or (q)" after "subsection (o)".

TITLE VII—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

SEC. 701. PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

(a) IN GENERAL.- Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended to read as follows:

"(g) PROTECTION OF MEDICAL INFORMATION.-

"(1) LIMITATION ON CONSUMER REPORTING AGENCIES.- A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless-

"(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

"(B) if furnished for employment purposes or in connection with a credit transaction-

"(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

"(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

"(C) such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer, unless the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

"(2) LIMITATION ON CREDITORS.- Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

"(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.- Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed-

"(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

"(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106-102; or

"(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

"(4) LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.- Any person that receives medical information pursuant to paragraphs (1) or (3) shall not disclose such information to any other person except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

"(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).-

"(A) REGULATIONS REQUIRED.- Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs, consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

"(B) FINAL REGULATIONS REQUIRED.- The Federal banking agencies and the National Credit Union Administration shall prescribe the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of the enactment of the Fair and Accurate Credit Transactions Act of 2003.

"(6) COORDINATION WITH OTHER LAWS.- No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.".

(b) RESTRICTION ON SHARING OF MEDICAL INFORMATION.- Section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)) is amended-

(1) in paragraph (2), by striking "The term" and inserting "Except as provided in paragraph (3), the term"; and

(2) by adding at the end the following new paragraph:

"(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.- Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control if-

"(A) the information is medical information; or

"(B) the information is an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.".

SEC. 702. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CREDIT REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended by inserting after paragraph (7) (as added by section 504(a)) the following new paragraph:

"(8) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.- A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for the purposes of this title and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.- Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding the following new paragraph:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless-

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.- Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

(d) COORDINATION WITH OTHER LAWS.- No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.- Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by inserting after subsection (f) (as added by section 301 of this Act) the following new subsection:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.- If the Commission determines that a person described in paragraph (8) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.- Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) (as amended by section 701) is amended-

(1) in paragraph (1) by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2) by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.- The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of the enactment of this Act.

The CHAIRMAN. No amendment to that amendment shall be in order except those printed in the designated place in the CONGRESSIONAL RECORD and pro forma amendments for the purposes of debate. Amendments printed in the RECORD may be offered only by the Member who caused it to be printed or his designee and shall be considered read.

Are there amendments to the bill?

AMENDMENT NO. 17 OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 17 offered by Mr. OXLEY:

Page 7, after line 9, insert the following new subsection:

(d) CRITERIA FOR ORDERLY IMPLEMENTATION OF FREE ANNUAL CREDIT REPORT PROVISION.-

(1) IN GENERAL.- In developing the regulations and effective dates under subsection (a) (and subject to the time limits in paragraph (2) and subsection (a)), the Federal Trade Commission and the Board of Governors of the Federal Reserve System shall provide a systematic approach for implementing the amendment made by section 501 that allows for an orderly transition to the consumer report distribution system required by the amendment in a manner that-

(A) does not temporarily overwhelm consumer reporting agencies with requests for disclosures of consumer reports beyond their capacity to deliver; and

(B) does not deny creditors, other users, and consumers access to consumer credit reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

(2) PROHIBITION ON EXTENSION OF EFFECTIVE DATE.-

(A) ONE-TIME AUTHORIZATION.- The Federal Trade Commission and the Board of Governors of the Federal Reserve System may exercise the authority provided under paragraph (1) only once during the 2-month period referred to in subsection (a)(1).

(B) EXTENSION OF EFFECTIVE DATE PROHIBITED.- No provision of this subsection shall be construed as extending, or authorizing the Federal Trade Commission or the Board of Governors of the Federal Reserve System to extend, the 2-month period referred to in subsection (a)(1) or the 10-month period referred to in subsection (a)(2) relating to the requirements imposed on consumer reporting agencies by the amendment made by section 501.

Page 10, strike line 12 and insert "inserting '(and to specific identity theft prevention subjects covered)' after".

Page 20, line 7, insert "a summary of rights, or other disclosure, that is the same as or substantially similar to" after "with".

Page 20, after line 14, insert the following new subsection:

(c) EFFECTIVE DATE.- Paragraph (2) of section 609(d) of the Fair Credit Reporting Act (as added by subsection (a) of this section) shall apply after the end of the 60-day period beginning on the date the model summary of rights is prescribed in final form by the Federal Trade Commission pursuant to paragraph (1) of such section and in accordance with section 3(a) of this Act.

Page 27, line 4, strike ", or duplicative of,".

Page 28, line 4, strike "credit" and insert "consumer".

Page 28, strike line 7 and insert "the biometric industry, and the".

Page 28, line 8, strike the comma after "public".

Page 32, line 11, insert ", using an address or a notification mechanism specified by the consumer reporting agency for such notices" before the period.

Page 35, beginning on line 25, strike "thereafter report correct information to" and insert "notify".

Page 36, line 3, strike the period, the closing quotation marks, and the second period and insert "of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.".

Page 36, after line 3, insert the following new subparagraph:

"(D) FRIVOLOUS OR IRRELEVANT DISPUTE.-

"(i) IN GENERAL.- The requirements of this paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including-

"(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

"(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person under this paragraph or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

"(ii) NOTICE OF DETERMINATION.- Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

"(iii) CONTENTS OF NOTICE.- A notice under clause (ii) shall include-

"(I) the reasons for the determination under clause (i); and

"(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.".

Page 56, line 16, insert before the closing quotation marks the following new sentence: "This paragraph shall not apply to a person described in subsection (j)(4)(A)(i), but only to the extent that such person is engaged in activities described in such subsection.".

Page 60, line 16, insert "or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer" before the period.

Page 73, strike line 6 and all that follows through line 14, and insert the following new subparagraph:

"(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6)).

Page 75, line 8, strike "purpose" and insert "purposes".

Page 75, line 21, insert "(and which shall include permitting actions necessary for administrative verification purposes)" after "needs".

Mr. OXLEY. Mr. Chairman, I am pleased to offer this manager's amendment, which reflects extensive negotiations with the committee's ranking minority member, the gentleman from Massachusetts (Mr. FRANK), to resolve issues that arose when the committee marked up this legislation in July. The amendment makes largely technical and conforming changes to legislation that the committee overwhelmingly approved by a vote of 61 to 3.

First, the amendment clarifies that while the new consumer protections against identity theft create uniform standards preempting State laws on the same specific subjects, the bill does not preempt subject matters that are outside the scope of those new provisions, such as limits on Social Security number use or criminal penalties for identity theft perpetrators. This approach assures that the strong new identity theft protections we establish in this legislation are applied uniformly across the country, while leaving undisturbed those State statutes that address subjects not covered by the bill's identity theft provisions.

Second, the amendment includes language responsive to concerns raised by several members at the Committee on Financial Services's markup of the FACT Act relating to the new furnisher reinvestigation duties imposed by section 304 of the bill.

Specifically, the manager's amendment gives furnishers the same right to reject frivolous or irrelevant disputes brought by consumers that credit bureaus have under existing law, including disputes already submitted to and resolved by the furnisher or a credit bureau. The furnisher is required to provide the consumer whose dispute it rejects as frivolous or irrelevant with a notice stating the reasons for that determination and identifying any information required to investigate the disputed information.

Third, the manager's amendment gives direction to the Federal regulators who are required to promulgate regulations establishing effective dates for various provisions of the bill to take into account the need for an orderly transition to a system in which consumers will be able to request a free credit report annually, to avoid overwhelming the credit bureaus and impeding their ability to satisfy time-sensitive requests for reports within the 2- to 12-month effective date provided in the legislation.

Let me again thank the ranking member, the gentleman from Massachusetts (Mr. FRANK), for the cooperative spirit in which he and his staff have worked with us since the committee's markup to make these important improvements to what was an already outstanding piece of legislation. I urge all of my colleagues to support the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I support this amendment. It is better than we got. It is not all I want, but it improves the bill, as is appropriate for this particular form of a non-controversial amendment in a technical way. It embodies some improvement in the situation vis-a-vis the retroactive California preemption that was embodied in the colloquy.

The colloquy that the gentleman from Alabama and the gentleman from Ohio and I had is really an explanation of what is in this particular manager's amendment, I think it will improve the bill, and I urge it be adopted.

The CHAIRMAN. The question occurs on the amendment offered by the gentleman from Ohio (Mr. OXLEY).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments?

AMENDMENT NO. 8 OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Ms. WATERS:

Page 7, line 15, insert "(a) IN GENERAL.- " before "Section".

Page 7, after line 24, insert the following new subsection:

(b) SPECIFIC EXCEPTIONS.- Section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681t) is amended by adding at the end the following new subsection:

"(e) SPECIFIC EXCEPTIONS.- Subsections (b) and (c) shall not apply to-

"(1) the California Financial Information Privacy Act (division 1.2 of the California Financial Code, as in effect after June 30, 2004); or

"(2) the Consumer Credit Reporting Agencies Act of California (sections 1785.1 through 1785.36 of the California Civil Code).".

Ms. WATERS. Mr. Chairman, first let me say that the gentleman from Ohio (Chairman OXLEY) and the ranking member, the gentleman from Massachusetts (Mr. FRANK), worked very, very hard to get a bipartisan bill to bring everybody together, along with the gentleman from Alabama (Mr. BACHUS). I think everybody put their best foot forward on this legislation, and I am just sorry that I am not able to support the bill simply because I have to protect California.

I think there was a misunderstanding somewhere along the way. I made lot of inquiries about whether or not post-1996 legislation or laws were protected in this bill. I was led to believe that they were protected, but now I find that they were not protected, and what we stand to do is literally undo or preempt much of the good consumer legislation that has been produced in my State. So I must object to the permanent preemption provisions that are proposed in this bill, the Fair and Accurate Credit Transaction Act.

I believe that the States should be free to adopt more extensive consumer protections than those that are provided in this Fair Credit Reporting Act. I believe that the national standards contained in the Fair Credit Reporting Act should be the floor, not a ceiling, on the protections available to consumers. States should have the right to provide additional protections.

I will ask my colleagues on both sides of the aisle, do any of you know what the next major consumer problem will be in the year 2010? In 1996, when the amendment to the Fair Credit Reporting Act was established, identity theft was not even on the radar. We had never even heard of identity theft. The idea that someone would violate a person by stealing their identity and accessing their financial records was not an issue we were familiar with. Now it is the fastest growing consumer complaint to the FTC, with over 200,000 complaints in 2002 alone.

As Californians, our laws on such emerging consumer issues as identify theft represent the gold standard in consumer protection, and that is why I am asking for support on an amendment to carve out all of California laws enacted since the passage of 1996 amendments to the Fair Credit Reporting Act from preemption provisions contained in the bill.

There has been an attempt, well, I do not know what happened, but, again, there was a misunderstanding, and I was misled. All of the consumer protections that were enacted after 1996, with the exception of California Civil Code 1785.25(a) regarding furnishers, are preemptable. So, I have a long list.

For example, let me tell you what is preempted. Consumer reporting agencies must disclose the names and addresses of all sources of information used in Consumer Reports. That is California law, now preempted if this passes.

California also requires consumer reporting agencies to, with a reasonable degree of certainty, match at least three categories of identifying information within the consumer's file with the information provided by a retailer. The categories of identifying information may include the consumer's first and last name, month and date of birth, driver's license number, place of employment, current residence, previous residence, or Social Security number. This effectively reduces a successful attempt at identity theft and reduces the chances for mistaken identity.

Another preemption, a consumer has the right to receive his or her credit score, the key factors in any related information. Another preemption.

A consumer would be able to have a security freeze placed on his or her credit report by making a request in writing by certified mail with a consumer credit reporting agency. A security freeze prohibits the consumer reporting agency from releasing the consumer's credit report or any information from it without the expressed authorization of the consumer. It would preempt it.

Upon receipt from a victim of identity theft of a police report or valid investigative report, a consumer reporting agency must provide a victim of identity theft with up to 12 copies of their credit report during a consecutive 12-month period free of charge. It is very hard to straighten up this identity theft. Sometimes it takes 3 to 4 years. But if you are getting that credit report every month and you can compare what has been taken off, what has been left on, where the mistakes are, you can wind out of this thing.

With strong consumer protections, Federal preemption of States would not be necessary because Federal law would be the floor, rather than the ceiling.

Then, again, as all of you are aware, this past August, California signed into law SB1, which provides strong consumer protections that should be the law of the land. You are going to hear more about this in an amendment additional to mine that will be presented.

But, again, let me just say that whatever the mistakes were, I should have been involved in the manager's amendment to correct these problems. I have not been placed in there. So I do not know what we are going to do, but I ask my colleagues to please consider what has been done here.

Mr. OXLEY. Mr. Chairman, I ask unanimous consent that debate on this amendment and any amendments thereto be limited to 20 minutes, equally divided and controlled by the proponent and opponent.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. SHERMAN. Reserving the right to object, the gentleman's unanimous consent applies to this one amendment?

Mr. OXLEY. Mr. Chairman, if the gentleman will yield, yes.

Mr. SHERMAN. Mr. Chairman, I withdraw my reservation of objection.

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, because this came afterwards, what happens to the 5 minutes just used? Is it subsequent to the 5 minutes the gentlewoman just used?

Mr. OXLEY. Mr. Chairman, if the gentleman will yield, that is fine with me.

Mr. FRANK of Massachusetts. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The unanimous consent request is that further debate on this amendment be limited to 20 minutes.

Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The gentlewoman from California (Ms. WATERS) will control 10 minutes and a Member in opposition will control 10 minutes.

Mr. OXLEY. Mr. Chairman, I designate the gentleman from Alabama (Mr. BACHUS) to control the 10 minutes on this side.

The CHAIRMAN. The gentleman from Alabama will control the time in opposition.

Ms. WATERS. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I want to acknowledge that the gentlewoman from California is absolutely correct. She did call to my attention during this discussion on this bill the potential problem that she learned about of a retroactive preemption. I missed it. I made a mistake in this case. She was correct and we should have spotted it. I think it is incorrect.

I want to make clear we are talking about two separate issues here on the preemption. There is the preemption prospectively of what is known as SB1. That is not what is at issue here. There will be a second amendment on that.

This has to do with laws that were passed by California subsequent to 1996 that were not subject to preemption at the time that would now be retroactively preempted. I think that is a mistake.

I should note that the gentlewoman read a list of preemptions. In many of the cases I acknowledge what is preemptive does provide some protection. In other words, it is not a case where there is a preemption, all protections are wiped out. In some cases, the protections are functionally equal. In other cases, they may be somewhat different. But these are laws that had been on the books in California. My view was that this bill ought to go forward with the existing preemptions, with some new consumer protections. It was not my intention to extend the preemptions. Through failure to spot

the meaning of some particular words, I must concede that this happened.

□ 1615

I regret that. We have tried in conversations to undo it. We have in the manager's amendment undone some of it, but not enough of it. But as I said, there are still some of the sections preempted and are replaced by other protections, so it is not a case where there will be no protections at all; but it does seem to me still that there are some rollbacks of California law that were unnecessary.

So as a matter of fairness to California, I do not think we should have been preempting without full knowledge.

Now, I do not mean to say that anybody did anything inappropriate. I should have been clearer about what was happening and we simply failed to spot the meaning of four words; that sometimes happens. I support the gentlewoman's amendment. I think the California laws are substantively wise, but that is not the primary point. My primary point is that we should not be here retroactively preempting what a State has done. That is very different than the future of SB1. We will talk about that later.

So I strongly support the gentlewoman's amendment; and throughout this process, because this bill is a long way from being sent to the President, I will continue to do what I can. She is correct, she and the other gentlewoman from California who serves on the committee called this to our attention, they deserved a better response than they got; and I will do everything I can now to correct the error that we made.

Mr. BACHUS. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, let me first stress that the legislation before us on which we are having an amendment by the gentlewoman from California now, and we will have one from the gentleman from Vermont which will follow that, I first want to say to them that there are many important consumer protections in this bill: free credit report, fraud alerts, the one-call-does-it-all, protecting of health information. And I want to commend both of the gentlewomen for their participation in that. So I do want to say that several of their suggestions, several of the things that they advocated are in this legislation.

To the gentlewoman from California, I rise in opposition to disregarding a national uniform standard in the case of, and this amendment covers two different acts; one of them because the act before us simply does not address a lot of the Gramm-Leach-Bliley things that this legislation did not address. I think this Congress will, at some point, take up a review of those things. The second one does deal with ID theft; it is the California legislation that was just passed.

This legislation before us today, if it passes, Californians will have important new protections in ID theft cases. And I think we all, no matter how we feel about the gentlewoman's amendment, I hope we can all agree on that. We do think that this amendment really strikes at the essence of this bill; and that is a broad, uniform standard where what is done in California meets the test of what is done in Alabama, and what is done in Alabama meets the test of what is done in Ohio. If we apply different standards to fraud alerts, if we require different standards of credit reporting agencies or reports, there is so much interaction here between States. It simply drives up the expense, when California, representing a fourth of this Nation, can impose its own standards on a national issue in which, on a daily basis, millions of transactions are crossing State lines.

Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, I yield myself 1 minute to explain to the gentleman that this is not an imposition on the rest of the country; this is a carve-out for California. This is a protection for what we have already done. We have protections in the law from 1996; and what we are saying is, you should not have national standards that are less than what we have produced in California. I have tried to protect that. I thought that I had. And as our ranking member said, a mistake was made. We thought, based on the representations of everybody, that it had been protected. And now I am here with an amendment that simply says, leave California alone and allow the better consumer laws to stand in California. Do not preempt these laws with standards that are less than what we have in California.

Mr. BACHUS. Mr. Chairman, will the gentlewoman yield?

Ms. WATERS. I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Chairman, is the gentlewoman talking about cases in identity theft? Is that what we are talking about?

Ms. WATERS. No. As the ranking member tried to explain, there are two different issues here today.

The CHAIRMAN. The time of the gentlewoman has expired.

Mr. BACHUS. Mr. Chairman, I yield the gentlewoman 1 minute of my remaining time.

Ms. WATERS. Mr. Chairman, there are two different issues here. When we did this work in committee, we thought that we had protected the consumer laws that were made in California after 1996; and everybody, all of our staff people, everybody thought so, on both sides of the aisle.

Mr. BACHUS. As to identity theft?

Ms. WATERS. No. I just read a number of them a few minutes ago in my presentation that had to do with some other laws, with credit reports and some other kinds of things.

Mr. BACHUS. Well, the amendment deals with two specific acts.

Ms. WATERS. Yes.

Mr. BACHUS. One of those acts was just passed by the California legislature in the past few days.

Ms. WATERS. Yes. That is the latter part. That is the latter part of this amendment. But the amendment that I am speaking to now is the one where I said consumer reporting agencies must disclose the names and addresses of all sources of information. California requires consumer reporting agencies to, with a reasonable degree of certainty, match at least three categories identifying information. I read a list of items that had been preempted that none of us thought had been preempted, and I am trying to carve out for California and put them back in.

Mr. BACHUS. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentleman from Alabama (Mr. BACHUS) has 6 minutes remaining; the gentlewoman from California (Ms. WATERS) has 6 minutes remaining.

Ms. WATERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, first let me just say I do rise in strong support of the Waters amendment to protect Californians', Californians' mind you, financial privacy laws and identity theft provisions. I applaud my colleague from California for her leadership on this issue, for identifying a mistake that was made, and really for just trying to correct it in a very rational way. That is what this amendment does. It corrects a mistake that was made. This bill is a bipartisan bill. We all wanted to support it; but coming from California, the gentlewoman has figured out a way that we should support this, and it would be a win-win for all of us.

The FTC, Mr. Chairman, reported on September 3 that 27.3 million Americans have been victims of identity theft in the last 5 years, including 9.91 million people, or 4.6 percent of the population in the last year alone. Now, these are epidemic levels, and we must do everything we can do to prevent identity theft and to help the victims of this horrendous crime. That is why this amendment is so important. It would preserve very important California laws on identity theft. These are California laws.

Let us be clear. If we do not adopt the Waters amendment today, Californians will lose vital identity theft provisions currently provided in California law. Victims of identity theft will lose the right to a free monthly credit report. Victims of identity theft will lose the protection of California's law providing the right to correct a credit report with a police report. Victims of identity theft will lose the protections of California's law requiring credit bureaus to place a fraud alert within 5 business days of receipt of a request from the consumer. And the list continues. In total, seven existing California laws would be wiped out by this bill and another four will probably be

eliminated. It really simply defies logic to kill these existing California protections for the victims of identity theft when we are facing a growing identity theft crisis in our State.

Again, I thank the gentlewoman for her leadership. I thank her for offering this fix to this very important bill, and I hope that we all can support this correction of a major error that was made.

Mr. BACHUS. Mr. Chairman, I yield myself such time as I may consume.

What this amendment does, first of all, it addresses two things; one is SB1 that was just passed in California. And as to affiliate-sharing, that is what is preempted by this legislation. But the present preemption, what we are doing is, we are taking a preemption that presently exists in the law and we are extending it as of January 1. So SB1 as to affiliate-sharing, you cannot do that today in California. You would be, if FCRA was not renewed.

Now, the second component that you have here is California's version of FCRA. And what that would do, the Waters amendment would not only allow California to change its law on an ongoing basis, but beyond what we grandfathered today, and we are grandfathering some of those protections, but it would also resurrect certain laws that are preempted today.

Now, as to a uniform standard, and I want to go back to what we posed to Treasury and what their response was in testimony before our committee, why should uniform national standards be extended to include matters that are designed to help fight identity theft? Why should not States be able to adopt stricter anti-ID theft measures?

Now, since that time, in the manager's amendment, we have allowed a lot of those as long as they do not affect the operation of the FCRA, and the answer that we got from the Federal Reserve, from the Treasury, from the FTC was that it would literally cost millions of dollars; that it is important to have national uniform standards for identity theft prevention measures.

For example, section 202 of the act calls for the development of a national fraud alert system. This requires the credit reporting agencies that operate on a nationwide basis to allow consumers to place various types of alerts in their credit reports when they are victims of identity theft. Now, we require certain things to go into those alerts. If California requires other things, then a company doing business in Ohio or Alabama or New York would not only have to comply with that law, they would have to comply with the California law if they had customers or consumers in California. Merchants dealing with California consumers would not only have to comply with the national law, they would have to worry about the law in all 50 other States with credit reports.

□ 1630

We would have a gradual erosion and chipping away of our national system. And we took volumes and volumes of testimony how the person most penalized by this would be the consumers in paying higher interest rates, also in being a less effective national standard. We would also discourage people from using the National Uniform Credit System to report and to furnish information if they thought they not only had to comply with a national law but a California law.

Finally, philosophically, when California is able to basically define what FCRA will be, then California imposes its will on the national policy. And we have to have a national policy. We have representatives of California here. In fact, probably one-fifth of this body is made up of California representatives, or one-sixth. They participated in this.

I anticipate that when this final vote is taken, the vast majority, as in committee, of Californians will vote for this legislation. But we simply cannot allow any State to dictate how this system will operate in Alabama, Ohio, New York or to impose additional requirements and costs on consumers in California or Massachusetts or other States. Simply put, this amendment, it sounds good but it strikes at the very efficiency, the cost efficiency, of our national credit reporting system. It bogs it down.

I will conclude with this: California recognized this when they preempted the law of several large cities in California who had attempted to impose their own standards simply by saying we cannot. The cost of cities and counties imposing their own standard would be prohibited. California ought to see that that logic also applies on a national level.

Governor Davis, I believe, initially bought into this. Initially when this legislation, some of this legislation was proposed, he did not sign it. He did not support it. He is now facing a recall in a few weeks, but I am not sure that is the time to judge what ought to be done in the middle of a politically expedient campaign.

Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, how much time is remaining?

The CHAIRMAN. The gentlewoman from California (Ms. WATERS) has 4 minutes remaining. The gentleman from Alabama's (Mr. BACHUS) time has expired.

Ms. WATERS. Mr. Chairman, I yield 2 minutes to the gentleman from Vermont (Mr. SANDERS).

(Mr. SANDERS asked and was given permission to revise and extend his remarks.)

Mr. SANDERS. Mr. Chairman, I thank the gentlewoman for yielding me time.

California may have one-sixth of the Members in this body, Vermont does not. I am it and I rise in strong support of the Waters amendment.

The issue of preemption was hotly debated in the Committee on Financial Services, and on one side of that issue was virtually every consumer organization in America. Groups like the Consumer Federation of America, the U.S. Public Interest Research Group, Consumers Union, and many others. And some of us in the committee supported these consumer organizations, making the point that the gentlewoman from California (Ms. WATERS) just made. That in the nature of our government, we are the United States of America, there are 50 States in our country. And sometimes one State does something really good and a whole lot of other States learn from that State. And that is one of the reasons that we have a creative form of government with a lot of ideas that are flowing.

On the other side of that debate, of course, were the credit card companies and the banks. And let us be clear, they do not want strong consumer protection. They are the people who are charging individuals in this country 25 percent interest rates on their credit cards. They do not want to see governors and legislatures and attorneys general stand up strongly and protect consumers. So what ends up happening is that we have a national bill which has admittedly some good provisions in it, but at the same time, it takes away the ability of 50 States to go further.

So the gentlewoman from California (Ms. WATERS), the gentlewoman from California (Ms. LEE), and I and many others were fighting for higher Federal standards, more consumer protection, but at the same time, give California the right to go forward.

It is inconvenient. Well, democracy is inconvenient. Alabama does some things. Vermont does some things. We live together. We learn from each other. We argue with each other, but we do not take away, we should not take away the rights of the States to go further. I support this amendment.

Mr. Chairman, I support the amendment offered by Congresswoman WATERS. This amendment would simply allow the 7 Fair Credit Reporting Act preemptions to expire, as Congress intended, on January 1, 2004 in order to allow the 50 states of this country to pass stronger consumer protection laws to improve the accuracy of credit reports and to aggressively fight identity theft.

I should note right off the bat that every major national consumer group in this country including the Consumer Federation of America, the U.S. Public Interest Research Group, Consumers Union, and the National Consumer Law Center all vigorously oppose state preemption. I would also like to tell you that the National Association of Attorneys General, representing all 50 States of this country, unanimously passed a resolution opposing the 7 FCRA state preemptions.

Mr. Chairman, you know my views on this subject. If my State of Vermont or your State of Ohio wants to pass laws that are stronger than the Federal Government's, we should give States that right. The States are the laboratories of Democracy. You know what happens here. If there is a particular identity theft crisis in Colorado and the Colorado State Legislature passes a law to correct this problem,

and it works, what happens? Pretty soon, California may pass the same law. Then Nebraska. Then Maryland. And, eventually it filters up to the federal government and we have a good national law on the books. But, if this legislation is signed into law, we would permanently prevent the States from taking this action. We hear a lot of talk from conservatives about protecting the States and the American people against the big, bad and instrusive Federal Government. Well, call me a conservative on this issue because I believe that the 50 States in this country should be able to pass their own laws and should not be pre-empted by the Federal Government from passing stronger laws that protect consumers. So, I would say to my conservative friends on the other side of the aisle, vote for my amendment. It is consistent with your philosophy on the role of the government.

And to my Democratic friends on this side of the aisle, I ask all of you to vote for this amendment as well. Let us not forget that just last week, during a recent mark-up of the Securities Fraud Deterrence and Investor Restitution Act (H.R. 2179) in the Capital Markets Subcommittee, virtually every Democrat voted against preempting the states from taking strong enforcement actions against Wall Street firms that defraud investors. I agree. The 50 States of this country should not be prohibited from aggressively punishing corporate wrongdoing.

Today, we are dealing with the exact same issue: state preemption. But, this time it deals with consumer protection. Just like we should not prohibit States from aggressively punishing corporate wrongdoers, to my mind, we should also not permanently bar the states from aggressively punishing identity thieves and improving the accuracy of consumers' credit reports. Therefore, I hope my Democratic friends will vote for this amendment as well.

Mr. Chairman, as we all know, the newspapers are filled with horror stories about the harm being done to consumers by identity thieves. This problem is compounded by the shabby job done by the credit reporting system in ensuring that consumers' credit reports are accurate and up-to-date. States have been at the forefront of the effort to stop identity thieves and to clean up the credit reporting industry. The federal government should be a partner in that effort but should not pull the rug out from under the states. There is no greater impediment to consumer credit than a credit report full of errors. There is no reason to tie the states' hands.

We have heard from the financial services industry and the major credit bureaus that if we don't extend these state preemptions, the entire credit system will collapse. But, let us not forget, we had a national credit system before the 1996 state preemptions were inserted, and it worked well. For example, one of the witnesses that we heard from on this issue from Juniper Bank who supports preemption cited a study that showed "in 1990, more than 70 percent of credit card balances were being charged more than an 18 percent annual interest rate. By 1993, only 34 percent of credit card balances were being charged more than 18 percent interest."

Great study. All of the benefits to consumers just happened to be 3 years before the 1996 preemptions were enacted.

Another supporter of state preemption who testified at our first hearing from the Information Policy Institute pointed to another study that showed that credit card prices "declined by almost 35 percent between the first quarter of 1984, and the fourth quarter of 1996," saving consumers "about $30 billion per year."

Again, great study. All of the benefits to consumers happended to occur before the 1996 state preemptions were enacted.

In addition, the 1996 FCRA amendments specifically grandfathered stronger consumer protection statutes in California, Massachusetts and Vermont from pre-emption. What have we seen in these 3 states that have stronger consumer protection laws in regards to credit reporting? We have seen that my State of Vermont now has the lowest rate of consumer bankruptcies in this country; the State of Massachusetts has the second lowest consumer bankruptcies in the United States; and California comes in ahead of the median. At a time when the United States as a whole experienced the highest rate of bankruptcy cases in history, increasing by 23 percent since 2000, I would say that these three examples gives us proof that stronger State consumer protection laws work.

What about mortgage rates? Well, the most recent data indicate that the State of California has the lowest effective rate for a conventional mortgage in the nation, and Vermont and Massachusetts were well below the median. Sounds pretty good to me.

In addition, let us not forget why the 1996 FCRA amendments were enacted. While identity theft complaints have been the number one complaint to the FTC each year since 2000, and in fact doubled from 2001 to 2002, it was credit bureau mistakes which were the number one complaint to the FTC 10 years earlier. And it was credit bureau mistakes, and complaints about them, that led Congress to the 1996 FCRA amendments. From 1990–92, according to a study by U.S. PIRG, mistakes in credit reports were the number one complaint to the FTC. What will the new crisis be? We don't know for sure. But, if we permanently preempt the States from acting on future problems, we will do this country a great disservice.

Moreover, if some of the new members don't believe Congress intended these preemptions to sunset, I would refer them to the floor statement of the former Ranking Member of the Banking Committee and former Republican Congressman from California Al McCandless who had this to say during the floor debate on this bill:

"The issue over whether the Fair Credit Reporting Act should preempt more stringent State laws or whether it should permit States to enact tougher credit reporting statutes has been one of the single toughest issues for the Banking Committee to tackle. On the one hand, many of our Members like the idea of a national uniform standard. On the other, we do not want to tie the hands of State legislatures. I think that this compromise bill resolves the issue of preemption to most everyone's satisfaction. The Fair Credit Reporting Act as amended by this compromise bill, will be the law of the land for the next 8 years. It will provide consumers across the country with greater protection than is currently offered by any existing State statute. A uniform national standard will make compliance more straightforward and will facilitate the extension of credit to consumers. States will be able to enact more stringent legislation if necessary after 8 years."

Let me repeat, "States will be able to enact more stringent legislation if necessary after 8 years."

That's what was said by the top Republican on the Banking Committee on the floor of the House when a compromise was reached on this bill. Let's stick to that compromise and support this amendment.

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think I made the case as clearly as it can be made. I was told by everybody that certain California laws after 1996 were protected. Now I find that they have been preempted. And I really do not think it is fair that I find myself here on the floor today having the laws of my State preempted and a manager's amendment that does not attempt to correct it.

I suppose I believe that my ranking member is going to do everything he can, I guess working in conference somewhere, to try and give back the protections that we have in California. I have always maintained that the Federal standard should be the floor. If any State would like to protect its consumers more, who is the Federal Government to tell them they cannot do it? That is wrong.

I do not buy the argument that it is inconvenient for some bank or financial institution to have to deal with California, because California has better consumer laws, and they would just rather be able to deal with them the same way that they deal with everybody else.

I do not think it is fair, and I do not think we should use the powers of our government to do that.

Let me just say this, that knowing that I was today that we were not preempted, and this does not have anything to do with SB1, I am talking about those laws that I referred to. Knowing that I was told that, I would expect my colleagues, who have worked pretty well on both sides of the aisle, to try and get a bill that everybody could support, that you would at least represent to me that you are going to try and undo the mistake. That you are going to try.

Mr. BACHUS. Mr. Chairman, will the gentlewoman yield?

Ms. WATERS. I yield to the gentleman from Alabama.

Mr. BACHUS. I will say this: Yes, there are provisions of California law that were preempted, but they are provision where we established a consumer protection on a national basis. And in almost every one of these cases, we went beyond what most States do.

Ms. WATERS. Reclaiming my time, we have to compare it issue-by-issue and then determine whether or not, in fact, you have done better or you have done worse.

The CHAIRMAN. All time for debate on the amendment offered by the gentlewoman from California (Ms. WATERS) has expired.

The question is on the amendment offered by the gentlewoman from California (Ms. WATERS).

The amendment was rejected.

The CHAIRMAN. Are there any further amendments?

Mr. OXLEY. Mr. Chairman, I ask unanimous consent that debate on the following amendments, and any amendments thereto, be limited to the time specified equally divided and controlled by the proponent and opponent as follows:

The amendments numbered 2, 5, 7, 9, and 10 in the CONGRESSIONAL RECORD shall be debatable for 10 minutes;

The amendments numbered 1, 6, 11, 12, and 16 in the CONGRESSIONAL RECORD shall be debatable for 20 minutes;

And the amendments numbered 15 and 4 in the CONGRESSIONAL RECORD shall be debatable for 30 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. SHERMAN. Reserving the right to object, Mr. Chairman, I thought that the Lee-Sherman amendment was getting 40 minutes equally divided. I could be wrong on that. What was the agreement?

Mr. OXLEY. Thirty minutes, Mr. Chairman.

Mr. SHERMAN. Mr. Chairman, would the gentleman mind having the Lee-Sherman amendment given 40 minutes?

Mr. OXLEY. What number is that?

Mr. SHERMAN. Number 15.

Mr. OXLEY. Number 15? I would give it 35 minutes. How is that for a compromise?

Mr. SHERMAN. That is a wonderful idea, Mr. Chairman.

Mr. OXLEY. Mr. Chairman, I amend my unanimous consent request to make the amendment number 15 debatable for 35 minutes.

The CHAIRMAN. Is there objection to the request with the addition that amendment number 15 be debatable for 35 minutes equally divided?

There was no objection.

The CHAIRMAN. Are there further amendments?

AMENDMENT NO. 15 OFFERED BY MS. LEE

Ms. LEE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Ms. LEE:

Page 7, after line 24, insert the following new section:

SEC. 102. FINANCIAL PRIVACY EXCEPTIONS.

Section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681t) is amended by adding at the end the following new subsection:

"(e) FINANCIAL PRIVACY EXCEPTIONS.- Subsections (b) and (c) shall not apply to the California Financial Information Privacy Act (division 1.2 of the California Financial Code, as in effect after June 30, 2004) or the law of any other State that is similar to the California Financial Information Privacy Act.".

The CHAIRMAN. The gentlewoman from California (Ms. LEE) will be recognized for 17½ minutes and a Member opposed will be recognized for 17½ minutes.

The Chair recognizes the gentlwoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first, let me thank the gentleman from Ohio (Mr. OXLEY) and the ranking member, the gentleman from Massachusetts (Mr. FRANK) for their diligent work to really make this a bipartisan bill. Of course, I cannot support it as long as it preempts California and that is what it does.

I offer this amendment today on behalf of all Californians and all Americans, really, who deserve and want to take back control of their private financial information. And I want to thank my California colleague, the gentleman from California (Mr. SHERMAN), the gentleman from California (Mr. FARR), the gentlewoman from California (Ms. WATERS), the gentlewoman from Illinois (Ms. SCHAKOWSKY), the gentleman from Massachusetts (Mr. MARKEY), and all of those who have been working on this very, very important issue and this important amendment.

Mr. Chairman, our amendment would make a major step towards reclaiming consumers' financial privacy by doing the following: First, it protects California's recently enacted landmark Privacy Act; and, secondly, it allows every State to enact financial privacy laws giving consumers in those States similar protections to Californians, which, of course, is the strongest in the Nation, if they so choose, only if they so choose. For those of you who are not fortunate enough to hail from the great State of California and may not be familiar with California's new law, let me just provide a little bit of background.

What does the new privacy law do? It gives consumers the right to stop the sharing of information by financial institutions, unless they meet very stringent criteria. The law requires financial institutions to obtain a consumer's affirmative consent before sharing information with most third parties. It also provides standards for consumers to receive clear notice of their rights.

Now, how did this groundbreaking law come about? Well, it was the result of a long hard fight and it is a major effort by California State Senators, Jackie Speier and John Burton. And I really want to thank them for their tireless effort in working with the financial institutions in California to come up with this arrangement, this compromise, this law which really did result in resounding bipartisan support for the bill SB1, which passed the California Senate by a vote of 31 to 6 and passed the assembly by a vote of 76 to 1.

Yes, I also want to thank Governor Davis for really standing up for California consumers by signing this bill. But it is very important, I believe, to recognize the critical role California consumers played in the fight for new and strong financial protections because in the end it was this broad support and the very hard work of California consumers that pushed the bill forward.

In fact, I want to cite a January California opinion poll to demonstrate the overwhelming popularity for a strong financial protection. Now, the poll found that 91 percent of individuals supported a ballot initiative that will require a bank, credit card company, insurance company or other financial institutions to notify a consumer and to receive a customer's permission before selling any financial information to any separate financial or nonfinancial company. The support was strong regardless of party affiliation: 96 percent of Democrats, 88 percent of Republicans, 90 percent of Independents. Clearly, financial privacy is not a partisan issue.

Now these groundbreaking, popular, hard-won protections which were negotiated with our financial institutions in California are threatened because of this bill before us today. Let us be clear, this bill does preempt California law. And what does that mean? That means that important California protections will just basically be wiped out. In fact, it means that Californians will never see parts of the law that was signed by the governor. And it means that the will of an overwhelming majority of Californians will be overturned by what we are doing today.

We cannot allow that to happen. We have an obligation to stop that and this amendment would do exactly that. And just like we have an obligation to stand up for all of our consumers today, we are standing up for our California consumers. We have an obligation to stand up for consumers, as I said, all across the country so that they have the opportunity to protect and to control their intimate financial details.

□ 1645

Consumers in California are no different than consumers everywhere when it comes to their financial privacy. Strong protections are what they seek and what they deserve.

I want to take a moment to address some of the inflated and really irrational concerns that have been raised about our amendment. It will not bring commerce to a grinding halt. It will not mean an end to affordable mortgages, and it will not leave more minorities without access to credit. It will not put an end to ATM machines, and it will not ruin the credit system as we know it.

It will merely require banks and insurance companies and other financial institutions to ask California consumers before they share and sell their private information. It will merely allow consumers and other States to benefit from similar protections in the future if they determine that it makes sense for them.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does the gentleman from Ohio (Mr. OXLEY) claim the time in opposition?

Mr. OXLEY. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Ohio (Mr. OXLEY) is recognized.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to the amendment and this really strikes at the heart of what we are trying to do in this legislation to provide national uniformity of our credit system. The Lee amendment would destroy the national uniformity with respect of the ability of the financial institutions and others to share information among affiliated entities.

The Lee amendment does not affect only Californians. Would that be the case, I would not be as particularly concerned, but by grandfathering the California law with respect to affiliate sharing, the Congress would actually abdicate its obligations by allowing California to set the national standard with respect to affiliate sharing. I suggest to my colleagues that that is the responsibility of the national legislature, indeed the Congress.

In essence, many financial institutions will not be able to adhere to multiple sets of rules with respect to affiliate sharing. Then what happens? Some or many will simply adopt the California requirements as the national standard, and ultimately, it becomes California setting national standards, and while I have a great deal of respect for my colleagues from California and the Golden State, I do not think it is a responsible position for the Congress to abdicate that responsibility to the Golden State.

So the question is not necessarily whether there will be a national standard but, in fact, who will set it, and ultimately, the Constitution provides the ability of the Congress to set those national standards.

The Lee amendment also would allow any other State to adopt its own laws with respect to affiliate sharing. Therefore, financial institutions and consumers could find themselves attempting to understand dozens of State laws pertaining to affiliate sharing. The actions dealing with privacy in California should not impact the Federal debate on FCRA, and this is important to understand. The affiliate sharing provisions in the California law are preempted by the existing provisions of FCRA today. So they will be essentially null and void whether Congress reauthorizes the FCRA or whether it does not.

The understanding among all parties in California was that the affiliate sharing provisions would be invalidated under the existing FCRA national standard. The negotiations on the California law and the shift of several companies positions in opposition to neutral was based on opposition to a State-wide referendum and was part of the negotiations that went on in the California legislature. That is not unusual in today's making of laws in any particular State.

In short, grandfathering California law and future laws in other States guts our national uniform standards and harms consumers across the country, could cause an increase in interest rates, inability to get credit, precisely the opposite of what we are trying to do in this legislation. That is why this legislation passed 61 to 3 in the Committee on Financial Services. That is why we have a broad base of support for this legislation across the aisle, among all sections of the country, why we have had strong leadership from both sides of the aisle on this important legislation.

We do not need at this point to get in a situation where we have a rush by other States to simply gut our national standards. That is not what we are about in this body, and all of us who have supported this legislation, who probably cosponsored and voted for it in committee and sent letters, Dear Colleagues, out supporting this legislation need to understand that this is a killer amendment to what we are trying to do in the underlying legislation, and that is why this amendment should be defeated.

Mr. Chairman, I reserve the balance of my time.

Ms. LEE. Mr. Chairman, I yield 5 minutes to the gentleman from southern California (Mr. SHERMAN), cosponsor of this amendment.

Mr. SHERMAN. Mr. Chairman, I thank the chairman for arranging an extra 5 minutes to debate this important amendment. It is our intention to offer it, and then withdraw it at the end of this discussion, in the hopes that these issues can be dealt with effectively in conference. By withdrawing the amendment at the end of this discussion, we will save the House at least 30 minutes as compared to a recorded vote, thus giving my colleague a six-time return on his investment.

This is a good and necessary bill. We have an amazing credit system in this country where a bank on the east coast will compete for the opportunity to lend money to somebody on the west coast who they have never met; even when none of the banks' employees knows anyone who knows the borrower. Imagine that compared to where we were in this country 100 years ago, when it took a personal relationship with a banker to get a loan. This is an amazing system, and it can exist only with national credit reporting that borrowers and lenders can rely upon and only with a national system that regulates that national credit reporting.

But in our effort to have national standards, which our friends on the other side of the aisle have explained the importance of, we should not reach the lowest common denominator. Instead, we need to look at what the States have done to protect their consumers and try to have a national standard that is at least as high, or at least addresses each of the different consumer protection issues. So, this bill needs to be compared to California law to see whether it achieves that, or whether it might achieve it at the end of the conference.

There are two sets of consumer protections in California law. The first is known as the pre-SB1, pre-Speier's bill protections. In this area, we from California had been told that none of the California pre-SB1 protections would be preempted. But in fact, they were. However, the violence done by that preemption is perhaps not as great as some of my colleagues have pointed out because in many of the cases where California law was preempted, it was replaced by a national standard that was just as good for consumers, even if slightly different in form.

For example, there is the California requirement that consumer reporting agencies must disclose the names and addresses of all sources of information in the consumer report. That California law is preempted but replaced with an even stronger Federal law that not only requires that, but, (I thank the chairman for accepting my amendment in committee), also requires that the phone numbers, as well as the addresses, of those who provide that consumer information be provided in the consumer report.

So it is important that in conference, we take a look at all the pre-SB1 California provisions, make sure that whatever protections a Federal law preempts, are replaced by equally strong consumer protections.

In a few areas that is not the case, and I am confident that in conference, with the advocacy of our ranking member, the gentleman from Massachusetts (Mr. FRANK) and with the chairman of the committee, we will achieve that.

The second set of California Consuming Protections were given to us by SB1, the Speier's bill, which was passed while this Congress was in recess last month. There are several provisions of that bill that are not preempted by Federal law and that will do an outstanding job of protecting Californians, and I commend them to our committee and to the State legislatures around the country. One of those (SBI) provisions, however, would be preempted. That is what is called the opt-out provision dealing with affiliate information sharing.

We are talking about a situation where a person goes to a bank, provides the bank with their financial information, are the bank shares it with their affiliated insurance company or their affiliated stock brokerage company? Good business practice, as well as California law, allows a consumer to instruct their financial institution not to share their information with an affiliated company. I think that is smart business. I commend Jackie Speier of California for writing it into California law.

As we go to conference, hopefully this issue will be addressed. One way to address it is the way Bank of America already addresses it voluntarily, and this would be a compromise. That is to

say, that a consumer should be able to opt-out for purposes of marketing. The consumer would be able to say, Bank, do not have your insurance company call me. If we were able to get that, yes, California consumers might lose a tiny bit, but 280 million Americans would gain substantially.

I look forward to a conference that will assure consumers around this country, and those of California, with enhaused protections.

Mr. OXLEY. Mr. Chairman, may I inquire as to the time left?

The CHAIRMAN. The gentleman from Ohio (Mr. OXLEY) has 13 minutes remaining. The gentlewoman from California (Ms. LEE) has 7 minutes remaining.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, Members are back in their office and they are listening to this debate, and one of the things that they may or may not have heard, but if they did, is that both gentlewomen from California may have been misled on this legislation into thinking that nothing in this law preempted California.

I, in fact, went back to the debate at the time that the gentlewoman from California (Ms. WATERS) offered a similar amendment to what is being offered on the floor today, and I want to read to her just by way of refreshing our memory, not to dispute what she says, and quote what she said.

She said, "I, in good faith, would not like to preempt the work of the State of California, the legislators who have spent so much time. Nor would I like to be on record preempting them with supporting this legislation, when I know that we are going to have a ballot measure that is going to be passed. The people of the State of California are going to pass this ballot measure that will give them further protections. I do not believe that a ballot measure should be preempted here at the national level."

She offered this amendment. It was defeated 56 to 6, and then as the legislation passed out of the full committee, the gentlewoman from California (Ms. LEE) and the gentlewoman from California (Ms. WATERS) joined the gentleman from Vermont (Mr. SANDERS) and voted against the whole thing because, in fact, it did preempt something in California. What is it that it preempts?

The legislation that California just passed did three things. Number one, it required opt-in for third party nonaffiliate sharing. Nothing in this legislation changes that. It had new Gramm-Leach-Bliley privacy notices. Nothing in this legislation affects that. There is only one thing and one thing alone that this legislation "preempts" California, and that is the required opt-out for affiliate sharing, and that is also the present law. So what was passed in California, as far as the required opt-out for affiliate sharing, the citizens of California did not get anything because the national law today preempts that. It had no effect.

If our national standards expire January 1, yes, they would, but as the gentleman from Ohio (Mr. OXLEY) said, Gramm-Leach-Bliley, we are going to address that next year and look at those affiliate sharing things. In fact, the chairman of the committee in the Senate says he is going to look at them, and I think that he probably will. We may address them in conference, but we did not open up that debate. We did not address it with our hearing.

Ms. LEE. Mr. Chairman, I yield 2 minutes to the gentleman from Monterey, California (Mr. FARR), a real advocate for consumers, a great leader.

Mr. FARR. Mr. Chairman, I thank the gentlewoman for yielding me the time.

I rise in strong support of the Lee-Sherman amendment No. 15, which protects the right of States to defend the privacy of their citizens. As written, this bill would preemptively cancel out the effects of California's SB1. I know it has been mentioned but remember, California, one, is the leading financial State in the United States and has the most number of consumers in the United States, and that bill passed after an incredibly long debate in the legislature, and it was supported by or went neutral by financial institutions who were affected by it, had overwhelming consumer support and was voted out of both Houses on a bipartisan fashion.

□ 1700

So do not take the actions of California lightly. It is a Big Business State, and it did a very remarkable thing by passing this bill. What Members should do now is preempt it. It preempts SB1 but also will nullify a number of existing identity theft laws.

The Credit Reporting Act states that it is a ceiling rather than a floor. I think if you look at what we have done in other legislation in this country where we set the floor in the areas of medical privacy, wire tapping, cable records, video rental record, telemarketing, financial records, and drivers records, Federal law allows the States to provide stronger protections. Why not here?

The Gramm-Leach-Bliley Act explicitly provides for States to enact laws for greater protection for the privacy of personal financial information. If you believe in States' rights and the ability of States to set standards to protect consumers, to protect Americans and their families, then I urge my colleagues to vote "yes" on this very important amendment.

Do not take the actions of California so lightly. It is a very important, remarkable historical act that has been created there; and we ought to allow California to proceed with it.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Chairman, I just think we really need to go back historically in this discussion and take a look at what we were dealing with. I actually hate to say it, but I remember what it was like back before we dealt with uniform standards on credit back when we first started this in 1970. Then in 1996 we went to pure uniformity.

I remember trying to get credit and being told you are going to have to wait for a while before we can do that. I was not the only consumer. Probably 100 percent of Americans or probably 98 or 99 percent were being told they had to wait in order to establish whatever the credit was. Every place you went it was handled separately or differently or whatever.

Congress did something right. Congress did something extraordinarily right when they passed the act initially and then went to the uniform standards with the usurpation of some of the State laws in 1996. I think that is one thing we simply do not want to back off of. Regardless of what is in the California statute, California is the most significant State we have in terms of people and in terms of financial interests, but the bottom line is that to impose the California standards basically on this country could be a problem.

I might also note another reason to vote against this amendment to this legislation is that it states at the end of it: "or the law of any other State that is similar to the California Financial Information Privacy Act." That is a damaging statement because I don't know how you measure "similar to."

Other States could come in and try to do something that would upset the uniformity of what we are doing at the Federal Government level.

What we have done now here in Washington is given every single consumer in this country the opportunity to have a uniform plan so that we know how to get information right away. And with the use of technology that can be done. You can buy a car instantaneously, much less establish credit of a lesser nature some place else.

I think California's attempt to impose restrictions in an area that is completely, totally governed by the FCRA's uniform national standards would be a tremendous error.

We had extensive hearings. I think we need to remember that, too, as we make our decision on how to vote on this amendment. We had over 100 witnesses in very expensive hearings. The chairman and the subcommittee chairman did a wonderful job working with the majority party and our own majority party in terms of developing this legislation.

It did pass overwhelmingly in our committee as everybody understood exactly what we are dealing with. In fact, at that committee another member from California offered an amendment to sunset FCRA's uniform national standards at the end of this

year. And during that debate, a specific appeal to give California the ability to establish its own standards either through action by the State legislature or statewide ballot initiative came up. That amendment was defeated 56 to 6.

So, clearly, the individuals in this body who have looked at this issue carefully understand that to undermine it by allowing States to start to opt out and to have different provisions with respect to the fair credit reporting that we have in the country would be an error.

I would encourage everybody in this body to look at this carefully and to vote "no" on this amendment to make sure that we protect a very good piece of legislation.

Ms. LEE. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. MARKEY), a real leader in this Congress in the fight for privacy rights.

Mr. MARKEY. Mr. Chairman, if the line of juris prudence that we are now operating under is allowed to stand, then we are in a situation in which there is no effective regulation of a bank, an insurance company, or a securities firm sharing of a consumer's personal financial information and no State regulation of such transactions.

In other words, we are left with a regulatory black hole in which neither the Federal Government nor the States are regulating what is going on within this affiliate structure where one part of a firm gets it and then shares it with all of its affiliates, stockbrokers, insurance, you name it. All of the family's secrets are then spread throughout the country and to anyone that is affiliated with them as an independent operator as well.

This is unacceptable. And it means we have no Federal standard for consumer consent regarding affiliate sharing and preemption of any State law dealing with the subject.

What the Lee amendment says is that we should close this black hole so that if the Federal Government is unwilling or unable to effectively address affiliate sharing, sharing it with all the companies which this bank or insurance company or stock brokerage has, taking all their secrets and starting to share it with all these other companies, then the States can do so.

This amendment preserves not only California's privacy statute but the laws of any other State that might want to give their people protection so that their family's secrets are not made a product sold to anyone with enough money to buy what it is that you are doing with your financial life, your stock brokerage, your insurance information.

This is an important issue that our country faces: the privacy of every American. It is why we fought the American Revolution.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume, as I feel compelled to respond to my good friend from Massachusetts in his somewhat overheated rhetoric regarding the revolution, which I know started in his district. And I am also sorry that we did not hear the famous story about his local banker, Mr. Wentworth. I am sure the other Members, who were not on the committee, have not had an opportunity to hear about it. I also am concerned that the gentleman was unable to hear 100 witnesses in eight separate hearings chaired by our good friend, the gentleman from Alabama.

Regulatory black hole? I would invite my good friend from Massachusetts to read this piece of legislation. This is the strongest piece of privacy legislation I would say ever passed, certainly in recent Congresses. That is why we had 61 members of our committee vote for the final product when it came to the final vote.

So I would say to my good friend, this really is crunch time as far as whether we are going to have a uniform standard that can protect consumers, can set out the rights that they have to protect their privacy, to protect their ability to fight off the horrible crime of identity theft, which affects 10 million Americans. That is what this bill is all about.

And we are dedicated to this national standard that has had so much success since the 1996 act. My friend from Delaware points it out so well, of the progress that we have made. We simply cannot allow ourselves to slip back and allow for States to start to move the goal post and to essentially lower those standards so that we end up with the system that we had before 1996, which would result in higher interest rates, less access to credit, and longer waits for credit. We do not want to go back to the bad old days; we want to move forward. And so I would suggest to the Members that that is what this bill is all about.

So, Mr. Chairman, I have great respect for my friend from Massachusetts, and am actually going to yield some of my time to him, since I miss him so much.

Mr. BACHUS. Mr. Chairman, will the gentleman yield for just a moment, before he yields to the gentleman from Massachusetts, because I think it probably has something to do with it.

Mr. OXLEY. I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Chairman, the original FCRA that the gentleman from Ohio pointed out was passed in 1996. Right? Not 1776. Is that right?

I will admit to the gentleman from Massachusetts we took absolutely no testimony on the American Revolution and none of our witnesses actually tied that in. But I appreciate his input.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I would be pleased to yield to my good friend, the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, I think the gentleman from Alabama missed the point in the discussion of the gentleman from Ohio where he changed the metaphor from the American Revolution to moving the goal post, which makes sense. As a graduate of Ohio State, you would try to switch the form of the debate.

But, nonetheless, we have California moving the goal post further away from the consumer, where in the minds of Californians, and most of us who have dedicated our lives to privacy, the California section moves it closer to the privacy objectives that ordinary families have for their personal financial information. And what we are doing here is essentially giving to the big financial institutions the ability to be able to circumvent this increasing interest at the State level of enhancing the rights of families to be able to protect their privacy.

I hope when we get to the conference committee that my cochairman of the privacy caucus, Senator SHELBY, who shares the passion on this issue, will be in disagreement with my colleagues as to whether or not we have reached in this bill the historic high point of where we should be in 2003 in terms of the protection of the privacy of American families.

Ms. LEE. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS), whose diligence on this bill has identified many errors we are trying to correct today.

Ms. WATERS. Mr. Chairman, I would like to thank the gentlewoman from California (Ms. LEE) for all the work she has done on this most important issue.

Mr. Chairman, if anybody had told me that I would be on the floor of Congress arguing States' rights, facing off with a conservative from Alabama, I would have told them they are crazy. But I am here today arguing States' rights on one of the most important issues confronting Americans today, and that is privacy.

Americans do not want people peeping into their bedrooms. They do not want folks eavesdropping on their calls. And they sure do not want financial institutions selling their personal and financial information. And that is what this is all about. This bill would require financial institutions to first obtain a consumer's explicit consent before selling or sharing their personal or financial information with affiliates or third-party companies for any purpose other than to complete a transaction initiated by the consumer.

What right do we have as Federal lawmakers saying to the American citizens that we do not care that they want their privacy protected; that we are the Federal Government; that we do not care what the States want because we have decided we want national standards for the convenience of the financial institutions. We do not want the financial institutions to have to be inconvenienced by having a State like California have better consumer laws than they have in these national standards.

I just do not believe the way this argument is going. I cannot believe that

I am standing here defending the privacy rights and the States' rights of Americans against the conservatives on the other side of the aisle.

□ 1715

Mr. Chairman, it is just too much for me to absorb at this moment. Let me say we have worked hard in California to have better consumer laws, and I dare say if we do not get it on this side, we are going to have to fight in the other body. But in the final analysis, we also have the ballot in California. We will go to the ballot to deal with this issue.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, let me reiterate again, because I think it is important that the gentlewoman from California (Ms. WATERS) know this, nothing in this legislation will, in any way, stop SB1, the California bill, from requiring opt-in for third-party nonaffiliate sharing, nothing. The gentlewoman mentioned third parties, this was all about allowing institutions to share their privacy or their records with third parties. That is not what this bill is about. This bill does not authorize that. This bill does not permit that. There is nothing that does that. There is nothing in this bill that stops the second component of that new California law, and that is the privacy notices. Nothing in this legislation stops that.

What this legislation does is it continues the present law. Gramm-Leach-Bliley addressed the privacy issues, not fair credit reporting, and we are going to address those issues in hearings next year. As the gentleman from Massachusetts said, the chairman of the Senate has said he may address affiliate sharing in the Senate. That is fine. We may address it in conference. We did not address it in this bill.

We did not do anything not allowed by present law. Currently, the present law does not preempt that.

Finally, we established a high bar wherever we established a bar. The gentleman from California (Mr. SHERMAN) talked about one of the most important things that they did in California, and that is the telephone numbers, giving the telephone numbers. We put that in this bill over strong industry opposition. It is in there. It is an important new right that everyone in 50 States will have, and it is part of a national standard.

Ms. LEE. Mr. Chairman, I yield myself the balance of my time.

When the Committee rises and we are in the full House, I intend to submit for the RECORD a letter signed by 55 Democrats and Republicans from California discussing the fact that this law, if passed, would preempt California law, SB1.

Finally, let me just say I want to support this bill, but why would any Representative from California support a bill that wipes out the protections for California consumers that they have worked so hard for, for so many years?

Mr. Chairman, I will include for the RECORD the list of financial institutions in California that negotiated with our consumers and remained neutral as this bill was signed into law by Governor Gray Davis. I think it is very important that we protect California law, and if other States want to support stronger measures, allow States to do that. As the gentlewoman from California (Ms. WATERS) said, this is a States' rights issue. I think this amendment would allow States to enact consumer protections that they deem necessary for their consumers.

American Electronics Association
California Bankers Association
California Chamber of Commerce
California Financial Services Association
California Mortgage Bankers Association
Capital One
Citigroup
Countrywide Financial
Farmers Insurance
Fidelity Investments
Financial Services Privacy Coalition
Household International, Inc.
JP Morgan Chase
MBNA
Merrill Lynch
Personal Insurance Federation of California
Providian Financial
Securities Industry Association
State Farm Insurance
Toyota Motor Sales USA
Washington Mutual
Wells Fargo

Ms. ESHOO. Mr. Chairman, I rise today to urge my colleagues to vote in favor of the Sherman-Lee Amendment to give consumers control over their financial information.

Seven million Americans were victims last year of ID theft. Overall, more than 33 million Americans have had their identities used by someone else sometime since 1990.

The Department of Justice says ID theft is the nation's fastest growing financial crime and the damages to consumers are becoming even more significant.

Despite the fact that millions of Americans are victimized by identity theft each year, Congress is getting ready to pass a bill that blocks states from enacting tougher reforms.

The strongest financial privacy law in the nation passed in California last month with overwhelming bipartisan support. This new law, sponsored by State Senator Jackie Speier, allows consumers to stop banks and other financial institutions from sharing confidential account and transaction histories with most of their affiliated companies.

As we consider this matter, I urge my colleagues to vote to bring these protections to all Americans and make sure that any changes to the Fair Credit Reporting Act truly benefit consumers.

Vote in favor of the Sherman-Lee Amendment which protects California's financial privacy law and allow other states to enact similar laws.

Ms. LEE. Mr. Chairman, I ask unanimous consent to withdraw this amendment.

The CHAIRMAN. Is there objection to the request of the gentlewoman from California?

There was no objection.

AMENDMENT NO. 12 OFFERED BY MR. NEY

Mr. NEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. NEY:

Page 56, after line 16, insert the following new subsection:

(e) TECHNICAL AND CONFORMING AMENDMENT.- Section 624(b) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(3)) (as amended by section 204(b) of this Act) is amended-

(1) by striking "or" at the end of paragraph (2); and

(2) by striking paragraph (3) and inserting the following new paragraphs:

"(3) with respect to the form and content of any disclosure required to be made under subsection (c), (d), (e), or (f) of section 609, except that this paragraph shall not apply-

"(A) with respect to sections 1785.10, 1785.16 and 1785.20.2 of the California Civil Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date) and

"(B) with respect to section 12-14.3-104.3 of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); and

"(4) with respect to the frequency of any disclosure under section 612(e), except that this paragraph shall not apply-

"(A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(B) with respect to section 10-1-393(29)(C) of the Georgia Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(C) with respect to section 1316.2-B of title 10 of the Maine Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(D) with respect to sections 14-1209(a)(1) and 14-1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(F) with respect to section 56:11-37.10(a)(1) of the New Jersey Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); and

"(G) with respect to section 2480c(a)(1) of the Vermont Statutes Annotated (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003).".

The CHAIRMAN. Pursuant to the order of the Committee of today, the gentleman from Ohio (Mr. NEY) and the gentleman from Massachusetts (Mr. FRANK) each will control 10 minutes.

The Chair recognizes the gentleman from Ohio (Mr. NEY).

Mr. NEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I commend the leadership shown by the gentleman from Ohio (Mr. OXLEY), the ranking member, the gentleman from Massachusetts (Mr. FRANK), and the subcommittee chairman, the gentleman from Alabama (Mr. BACHUS), and their staff who put this important bill together.

Reauthorizing the expiring provisions in the Fair Credit Reporting Act had the potential to be extremely divisive, partisan and contentious. However, their diligent efforts have created a solid piece of legislation that was reported from the Committee on Financial Services by an overwhelming bipartisan vote. I believe this legislation is a testament to their hard work, and I give them credit for it.

Mr. Chairman, the Ney-Royce-Scott amendment is straightforward. It will amend sections 501 and 502 of H.R. 2622 so they will be able to set a national standard for consumer access to credit scores and credit reports. As Members know, section 501 requires that all consumers have the right to request a free copy of their credit report every year. This is a common sense way to help combat identity theft and fraud while helping Americans maintain a good credit rating.

Section 502 requires that consumers be able to request their credit scores for a reasonable fee, and that when they apply for a mortgage, the credit score their mortgage was based on be provided for a reasonable fee also. I think this is not only good for home buyers, but also a common sense way for consumers to be able to protect themselves from fraud and protect their credit history.

These are just two of the many new consumer protections in the FACT Act. However, neither sections 501 nor 502 is a national standard. As it is currently drafted, H.R. 2622 is silent on whether States can add requirements on top of those already in sections 501 and 502 of the bill.

This could mean that consumers could be faced with new, confusing duplicative and potentially burdensome disclosure requirements. I want to make it clear I do not want to prevent States from being able to protect their citizens. It has been proven time and again that the States often provide the best laboratory for testing new ways to protect consumers from fraud. The ability of States to be more nimble and to be more responsive than the Federal Government has allowed them to experiment with new ways to offer important consumer protections. In fact, both sections 501 and 502 can find their roots in State law. For example, section 502 is nearly word-for-word identical to law in California. Likewise, seven States currently have different requirements for making free credit reports available to consumers.

In recognition of the leadership States have shown, this amendment allows those States that already have laws in place and which lenders and credit bureaus already comply with to remain on the books, much like in 1996 when we put in place national standards, but grandfathered in laws that were already on the books.

However, much like in 1996, now that we are taking the lessons of those laws and forming them into a national standard, we must take the next step and make this standard truly national by preventing States from enacting new and duplicative laws that could harm consumers in the future. If we are not careful, consumers could end up getting multiple disclosures with different numbers, explanations, and forms that are highly confusing and even contradictory. Even worse, if sections 501 and 502 are not made a national standard, a patchwork of State laws could end up raising costs for consumers, something none of us want to see happen. That does not benefit consumers, which is why we need a single national standard that provides consumers with one clear and comprehensive disclosure. I believe sections 501 and 502 achieve that goal.

I do not doubt that the new requirements in sections 501 and 502 will be costly to industry. However, I think that most of us would agree that those costs are worthwhile because of the protections they afford consumers. That is one of the many trade-offs we have been forced to consider when drafting this bill.

Mr. Chairman, as I mentioned a moment ago, if we allow States to add more and more regulations on top of those already in H.R. 2622, then we create the risk of adding so many burdens that ultimately the consumer will see increased costs. That is why I urge my colleagues to support uniform national standards for consumers by supporting this amendment.

We have an opportunity to make a strong statement about the need to pass strong consumer protections while also making the statement that those consumer protections must be uniform. I urge Members to vote on the bipartisan Ney-Royce-Scott amendment, and I thank the cosponsors of the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the crux of this is that by this amendment, the gentleman from Ohio (Mr. NEY) seeks to extend preemption beyond where it is under current law. I believe what we attempted to do, with a great deal of success, we made a mistake with regard to California, was to go forward with existing preemptions, to bring them forward, while we added some consumer protections. It is not contested. This amendment would preempt State activity that is not now preempted.

If we simply extended the Fair Credit Reporting Act without this amendment, there are things that the States could do that this amendment will prevent them from doing. Yes, the bill does make some improvements with regard to credit scores and with regard to credit reports. But as an example, and I recognize that the gentleman's amendment does grandfather current State law that goes beyond what the Federal law does, but I cite these two States not because they are going to be preempted, but because they are an example of the kind of actions that States have taken in the past that would be preempted in the future.

Two of our more radical States have taken actions in the past that would be preempted in the future, Colorado and Georgia. What this amendment says is no other State should be as radical and as anti free market and as populist as those two places, Colorado and Georgia. Colorado and Georgia have both seen fit in their legislative processes to extend to their citizens rights with regard to credit scores and credit reports that no other State will be allowed to do if this amendment is adopted.

Now credit scores, in particular, are very important. Members should check with their own constituents and their own State governments. Credit scoring is spreading. People are now finding that credit scoring is being used not simply to give them a loan, but to give them insurance. It has become a very controversial subject. Indeed, one of the things that is in this bill, and I appreciate the chairman having agreed with us that it should be there, is a study that we have commissioned about the legitimacy of using credit scoring as a standard in areas outside the granting of credit.

Should consumers be denied insurance because there was a past credit problem if those consumers are being given insurance that does not involve credit, insurance which needs to be paid for currently?

The gentleman's amendment would prevent States in the future from going beyond where we are with regard to credit scoring. I agree there is need for uniformity in some things, but insurance has always been a State matter. I do not believe we need a national policy with regard to the regulation of insurance. If we do, then we have to change a lot more than simply preempt this because we have left insurance there.

I want to emphasize at this point, I understand this does not preempt what is currently around in some States, but it says in an area that is of growing concern to the States, credit scoring and that has particular concern for members of ethnic minority communities, you may not do anything in credit scoring that we have not done.

We do good things in this bill, but I do not think that it is perfect. I do not think it explores and occupies the entire universe of consumer protections. I believe there are things that the States could do that would be relative to that State that would not impinge on others.

I do not think the Colorado and Georgia rules interfere elsewhere. For instance, in Colorado it says as I said it, that if you are going to be treated negatively because there have been too many inquiries on your credit report, the credit agency has to tell you that so you can take some action to protect yourself. I think that is a reasonable

thing for a State to be able to do. I am glad Colorado has done it. I do not think Colorado ought to be, as it would be under this amendment, the last State to be able to make that protection. I hope that we will stick with what I thought was the outlines of what we were agreeing to here which was to preserve the existing preemptions, but not to extend them.

Mr. Chairman, I reserve the balance of my time.

Mr. NEY. Mr. Chairman, I have no additional requests for time, and I yield back the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I want to just stress again, and I was reminded by one of our able staff members, in the case of credit scoring, we have in our legislation emulated what California did to some extent.

□ 1730

I will be prepared to agree to a unanimous consent request that subsequently no one will be allowed to mention California in this debate. I would be ready to agree to that. But I will take my one last reference to it and say we have benefited from what the States do. Even if you believe in preemption, this is the wrong time in the evolution of national policy to lock in a preemption with regard to credit scoring. I warn Members, credit scoring is an explosive issue in some areas. It is one which is being expanded beyond the granting of credit. Do not vote for an amendment that will limit your State's ability to respond to what consumers will feel is very important in the area of credit scoring, and that is what this amendment would do. Even if you believe in an ultimate preemption, it is at a very premature stage. Credit scoring is a relatively new issue in terms of its being extended to other areas. I do not see any reason why we should go beyond the existing preemptions. Everyone has said they work very well. All the studies have been of the existing preemptions.

I want to be very clear once again, this is a new preemption. This would have the States lose the right that they now have, and have under the Fair Credit Reporting Act, to protect their citizens, particularly with regard to the area of credit scoring. I think it would be very unwise. I urge the Members to stay with the committee position here and defeat this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. NEY).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. NEY. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Ohio (Mr. NEY) will be postponed.

AMENDMENT NO. 11 OFFERED BY MR. ROYCE

Mr. ROYCE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 offered by Mr. ROYCE:

Page 34, strike line 9 and all that follows through line 18, and insert the following new subparagraph:

"(A) IN GENERAL.- A consumer may dispute directly with a person the accuracy of information that is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p), if-

"(i) the information was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B);

"(ii) the consumer has disputed the accuracy of such information with the consumer reporting agency that prepared the consumer report pursuant to section 611;

"(iii) the consumer has received the results of the investigation from the consumer reporting agency and has requested that the consumer reporting agency reinvestigate the results in accordance with section 611; and

"(iv) the results of the consumer reporting agency's reinvestigation requested pursuant to (iii), as reported to the consumer, do not resolve the dispute."

Page 35, beginning on line 25, strike "thereafter report correct information to" and insert "notify".

The CHAIRMAN. Pursuant to the order of the Committee of today, the gentleman from California (Mr. ROYCE) and the gentleman from Massachusetts (Mr. FRANK) each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I yield myself such time as I may consume. I am offering this amendment today on behalf of myself and on behalf of the gentleman from Pennsylvania (Mr. TOOMEY) and the gentleman from Ohio (Mr. TIBERI). We are doing this to correct some of the serious problems with the furnisher liability provision that was offered by the committee's ranking member during the full committee markup. That particular provision penalizes businesses who voluntarily provide the information that makes our credit system work. The provision also turns the existing system for correcting errors on its head with little evidence that it will do anything to increase the accuracy of that system. As the director of the FTC's Bureau of Consumer Protection recently said, and I will quote these remarks, "We don't want to discourage voluntary reporting. Imposing too many obligations on the furnishers could have that effect."

As our chairman will recall, I believe, I along with several other members of the committee raised these concerns about what we perceived as these serious flaws. We were told by the other side of the aisle that each of these problems we raised would be addressed before consideration on the House floor. Unfortunately, we have not yet found common ground. I am hopeful that we yet will; but the amendment that I have filed here seeks to resolve the following key problems, and I want to state these problems again so that we can focus on them.

First, the furnisher liability provision would allow the current system to be circumvented, thereby flooding small- and medium-sized credit grantors with unnecessary investigations; second, that provision in the bill opens the door for credit repair clinics to subvert the existing system by overwhelming furnishers who are ill prepared to address these tactics. By overwhelming, we mean sending in tens of thousands at one time. Last, that provision effectively doubles the number of reinvestigations businesses would have to handle by encouraging consumers to file in two different places at the same time, because they would file both with the furnisher and they would file with the credit bureau. In short, the provision would drive many furnishers out of the voluntary system. That would reduce the integrity and accuracy of our system.

The current dispute resolution system resolves the overwhelming majority of disputes. It is only the very small number of unusual problems that need specialized attention. Our amendment that we are offering here preserves the existing system that works for so many consumers today, but provides a new right for those infrequent instances where the current system may not be sufficient. In short, our amendment requires individuals to use the current investigation and reinvestigation process through the bureaus. If the dispute is not resolved, it would then allow individuals to take their credit bureau dispute directly to the furnisher, and it compels the furnisher to address it within 30 days under a threat of liability. I think this approach addresses each of the concerns raised in the markup while providing a new dispute resolution process for those individuals who are not served through the current system.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

This is a difficult issue. Let me say first, I very much agree with the gentleman, and this is something that I want us to return to; and I hope the chairman will do this. The credit repair agencies, I agree, are a problem. Whatever system we have, I think there is an abusive practice there. I think the gentleman is right to point to it. I myself check my voice mail when I am down here. I called my Massachusetts voice mail where my phone is listed, and I have a man telling me that he has got my credit records in front of him and he can help me with my debts. Since I pay up pretty regularly, I thought maybe this was identity theft. I called him up, and it was one of these phoney credit repair agencies. I called just to do that.

Let me say to the gentleman, I would be glad to work with him to do legislation, because whatever we do, whatever remedy we give, we are going to have the problem of credit repair. I think he has pointed to a very good problem. I would just say to the gentleman that I look forward to working with him. I cannot support this particular amendment, but I would be glad to work with our chairman on dealing with the credit repair issue.

Mr. ROYCE. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. ROYCE. I thank the gentleman for yielding. I look forward to trying to work out a satisfactory compromise on this.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time.

Mr. ROYCE. Mr. Chairman, I yield 3 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, the problem that the gentleman from California has identified is a real problem, and it does need a solution. I want to reiterate what the gentleman from Massachusetts said, because I think there is genuine support for finding a solution to this. The last thing we want is for small- and middle-sized businesses to be burdened down and not to report information to the national credit reporting system because this could actually encourage a situation in which people, knowing that they do not participate because of a liability, target them, do business with them and knowing that they are not part of the national credit reporting system. The more information that goes into that system, the more valuable it is. It is often these small- and middle-sized businesses that in fact do not have the sophistication to collect bad debts or to write off bad debts; and when they take a loss, it is more severe because it reflects a greater percentage. So the very businesses that need to be not only furnishing information but drawing information, we need to do everything we can to encourage those retailers and others to participate in the system.

I fear that unless somewhere in conference or in the Senate, and I would say to the gentleman from California, we just simply have not come up with the right language yet, but I know the gentleman from Ohio is very committed to working on this issue. I want to commend the gentleman from California for working on this issue and identifying it and bringing it to our attention, along with the National Retail Association that has made us very aware that this is a weakness of the bill as it now exists.

Mr. ROYCE. Mr. Chairman, I yield 2½ minutes to the gentleman from Virginia (Mr. CANTOR).

Mr. CANTOR. Mr. Chairman, I thank the gentleman from California for yielding me this time. First of all I would like to congratulate the gentleman from Ohio (Mr. OXLEY), the gentleman from Alabama (Mr. BACHUS), and the gentleman from Massachusetts (Mr. FRANK) for producing a bill that addresses an extremely important issue. I know that the gentleman from Alabama has been quoted as saying that this is probably one of the most important economic initiatives that we have got to accomplish this session because it means so much to so many people.

I was reading some figures that say that if we are not going to go forward, if we did not or had not gone forward with reauthorizing the Fair Credit Reporting Act, it would result in a $20 billion loss in the consumer spending area. Actually, as some of the dialogue here has indicated, it would fall really on those that need help, who need access to credit most. I am glad that we are here, and I congratulate the chairman on his work.

I also am here to support the gentleman from California in trying to search for a solution to a provision that is in the bill that would, as has been said earlier, provide a disincentive for retailers to be a part of this nationwide system that we have that affords individuals access to credit. For the reasons stated before, the provision as it stands now, which would force an individual seeking to correct information on a credit report to go to the furnisher rather than the parties currently doing it now in the credit bureaus, would provide inefficiencies on the part of the furnishers; would, as I said earlier, provide a disincentive for those furnishers to even offer the information to the credit bureau; and ultimately, I think, would drive up costs for everybody. As we know, the individuals who end up suffering most are those who we are trying to help by affording the least expensive access to credit.

Again, I congratulate the gentleman from California on his efforts and want to offer help in any way that I can to hopefully resolve this issue.

Mr. ROYCE. Mr. Chairman, I yield myself such time as I may consume.

I very much appreciate the support from the gentleman from Virginia. I appreciate the offer from the ranking member to work toward a resolution of this. In the spirit of cooperation, I am going to withdraw this amendment. However, Mr. Chairman, I am going to ask for your commitment that you will continue to work with me to ensure that these problems are resolved before a final conference report comes back to the House.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. ROYCE. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Chairman, let me indicate my support for the gentleman's purposes here. I think he makes an excellent point. We had some good debate in the committee as well as here on the floor. As we work toward, hopefully, the conference committee, I pledge my support for trying to find an answer to this difficult problem.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. ROYCE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I would say, particularly with regard to protecting legitimate merchants against abusive credit repair companies, I would be glad to work with the gentleman.

Mr. ROYCE. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1745

AMENDMENT NO. 4 OFFERED BY MR. SANDERS

Mr. SANDERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. SANDERS:

Page 69, after line 5, insert the following new section (and conform the table of contents accordingly):

SEC. 507. LIMITATION ON USE OF CONSUMER REPORTS.

(a) IN GENERAL.- Section 604(d) of the Fair Credit Reporting Act (15 U.S.C. 1681b(d)) is amended to read as follows:

"(d) LIMITATION ON USE OF CONSUMER REPORT.- No credit card issuer may use any negative information contained in a consumer report to increase any annual percentage rate applicable to a credit card account, or to remove or increase any introductory annual percentage rate of interest applicable to such account, for reasons other than actions or omissions of the card holder that are directly related to such account or a late payment of 60 days or more on any another credit card or debt.".

(b) TECHNICAL AND CONFORMING AMENDMENT.- Section 604(a)(3)(F)(ii) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)(3)(F)(ii)) is amended by inserting "subject to subsection (d)," before "to review".

The CHAIRMAN. Pursuant to the order of the committee of today, the gentleman from Vermont (Mr. SANDERS) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is cosponsored by the gentlewoman from California (Ms. WATERS) and the gentlewoman from California (Ms. LEE). It is also strongly supported by the Consumer Federation of America, the Consumers Union, the Electronic Privacy Information Center, the National Association of Consumer Advocates, the National Consumer Law Center, the New York Public Interest Research Group, the Privacy Rights Clearinghouse, the Privacy Times, and the U.S. Public Interest Research Group. In other words, almost every major consumer organization in America is supporting this amendment.

Mr. Chairman, this amendment deals with an issue which is of growing concern to millions of credit card holders, and that is that, increasingly, credit card companies are engaging in an outrageous bait and switch practice which is costing consumers hundreds of millions of dollars.

This, Mr. Chairman, is how the scam works: In our country today, credit card companies are sending out over 5 billion solicitations a year. Yes, that is right, 5 billion pieces of mail are being sent to Americans every year in order to purchase this or that credit card. Sometimes I think about half of those solicitations come to my kids. Nonetheless, we are all receiving them. As we all know, these mailings very often have bold headlines stating zero percent interests rates for 6 months, or 2.5 percent interest rates for a year, or whatever. We all receive them.

Now, here, Mr. Chairman, is the scam and the bait and the switch. An individual fills out the form and purchases the credit card, and month after month after month, he or she pays the amount owed to the credit card company faithfully and on time. In other words, the individual consumer has fulfilled his or her end of the contract. But in the midst of this, something strange happens. People are paying up on time, but suddenly the interest rate skyrockets, despite the individual making their payment on time.

Now, how can this happen? How can interest rates double or triple when the individual has fulfilled the obligations of the credit card company and made payments on time and never has gone over the credit card limit?

Well, it happens because the credit card issuers, companies like Chase Manhattan, Citigroup or Bank One, have decided all on their own that the consumer has become a greater financial risk, even when that consumer has in every instance paid their credit card bill on time.

What happens is the company obtains information from their customer's credit report which indicates a late payment on another financial transaction, another transaction. Perhaps the consumer might have been late in paying a student loan or a mortgage payment or a medical bill, and because the individual was late paying off another financial transaction, having nothing to do with the credit card they have from this company, the credit card company raises interest rates on their transaction with that individual.

Even more outrageous, credit card companies are raising interest rates when the consumer has never been late on any payment, and here is the crime there: There is an illness in the family. Somebody borrows money to pay off a medical bill; and, because they have committed that terrible crime of borrowing money for a medical reason, interest rates will go on the credit card, although they have never been late on any payment.

That is absurd, that is unfair, and that is a rip-off of the American people. At a time when the Federal Reserve has lowered short-term interest rates 13 times, why do we have consumers in this country paying 16 percent, 26 percent, even 29 percent APR on their credit cards?

Furthermore, Mr. Chairman, the Committee on Financial Services and my Subcommittee of Financial Institutions, of which I am the ranking member on, have heard from a number of witnesses about the inaccuracies of credit reports. According to freecreditinsight.com, over 70 percent of credit reports contain errors, so the credit reporting agency makes a mistake and your interest rates go zooming up.

By charging higher interest rates, the profits of credit card companies skyrocket and consumers grow deeper and deeper into debt. Is it any wonder why bankruptcies in the U.S. are now at an all time high, increasing by 23 percent since 2000?

Mr. Chairman, this is the issue. This is a very simple issue. It is an issue of fairness. If I take out a credit card and the credit card company says to me you have to pay up at a certain time and your interest rates are such-and-such, and I do that every single month, that is what the deal should be. And, if I am late, if I go above the amount of credit that I agreed to, well, I agree, they have a right to penalize me. They do not have a right to double or triple my interest rates when I pay my bills on time and because I took out a loan because my wife might have been ill.

Mr. Chairman, Congress has a responsibility to stop the credit card industry from ripping off consumers by this deceptive and unfair practice. I urge my colleagues to vote for this amendment to restrict the credit card interest rate bait and switch.

Specifically, this amendment would prohibit credit card issuers from using negative information contained in their customers' credit reports, such as a late payment on a student loan, a lower credit score, a new mortgage or new loan to pay for medical emergency or an error in a credit report, as a reason to double or triple credit card interests rates.

Importantly, as part of a compromise worked out at the committee level, this amendment has been crafted so that if a consumer is at least 60 days delinquent on any other credit card or debt, the credit card company could still use that information to increase the interest rates of their customers.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Who seeks to control time in opposition?

Mr. OXLEY. Mr. Chairman, I claim the time in opposition to the Sanders amendment.

The CHAIRMAN. The gentleman from Ohio is recognized for 15 minutes.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment, first of all, was defeated on a bipartisan vote of 44 to 22 in the Committee on Financial Services.

Chairman Greenspan has raised serious concerns about this amendment. Let me quote, if I may, from a letter from Chairman Greenspan to the gentleman from Delaware (Mr. CASTLE) who had requested the response from the Fed, and specifically Chairman Greenspan, regarding the amendment offered by the gentleman from Vermont.

He says in part, "The information gathered by credit reporting companies on the borrowing and payment experiences of consumers is a cornerstone of the consumer credit system in this country. Experience indicates that access to the information assembled by these companies and credit evaluation systems based on that information have improved the overall quality and reduced the cost of credit decisions while expanding the availability of credit."

He goes on to end in this way: "In sum, in deciding whether to restrict the use of certain information in credit evaluations, the Congress should be aware that such restrictions are likely to diminish the effectiveness of statistical systems that have played a significant role in reducing the overall cost of credit and widening its availability."

So what we have here is the chairman of the Fed saying that the Sanders amendment is going to have a chilling effect on the availability of credit, and could drive up the cost of credit at the same time, basically saying to those of us who are good credit risks, we will be asked to pay for those who are less responsible in paying back those credit card debts.

Now, the committee did adopt an amendment offered by the gentlewoman from New York (Mrs. MALONEY) that specifically addresses the issue raised by the gentleman from Vermont. It requires any preapproved credit card solicitation to disclose the credit card issuer's ability to adjust the interest rate for reasons other than delinquencies on the credit card account. The notice will educate the consumer and allow him or her to act accordingly.

So in place of this rather draconian approach by the gentleman from Vermont, we have the gentlewoman from New York's amendment, which is part of this bill that we are debating now, adopted in the committee unanimously, that would provide more information, more notice to the consumer, to make certain that they are aware that, should a delinquency occur, it is a possibility that the interest rate could go up.

Essentially, this is an overkill amendment, and the committee found by a two-to-one margin that indeed that was the case. Nothing has changed from the time that the committee adopted the bill to today on the floor.

So the amendment would clearly increase the cost, and probably decrease

the availability of credit for credit card borrowers. Lenders must have the ability to adjust the interest rate on a loan in order to adequately price for that borrower's risk.

It seems obvious that those who are good credit risks are able to obtain credit at lower costs. That is how our system works. If someone who is a good credit risk suddenly imposes additional risk to the lender, the lender should be able to adjust for this increased risk. The amendment would prohibit a credit card issuer from doing this in many circumstances, and what the likely impact of this Sanders amendment would be lenders would be forced to offer credit card accounts at higher interest rates in order to buffer against any potential future risk that any borrower may present.

Frankly, for those of us, the vast majority of us, those who pay their credit card bills monthly and are responsible, why should we be faced with a potential for higher interest rates and less available on that score? Adjusting the price of credit to match the level of risk imposed by the customer is not a bait-and-switch tactic, it is simply good, common sense, and such adjustments are already adequately addressed by existing law, particularly in regard to the Maloney amendment.

To that extent, I oppose the Sanders amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my friend from Ohio just said why should people who pay their bill on time every month be penalized? I agree with him. But as the gentleman knows, right now people pay their bills on time every single month and, despite that, they can see a doubling or tripling of their interest rates, and that is precisely what we are trying to prevent.

Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, let me just thank the gentleman from Vermont for his leadership on the committee and for bringing this amendment today to the floor. But I must say that this is a very moderate amendment, it is a very conservative amendment, and I was, quite frankly, surprised he would go for it. But in the spirit of compromise, he did. So, very seldom do I believe that something is better than nothing, but I believe that this is such a fundamental injustice as it relates to our consumers that I had to support this very modest measure.

Quite frankly, a creditor should not be allowed to increase interest rates if consumers are paying the debt according to the agreed upon terms. They should not be allowed to raise interest rates based on payment histories of another debt. That is just fundamentally wrong. When individuals agree to a contract, when a consumer believes that they are doing the right thing and paying their monthly payments, how in the world can they get set up to fail? That is what this does.

□ 1800

An interest rate that jumps from 7 percent to 29 percent, bankruptcy, certainly, will follow if, in fact, this does not fit within the consumer's financial scheme. And generally, the consumer has a financial plan that they have to stick to in terms of payment schedules of debts. And so a huge payment like this is wrong. It would make more sense if the gentleman from Vermont (Mr. SANDERS) had offered an amendment to say what I just said earlier, that a creditor should never be allowed to increase an interest rate on a debt if, in fact, the consumer is paying that debt based upon the agreed-upon agreement. But I understand how this place works, and I really thought that he had enough support on the other side to at least get this very basic kind of amendment passed, I would say to the gentleman. So I want him to know that I support it. I thank him for bringing it to the floor. But just know I think that sooner or later, we have to correct this injustice.

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. CANTOR).

Mr. CANTOR. Mr. Chairman, I thank the chairman for yielding me this time.

I rise in opposition to the Sanders amendment. I am listening to the gentlewoman from California's remarks that we should not allow a credit card company or a bank to alter one's interest rate on an extension of credit based on that consumer's performance in the marketplace, but if we look back to the beginning of the transaction to see how the credit was extended to begin with, it was based on the overall credit picture. And we have a nationwide credit access, information access system that affords lenders the ability to know more about their risk. And by tying the hands and essentially asking the credit card issuer and the lender to ignore information that will impact their risk will end up ultimately denying more credit to more people.

Mr. Chairman, we ought to let the marketplace work. We ought not go in and try and micromanage someone's business. We have the laws in place which require disclosure. There is the Maloney amendment that was attached in committee which will ensure adequate notice if there is, for some reason, the increase in the rate. Again, the end of the day is we want to make sure as many people as possible have access to credit.

What this amendment will do, as the chairman has said, will raise rates for everyone and will deny those who really need the credit access to those funds.

Mr. SANDERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I rise in support of this amendment. Mr. Chairman, I was hopeful that my friends on the opposite side of the aisle would have the good sense not to oppose something like this. This is so ridiculous. This is so ridiculous that they could absolutely defend a credit card company increasing your interest rates, even though you are paying your bills on time every month. You are paying your bills on time, you have not missed a payment, but because you did not pay Nordstrom's or Gap, and you may have a dispute with them, they are going to raise your interest rates. Then, my friends on the opposite side of the aisle will say, they have to do that; and if we do not allow them to do that, that will have a chilling effect on credit.

Well, I think what one of my friends on this side of the aisle just said to me makes a lot of sense. She said, you know, this is nothing but a racket. You are defending a racket. You are defending a racket that is exploiting the people for no good reason. They simply want to make more money, and they can come up with any excuse, any way possible to get more money, to gouge your constituents; and you would stand here and argue that unless we allow them to gouge your constituents, you will have a chilling effect on them being able to get some credit. Give me a break. This is the greatest ripoff I have ever seen. And to add to it that if you are paying your bills on time, you are not missing a payment, and you go out and borrow some money because you may have a situation where you need more money, they look at that and say, oh, they went out and they borrowed some more money; I can use this, and I can describe it as a credit risk. Up with the interest rates.

Oh, you are better legislators than that. You do not want to do that to your consumers. You do not want to undermine them that way. You do not want to have the dollars that they are working hard to earn pulled out of their pockets in this racket.

Support the amendment. That is the decent thing to do.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Chairman, I thank the chairman for yielding me this time.

We had this discussion on this amendment before the Committee on Financial Services, and it did not make a lot of sense then; and, frankly, it does not make a lot of sense now, that we would even consider this amendment.

Essentially, those who are issuing credit, particularly credit cards, that is their business, that is their product, that is what they do. And what they have to look to is the creditworthiness of any of us. We probably all in this room and most people in this country today are carrying some sort of credit card, and probably multiple credit cards in the cases of most individuals. And that is based on one's ability to be

able to pay their debts and be able to manage their accounts. Obviously, the one account is not necessarily the whole answer. The whole answer is exactly where you are financially. They make a decision with respect to where you are in a circumstance, and they issue the credit based on that. With the Maloney amendment, we have a circumstance in which people will be informed that if, indeed, their creditworthiness is challenged, they may have to pay higher interest rates.

The chairman cited a letter which I received on July 22, 2003, from Chairman Greenspan with respect to this issue, and I would just like to read a little further from that beyond what he had read. He said, "Consumers' performance on credit accounts as well as the number and recency of certain types of inquiries to credit reporting companies are credit criteria that are statistically associated with creditworthiness in evaluative systems that are used for credit granting and pricing. Records of consumers' usage of, and payment performance on, credit accounts with other creditors are fundamental building blocks for evaluations of creditworthiness. For example, where a creditor commits to allow a consumer to make purchases or obtain cash advances from time to time on a revolving line of credit, the consumer's performance on other credit accounts can well presage the credit risk outlook for the creditor's own account," and it goes on from there.

It is relatively simple. You are in a situation in which an individual has taken credit based on the circumstances of their own creditworthiness and then has gone out and established their creditworthiness as not what it should be. There are problems or circumstances. Frankly, the credit card companies and others dealing with this do not want to have to do this if they can avoid it because it is easier for them to deal with it on the levels on which it is issued; but there are circumstances in which this happens, or perhaps this discourages it from happening, that is your interest rates might be increased.

So I think for all of these reasons, while this amendment sounds to be well-intended, ultimately would be extremely counterproductive in that I think a lot of the credit which is issued now, because people realize that this may be an outlet in order to make sure that people do not extend their credit otherwise, might in the future not be able to be granted, simply because the credit issuers are going to say this person has sort of a spotty history and yes, we would have done it if we had known we could have increased the interest rate if necessary, but in this circumstance we are not going to issue it. I think you are going to find a lot of people who marginally might have been able to receive credit before are not going to be able to receive it if this amendment were to be adopted. So I encourage the defeat of the amendment.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, DC, July 22, 2003.

Hon. MICHAEL N. CASTLE,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN: This letter responds to your request of July 18, 2003, seeking my views as to whether proposed changes to the Fair Credit Reporting Act might affect the pricing of credit based upon risk or might potentially bear upon the safety and soundness of creditors. The proposed amendments referred to in your letter would limit use in credit evaluation systems of certain types of information, such as information regarding the number of inquiries about the consumer made to a credit reporting company, and would also restrict consideration of other types of information, such as information about the consumer's personal credit experiences with other creditors in credit decisions that involve the interest rate on an account.

The information gathered by credit reporting companies on the borrowing and payment experiences of consumers is a cornerstone of the consumer credit system in this country. Experience indicates that access to the information assembled by these companies and credit evaluation systems based on that information have improved the overall quality and reduced the cost of credit decisions while expanding the availability of credit.

Credit evaluation systems rely on information to measure the credit risk posed by current and prospective borrowers. In the process of credit evaluation, creditors seek to use information that helps them better distinguish between good and bad credit risks. The information items that receive positive and negative weights in credit evaluation systems are those that have demonstrated statistical usefulness in this process.

Consumers' performance on credit accounts as well as the number and recency of certain types of inquiries to credit reporting companies are credit criteria that are statistically associated with creditworthiness in evaluative systems that are used for credit granting and pricing. Records of consumers' usage of, and payment performance on, credit accounts with other creditors are fundamental building blocks for evaluations of creditworthiness. For example, where a creditor commits to allow a consumer to make purchases or obtain cash advances from time to time on a revolving line of credit, the consumer's performance on other credit accounts can well presage the credit risk outlook for the creditor's own account. Similarly, an upsurge in recent inquiries could indicate that a borrow in financial distress is seeking to gain access to more credit. Thus, restrictions on the use of information about certain inquiries or restrictions on considering the experience of consumers in using their credit accounts will likely increase overall risk in the credit system, potentially leading to higher levels of default and higher prices for consumers. Even with higher prices for credit, elevated levels of default may raise risk levels for credit-granting institutions.

In sum, in deciding whether to restrict the use of certain information in credit evaluations, the Congress should be aware that such restrictions are likely to diminish the effectiveness of statistical systems that have played a significant role in reducing the overall costs of credit and widening its availability.

I hope these comments are useful.

Sincerely,

ALAN GREENSPAN.

Mr. SANDERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY), the famous author of the Maloney amendment.

Mrs. MALONEY. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank the gentleman from Alabama (Mr. BACHUS) and the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK) for their extraordinary leadership on this important bill. And I thank them for supporting my disclosure amendment which will require conspicuous disclosure on credit reports and all credit papers of pricing items and techniques and strategies.

But at the same time, I continue to be very, very troubled by some pricing strategies used by certain companies, and I believe that the Sanders amendment provides a needed reform.

The amendment affects how credit card companies use information from credit reports to increase interest rates on their customers. This devious practice is known as "bait and switch," where a consumer's low interest rate may be increased to 20 percent or higher simply because they may have taken out a new mortgage or some other liability. A recent New York Times article documented just such a case where an Illinois doctor had his rate go from 6.2 percent to over 16 percent when he took out a mortgage.

The amendment merely allows the consumer a window of 60 days before their rates are increased, in the event they were on a vacation or got sick or missed a payment or were experiencing some type of short-term financial difficulty.

I have met with a large number of industry representatives on this issue. Some company practices are already close to the standard of this bill and some are not. Congress has established some minimum consumer protections in other instances where necessary for the credit card industry such as the $50 maximum liability for lost cards. I believe this amendment sets a modest floor for the industry's practices above which there is an abundance of room for different companies to take different approaches and compete in the free market.

Mr. Chairman, I support this amendment.

Mr. OXLEY. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I am opposed to this amendment for a couple of reasons. I too serve on the Committee on Financial Services where this amendment was defeated by a two to one margin. The Maloney compromise amendment which came up seemed reasonable. It does give disclosure, and I think that that certainly is a good warning to the consumer.

Mr. Chairman, one of the previous speakers mentioned a dispute, if you are disputing an item on your credit card statement, that is something that is put into abeyance, so that would not affect your credit rating. If we were to pass this amendment, I believe that all

consumers would be harmed, because there would be higher costs of credit nationwide.

When a credit card is issued, it is based upon a snapshot in time. As the picture changes, obviously, we need to have the companies remain to have that kind of flexibility that they have right now. This is really an issue of credit risk and creditworthiness; and as various occasions arise in one's life that they may be overextending themselves, then certainly the credit card company deserves to have the right to make those appropriate changes.

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

The sides on this debate are very clear. One side are the credit card companies and the very large banks who are making huge profits from their consumers and, in some cases in our low-interest moment, right now, who are charging 25 or 29 percent a year interest rates. In other words, they are ripping off the American people.

On the other side of this debate and supporting this amendment, are virtually every major consumer organization in America that is saying enough is enough. If people pay their bills on time every month, they should not see their interest rates double or triple. The chairman mentioned that there was bipartisan opposition to my amendment. He was right. But as he knows, there was bipartisan support for this amendment, including the gentleman from Alabama (Mr. BACHUS), who was very articulate and supportive of this amendment as chairman of the relevant subcommittee.

Let me simply conclude by saying this: the American people are sick and tired of being ripped off by credit card companies. When they pay their bills every month on time, they should not see their interest rates soar. I would urge the Members of this body, in a bipartisan way, to support the American consumer and pass the Sanders amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. RYAN of Wisconsin). The question is on the amendment offered by the gentleman from Vermont (Mr. SANDERS).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. SANDERS. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Vermont (Mr. SANDERS) will be postponed.

AMENDMENT NO. 16 OFFERED BY MRS. KELLY

Mrs. KELLY. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 16 offered by Mrs. KELLY:

Page 44, after line 22, insert the following new subsection:

(c) REGULATORY AUTHORITY TO ADJUST REPORT DISTRIBUTION SCHEDULES IN TIMES OF REQUEST SPIKES.- Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by inserting after subsection (g) (as added by section 702(e) of this Act) the following new subsection:

"(h) REGULATORY AUTHORITY TO ADJUST REPORT DISTRIBUTION SCHEDULES IN TIMES OF REQUEST SPIKES.-

"(1) IN GENERAL.- If the Federal Trade Commission and the Board of Governors of the Federal Reserve System determine that consumer reporting agencies have been temporarily overwhelmed with requests for disclosures of consumer reports under section 612(e) beyond their capacity to deliver such reports in a timely fashion, the Commission and the Board, by order, may implement such measures as the Commission and the Board determine to be necessary for a limited time to regain equilibrium between the ability of the agencies to disclose consumer reports and consumers demands for such reports.

"(2) PROTECTION FOR EMERGENCY AND TIME-SENSITIVE REQUESTS.- In issuing any order under paragraph (1), the Federal Trade Commission and the Board of Governors of the Federal Reserve System shall ensure that, during the effective period of any such order, creditors, other users, and consumers continue to have access to consumer credit reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft.".

The CHAIRMAN pro tempore. Pursuant to the order of the Committee of today, the gentlewoman from New York (Mrs. KELLY) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, while this bill contains good consumer protections, my concern is that if free credit reports are extended to consumers, then there will be an unquestionable strain on the system. Unfortunately, the current system is not yet equipped to deal with overwhelming requests for credit reports that may result from offering free credit reports or any other extraordinary events. Consumers who have an identified need to access their file could find their request lost in an overburdened system. This will undoubtedly reduce service levels that could otherwise be dedicated to helping consumers who do have a concern about their files and need to have information quickly.

After holding several hearings on the issue of identity theft, my concern is that large numbers of people simply looking for information could result in a chaotic shock to the system that would be ripe then for fraud and difficult to detect criminal behavior.

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In the full committee I offered an amendment to ensure consumers' requests are accommodated by alleviating burdens on credit bureaus as the new law is implemented. I am pleased we have included a lot of this language in the manager's amendment, and as a result, the underlying bill now directs regulators as they construct a system for implementation to take into consideration potential spikes in the volume of requests for first year of the legislation. It is a tremendous first step, but I do not feel it is enough.

The amendment I am offering now builds on the manager's amendment and simply gives regulators the authority to respond on a temporary basis to the needs of consumers when credit bureaus are overwhelmed with requests after the 1-year implementation.

If the regulators determine it is necessary to exercise this authority, the amendment also explicitly states that their temporary approach must maintain consumer access to credit reports for emergency or time-sensitive requests. Including incidents of home purchases and suspected identity theft. Without the flexibility that this amendment provides, customer service may decline as credit bureaus become overwhelmed with requests under extenuating circumstances. By giving regulators the authority to mitigate in these instances, credit bureaus would be able to devote time and attention that each request deserves.

I want to thank both the chairman and ranking member for including some language in the manager's amendment on the first year of implementation, but this amendment would complete that work. It is a straightforward approach to a significant problem and I urge colleagues to support the amendment that will benefit millions of Americans who need prompt access to their credit reports.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I claim the time in opposition to the amendment.

The gentlewoman correctly described what happened when the gentlewoman raised this issue in committee and we had a discussion of it and I agreed to the substance in the first year. And yes, in the manager's amendment we have, I think, a very good version of the amendment that she had introduced in committee because when you are doing something like this, there is often a problem in the transition. And the gentlewoman is correct that her initiative, we have managed the problem of the transition, namely, we have given to the regulators, in this case, primarily the Federal Trade Commission, with some participation from the Federal Reserve, the ability to do it within the first year.

But I could not agree to making that a permanent feature in the way in which we now have because, for instance, some of the credit reporting agencies might be responsible and gear up for this. I do not want to reward those that might not do it. I think it is very reasonable to say in the first year, and it is also the case when you go from not having this right to having the right, yes, you can expect there to be a slew of first-time requests. But

after the first year there is no reason to think that there is going to be this kind of backlog and a reasonable company ought to be able to manage that.

If something should turn out later down the road to be an unanticipated problem, we have the capacity to deal with it, but I think it would weaken this if we were now to say to the regulators, in effect, on an ongoing basis, they could suspend this indefinitely, suspend this right for a lot of people. So while I supported and was glad to the 1-year transition issue, it does seem to me to go much further and we had and this was a process of give and take, we had agreed I thought on free credit reports as a basic rule. I must say that on our side and in many other places, giving the regulators an ongoing right to suspend what we have advertised as a new right beyond the transition year is very troubling and I would find it very difficult if this were to be included.

Mr. Chairman, I reserve the balance of my time.

Mrs. KELLY. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, serving on the Committee on Financial Services has been a challenge at times and certainly a great pleasure. And I want to thank the gentleman from Ohio (Mr. OXLEY) for his leadership in championing the bill that we have before us.

The Kelly amendment, I believe, is a very worthwhile amendment. As free credit reports are extended to consumers, there will be an unquestionable strain on the system. Unfortunately, the system is not yet equipped to deal with the overwhelming requests for credit reports. It may result from offering free credit reports or other extraordinary events that may occur as people begin to request these free credit reports and overload the system.

Consumers who have identified the need to access their file will find their requests lost in an overburdened system. That will reduce service levels that could be dedicated to truly helping consumers who do have a concern about their files.

Yes, there is language in the manager's amendment that directs regulators as they construct a system for implementation to consider potential spikes in the volume of requests for their first year of implementation. The Kelly amendment, I believe, builds on this language and simply gives regulators the authority to respond on a temporary basis to the needs of consumers when credit bureaus are overwhelmed with requests.

If the regulators determine it is necessary to exercise this authority, the amendment also explicitly states that their temporary approach must maintain consumer access to credit reports for emergency or very time-sensitive requests, including instances of home purchases and suspected identity theft. Without this flexibility that this amendment offers, customer services will undoubtedly decline as credit bureaus become overwhelmed with these requests. By giving regulators the authority to mitigate in these instances, credit bureaus will be able to devote better time and attention to those needing the requests.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself 1 minute.

One point, I recognize there could be a spike problem in the beginning. We should underline with regard to these requests, we are talking here about the problem of sending it out. Nobody has to send out a report that does not exist.

In other words, we are not imposing on the credit reporting agencies the duty of compiling the report anew. And I think that is something we ought to take into account. The question is simply whether after that first year they will be flooded, and the request is to simply send a report that exists. If no report exists, no obligation exists. And I do not think that the problem after the first year at this point is going to be so clearly a problem that we ought to write in this suspension. I am prepared to look at it later, but I think it would be a serious error at this point.

Mr. Chairman, I reserve the balance of my time.

Mrs. KELLY. Mr. Chairman, does the gentleman have any further speakers on this issue?

Mr. FRANK of Massachusetts. Just myself to close, as we have the right to do.

Mrs. KELLY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe this is an important work that I think we need to address before any conference report is finished. I think with an agreement with our chairman and with an agreement, hopefully, that was just stated by our ranking member, I think that I am willing to hopefully work with him in the spirit of cooperativeness here on the floor today.

Mrs. KELLY. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

Mr. FRANK of Massachusetts. Reserving the right to object, I would point out to the gentlewoman, the last time she and I had this conversation the result was a pretty good amendment to the manager's. I think we have a pretty good track record of working together.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore (Mr. RYAN of Wisconsin). The amendment is withdrawn.

Mr. EHLERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in order to enter into a colloquy with the distinguished chairman of the Committee on Financial Service.

Mr. Chairman, constituents in my district have brought to my attention a problem regarding the inability of certain people to obtain a credit rating from a credit bureau, even when they are very creditworthy. This is an extremely troublesome issue given the importance of a credit rating in our society today. It is very difficult to function without credit. From placing a deposit when renting a car, to staying in a hotel to getting a mortgage for a home, people rely on credit every day. Indeed, credit bureaus wield a great deal of influence in this respect.

Unfortunately, the rules and formulas they apply can yield unjust and nonsensical results. For example, visiting scholars at our colleges and universities or other temporary workers from overseas who have good credit in their home countries, often industrialized countries with advanced credit and accounting systems, often cannot obtain credit when coming to America. This prevents them from obtaining a credit card which is so vital for proper functioning in this society.

As another example, one woman in my district worked overseas for about 10 years during which time her credit cards expired and she stopped transacting business with credit cards from America. Upon returning she had a nearly $20,000 cash balance in a bank account but she was unable to get a credit bureau to rate her. She could not get a mortgage for a house, a credit card or even a retail store charge account. Despite her many years of good credit rating, this lull in credit usage eliminated her creditworthiness in the eyes of the number crunchers at the credit bureaus.

At the same time, credit card companies turn around and grant credit cards almost willy nilly to high school or college students with no credit history at all. These kinds of situations are unfair given the importance of a credit rating, good or bad, for so many financial transactions. It just does not make sense in many situations that some creditworthy people cannot get a credit rating at all despite having adequate cash resources or a positive history in another country.

Mr. Chairman, I would appreciate the time and effort of you and the committee to investigate whether a solution to these problems can be found.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. EHLERS. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Chairman, I understand the gentleman's concern and we have had some discussion about it. I would be pleased to work with him to explore what might be done to remedy these situations. It is certainly unfortunate that under our current system some situations like the ones you mentioned do arise preventing consumers, who are low credit risks, from obtaining credit quickly.

I look forward to working with the gentleman from Michigan (Mr. EHLERS) to see if we can address the legitimate concerns he raises.

Mr. EHLERS. Reclaiming my time, I thank the chairman for his assistance

and I look forward to working with him and the Committee on Financial Services on this important issue.

AMENDMENT NO. 1 OFFERED BY MR. KANJORSKI

Mr. KANJORSKI. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. KANJORSKI:

Page 7, strike line 13 and all that follows through line 24 and insert the following (and conform the table of contents accordingly):

SEC. 101. 9-YEAR EXTENSION OF UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS.

Paragraph (2) of section 624(d) of the Fair Credit Reporting Act (15 U.S.C. 1681t(d)(2)) is amended to read as follows:

"(2) shall not apply after December 31, 2012.".

The CHAIRMAN pro tempore. Pursuant to the order of the Committee of today, the gentleman from Pennsylvania (Mr. KANJORSKI) and the gentleman from Ohio (Mr. OXLEY) each will control 10 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I strongly support the Fair and Accurate Credit Transactions Act. Nevertheless, I believe that we should alter the legislation to sunset the key elements of the bill at the end of 2012.

The gentlewoman from New York (Mrs. MALONEY) also joins me in sponsoring this pragmatic and reasonable amendment.

In June, I helped to introduce H.R. 2622 to extend the expiring provisions of the Fair Credit Reporting Act and to improve consumer protections. In my view, the 1996 amendments to create a national credit reporting system have expanded access to credit, lowered the price of credit, and accelerated decisions about getting credit. To continue this record of achievement, we need to extend the expiring provisions of this law before the end of the year.

While I support the FACT Act, I also continue to believe that we should amend the bill to include a 9-year sunset. As currently drafted, the legislation would permanently extend the seven expiring preemptions of State law within the Fair Credit Reporting Act. In my view, we should sunset the Uniformed National Consumer Protections Standards contained in H.R. 2622 at the end of 2012, and the Kanjorski-Maloney amendment accomplishes this narrow objective. Unlike current law, our amendment would not specifically allow States to enact additional credit reporting standards in the preempted areas after the 9-year sunset.

In referring to the U.S. relationship with the Soviet Union, Ronald Reagan once said that we should "trust but verify." We have adopted a similar approach with H.R. 2622. We should trust that the participants in the credit reporting industry will continue to work to comply with the law but verify that the consumers continue to have appropriate protections with respect to their credit in years ahead.

Mr. Chairman, a sunset provision provides industry with incentive to continue to work to advance the interest of consumers. Moreover, without a sunset, we may well have trust until some major problem causes chaos in the credit reporting industry and forces Congress to revisit the issue in a haphazard way.

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Furthermore, a sunset provision will allow us to evaluate the effectiveness of our credit-reporting programs and policies within a predetermined time frame and force us to decide whether to alter them. In fact, the sunset imposed by Congress in 1996 has allowed us today to review in a methodical and systematic manner the success of the current law and make necessary improvements to it to reflect changes in the financial system.

Identity theft, for example, has dramatically increased in recent years. Technology has also changed greatly in the last 7 years. Mr. Chairman, the FACT Act before us today addresses both of these developments. It, therefore, makes sense to ask the 112th Congress to review and reconsider our work in the 108th Congress and make further improvements to our credit reporting laws. A sunset at the end of 2012 provides sufficient time for industry to implement the reforms called for in this bill, establishes sufficient surety for our financial marketplace, and allows for new issues to arise on the public policy landscape.

In closing, Mr. Chairman, I encourage my colleagues to make a good bill even better by supporting the sensible and practical Kanjorski-Maloney amendment to sunset H.R. 2622 at the end of 2012.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 4 minutes to the gentleman from Ohio (Mr. TIBERI).

Mr. TIBERI. Mr. Chairman, it is a pleasure to speak to this amendment as well as to the legislation at hand. I am opposing the amendment. The amendment obviously would eliminate the uniform standards established by the FCRA in the future in 9 years.

Congress did something very good in 1996, and it did so voluntarily. There was not anything about to expire with FCRA in 1996, and Congress established a national uniform standard for FCRA in 1996 that recognized, quite competently, that this was an experiment, an experiment that should last and be tested over a 7-year period. That 7-year period is coming to an end on January 1 of 2004.

Over 100 witnesses through eight hearings loudly, clearly told our committee, Democrats and Republicans, that what we have had over the last 7 years and what Congress did in 1996 was quite successful. It has been successful for our economy, but, most importantly, successful for American consumers.

We are now, as American consumers, leaders of the world as far as credit goes, mortgage credit, consumer credit. And FCRA and the exemptions, the eight exemptions did that.

What we do not want to do is do this again in 9 years because what we have seen in the last 7 years and what was done in 1996 was done correctly.

Now, ladies and gentlemen, the committee rejected this amendment. We heard from, as I said, over 100 witnesses. Three of those witnesses included the Federal Trade Commission chairman, Chairman Greenspan, and Treasury Secretary Snow. They, too, believe this is the right way to go and support this legislation in its current form.

Now, there has been discussion on the floor today about what has been happening on the left coast and what has been happening in their legislature and what has been happening with their Governor who is in the process of being recalled. Well, this legislation is a great piece of legislation. I am afraid that because of their action, this Congress will be dealing with issues because of the California legislature in years to come.

This legislation today and what has happened in the last month out West demonstrate why this piece of legislation in its current form without the current amendment being offered is the right way to go.

The arguments that Congress will not address or will not be able to address, the problems or potential problems in the future without this amendment are unfortunately baseless because Congress can address issues pertaining to FCRA or issues pertaining to identity theft in 2 years, 3 years, 4 years, or 5 years.

Members of the House, the amendment is supported by some because they hope that the national uniform provisions will expire.

The national standard is good for consumers. It is good for America. This is a good bill drafted by the gentleman from Ohio (Chairman OXLEY) and the gentleman from Alabama (Mr. BACHUS). I support the bill. I urge my Members of the House and the Republican and Democrat side to reject the amendment from my learned colleague.

I thank the Members of the House for supporting this bill.

Mr. KANJORSKI. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I am very pleased to be an original cosponsor of the Fair Credit and Reporting Act. Over the course of several months the committee conducted comprehensive hearings and produced a balanced bill that

preserves the national credit market and enhances consumer protections.

I do not think any reasonable person would question the fact that the engine driving these improvements is the sunset provision put in the original Fair Credit and Reporting Act in 1996 that expires at the end of this year. Without the present sunset, consumers would not be getting free credit reports or access to their scores as they will be in this underlying bill.

Without the sunset, the Congress would not be forced to conduct months of hearings on the fundamental questions of credit report accuracy, identity theft, the privacy of medical records, and access to credit reports. These are major, all-important new rights that the underlying legislation grants to consumers that result directly from the current sunset.

In offering this amendment today, the gentleman from Pennsylvania (Mr. KANJORSKI) and I seek to strike a balance. Nine years ensures that the legislation will be revisited, but it grants the financial services industry a prolonged period of time during which it will not have to be concerned about major changes of law that will affect company operations.

I applaud my colleague, the gentleman from Pennsylvania (Mr. KANJORSKI), for being consistent in his desire to sunset the programs Congress creates. I think this approach is particularly important on this issue and on the legislation before us tonight.

Nine years ago, the world was a very different place. Technology has completely changed the manner our constituents access financial services in that time, and things are likely to be just as different 9 years from now; and it is appropriate that Congress revisit this law at that point.

For that reason and the others illustrated by my colleague, I deeply and truly do believe that this amendment is a very important one, and I strongly support it.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, the gentleman from Ohio (Mr. TIBERI) spoke in opposition to this amendment and I think basically said everything that needed to be said on this particular amendment; and I think the most important thing he said is that Congress has demonstrated, because they have done it in the past, they are free to revisit and fine-tune FCRA anytime they wish; and they did that in 1996, even though there was not an impending deadline.

Far more important is what we learned in our hearing and how good the national credit reporting system is to our Nation. I am not sure that anybody disagrees with that, that anybody thinks that it ought to be experimented with, that it ought to expire in 9 years. It is very good for consumers. It has been particularly good in democratizing credit and extending credit to middle- and low-income Americans; and to limit that to 9 years, we do not do that with the Community Reinvestment Act. We do not do that to the Equal Credit Opportunity Act. We do not do that to our other acts which protect consumers, and this act is for the benefit of consumers and it protects consumers.

Let me conclude by saying the gentleman from Ohio (Mr. TIBERI) is one of our younger members of our committee, an outstanding member. It is just one example of the many young members that we have on our committee that have really had real input in this bill. I want to commend all of them.

I will close by commending the gentleman from Ohio (Mr. OXLEY) giving me the opportunity to work on this bill, for making it a priority, for realizing early that we needed multiple hearings. I would also like to commend these people: the gentleman from Massachusetts (Mr. FRANK), the gentlewoman from Oregon (Ms. HOOLEY), the gentleman from Kansas (Mr. MOORE), the gentleman from Ohio (Mr. LATOURETTE), the gentlewoman from Illinois (Mrs. BIGGERT), and other members of the committee.

Mr. KANJORSKI. Mr. Chairman, can I inquire as to the time remaining.

The CHAIRMAN pro tempore (Mr. RYAN of Wisconsin). The gentleman from Pennsylvania has 3½ minutes remaining. The gentleman from Ohio (Mr. OXLEY) has 4½ minutes remaining.

Mr. KANJORSKI. Mr. Chairman, I yield myself such time as I may consume. I do not think we need our 3½ minutes. I have no other speakers, Mr. Chairman.

Mr. Chairman, I guess I want to first say one of the privileges of serving in the House of Representatives is the opportunity to meet the Members of Congress on the other side of the aisle, and one of the Members of Congress that has been very instrumental in this bill is my good friend, the gentleman from Alabama (Mr. BACHUS); and he and I do not agree on a lot of things philosophically, but he represents the type of qualities that this House needs more of. So it has been such a pleasure to see him cochair this subcommittee and accomplish the almost unanimous consent of this committee on this piece of legislation, and it goes a great deal to his innate abilities and his just Southern gentlemanliness of how to accomplish a good piece of legislation. So I want to compliment him.

I disagree on the proposition that it hurts to sunset things. I think my colleague and I probably agree and have voted for sunset provisions. I am probably on most of the committees I serve on known as the sunset person. I like to sunset everything. The reason I like to sunset everything is it forces the Congress of the United States to come back, reevaluate, restudy and bring up to date needs that otherwise are not driven by public recognition or by commonality in the public force to cause legislation to be addressed.

In my opening remarks, I said that it is important that we trust industry, and I think as a Member of my side of the aisle what I want to say is that I have met with all of the interested parties in the reporting industry and the financial industry, and I have found them all working toward a common effort to increase credit, to increase accessibility to credit, and increase efficiencies to benefit consumers. So we have no disagreements on that.

Between now and 2012 there will be changes in technologies and changes for needs, and in my opening remarks I also said I like the idea of trust but verify. There will be some elements of the society that want to take advantage or not comply with the act. It will give us an opportunity to evaluate that and find out methods that we can reward good practitioners of fair credit and at least bring into the limelight bad practitioners of good credit.

I just do also want to take one moment to respond to my gentleman friend from Ohio. He referred to the left coast, and I am not sure, was he looking north or looking south because he may have been attacking my hometown. I could be on the left coast if one is looking south.

The comment I want to make to my colleague is there is a fundamental illogic in his argument. He said that the left coast is having this recall and they are, and he seems to favor the recall. The recall probably is an element of sunset provisions, that is, the opportunity to require a revesting out there of an election of a Governor.

□ 1845

So if my colleague is in favor of not having sunsetting and not having recalling, then I suggest he talk to one of his fellow colleagues on his side, because I think he brought this about with the argument that the people should be protected with the right to recall.

I do not favor recall, but in the Congress I do favor a sunsetting provision because it will give us the opportunity to reevaluate, rejudge, and have oversight and correct some mistakes made in the initial legislation. So I urge all my colleagues on the Republican side, the Democratic side, and those that are Independent, in the middle, to support this amendment.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume, and in conclusion I would say to my good friend from Pennsylvania that this is a philosophical difference. Clearly, he makes some interesting arguments. The amendment was, in fact, rejected in the committee.

In fact, FCRA, as other Members have said on both sides of the aisle today, has been a very successful piece of legislation. It has provided consistency, reliability, certainty, and uniformity in our credit laws. And that has had enormous consequences for our economy and for consumers, as has been chronicled time and time again during the period of this debate.

I would suggest that this act that we are now seeking to make permanent has stood the test of time for 7 years, and it is now time that we make this permanent so that credit agencies, people who get credit, issuers, furnishers, everybody concerned knows what the rules are, knows that those rules are effective and work well, and that they will be permanent.

So I respectfully oppose the Kanjorski amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. RYAN of Wisconsin). All time for debate has expired. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. KANJORSKI. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI) will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. INSLEE

Mr. INSLEE. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. INSLEE:

Page 80, after line 5, add the following new title (and conform the table of contents accordingly):

TITLE VIII—TECHNICAL CORRECTIONS

SEC. 801. AMENDMENTS RELATING TO SECTIONS 625 AND 626 OF THE FAIR CREDIT REPORTING ACT.

(a) SECTION 625.- Section 625(h) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)) is amended by striking "Committee on Banking, Finance and Urban Affairs" and inserting "Committee on Financial Services".

(b) SECTION 626.- Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended-

(1) in subsection (b), by striking "a supervisory official designated by"; and

(2) by adding at the end the following new subsections:

"(f) REPORTS TO THE CONGRESS.- On a semiannual basis, the head of a Federal agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism shall fully inform the Permanent Select Committee on Intelligence and the Committee on Financial Services of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a).

"(g) PAYMENT OF FEES.- A Federal agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.".

Mr. OXLEY. Mr. Chairman, I reserve a point of order.

Mr. INSLEE. Mr. Chairman, we have an amendment that will cure a modest imperfection that occurred essentially due to the PATRIOT Act. It is something that I think actually may have been an oversight, but it is something we would like to take a shot at solving today.

Mr. Chairman, while the FBI for years has been allowed to have access to our credit reports, we have wisely included certain conditions in the law about the FBI being able to dial up and get access to citizens' credit reports. There is a requirement that there be a sign-off by the Director or someone appointed by the Director, and that there be a report to Congress and that there be payment to the credit reporting agency for the costs associated with sharing the information. These are reasonable conditions and requirements for privacy concerns.

Unfortunately, when we adopted the PATRIOT Act, we did not include those conditions, those privacy protections, when it applied to the ability now for the Treasury Department and a host of other investigatory agencies who can now essentially call up and get citizens' reports. So our amendment would simply require the same privacy protections that apply to the FBI's getting access to our credit reports to other investigatory agencies.

We understand that there is a point of order raised on this, but we have brought this to the Chair's attention; and we hope as this matter moves along, the chairman will look for a way to solve this problem at a later date as this legislation matures. It is very solvable, it needs to be resolved, and it should not be controversial. So we hope that that will occur.

Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The CHAIRMAN pro tempore. The amendment is withdrawn.

AMENDMENT NO. 6 OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. FRANK:

Page 44, strike lines 9 and 10 and insert "Section 612 of the".

Page 44, beginning on line 14, strike "described in section 603(p)" and insert "that compiles and maintains files on consumers on a nationwide or regional basis".

Page 44, strike line 18 and all that follows through line 22.

The CHAIRMAN pro tempore. Pursuant to the order of the Committee of today, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, there has been a good deal of self-congratulation on this bill, but some of it is not yet deserved. I hope after the adoption of this amendment it will be.

We have congratulated ourselves on, among other things, providing under this amendment for free copies once a year of credit reports to consumers. Indeed, we had a colloquy with the gentleman from New York about the flood that was going to happen; and at one point in committee. Language was adopted which did provide all consumers with free copies of all credit reports that might have been done on them.

Then an amendment was adopted in committee, and I wish it had not been adopted, it was not by vote, it just happened, which substantially limited it. So as of now, as the bill stands, if this amendment is not adopted, consumers can get free copies of their credit reports, consumers in general, from only one of the three major national credit agencies. And that is a good thing, but there are an awful lot of specialized credit agencies. There are regional credit agencies. Not as many. Some that remain from previously. There are local credit agencies. My amendment does not cover them; I leave them out. They had been in the original bill, but I had agreed to a cutback. The cutback went much further than I thought we had agreed to.

So what this amendment says is an individual should be able to get a free copy of their credit report from the national specialized credit agencies, and there are large numbers of national agencies. One of the most important is the Medical Information Bureau, and I have spoken to them. They have no objection to being in this requirement. They give medical information, which would be relevant. There is also ChoicePoint, CheckSystems, CLUE, and Landlords United. A lot of these national specialized agencies have to do with landlord-tenant agencies.

So if this amendment does not pass, please do not try to take credit for passing a bill that generally gives consumers a right to a free credit report. It gives consumers a right to a limited pool of free credit reports, those from the major national credit agencies. But a large number of the agencies which compile credit on people will be excluded from the bill, and I think that would be a severe error and a misrepresentation.

Mr. Chairman, I reserve the balance of my time.

Mr. BAKER. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN pro tempore. The gentleman from Louisiana (Mr. BAKER) is recognized for 10 minutes.

Mr. BAKER. Mr. Chairman, I yield myself such time as I may consume, and I rise in opposition to the gentleman's amendment.

During the course of the committee deliberations, I was concerned about the consequences of the mandatory credit report obligation on those entities within communities which are basically small businesses. The three principal national credit reporting entities are responsible for in excess of 95 percent of all credit reporting activities, financial in nature, within the country.

I offered an amendment in committee which I represented to the gentleman that would affect what we deemed to be small reporting agencies in nature, to which there was agreement in that principle. The effect of the amendment, subject to further review, though it was not the intent, was clearly to go beyond just the very small credit bureaus in the way in which the amendment was constructed. I then understood, by error, the intent of the amendment was better than I originally thought.

Although I was aiming only at the very small credit bureaus, for which it would be an economic disadvantage of some significance for them to provide this level of free report and, furthermore, who are not now required under law to provide a free credit report for this reason, it also went to other entities, for example, MIB or other health-related reporting entities under the broad definition of consumer reporting enterprises that also required them to provide the free credit report. By inadvertence, my amendment was a little broader in scope than I thought, but in principle and effect I agree with the consequences of my amendment.

I support the gentleman's view that the three large credit-reporting entities, which conduct over 95 percent of the disclosure of financial matters of consumers, should be subject to this now new one additional reason for a provision of a free credit report. The adoption of this amendment, however, if the House were to accept the gentleman's position, would be to require all consumer-related reporting agencies, even the smallest, to provide this free credit reporting information even to their financial detriment.

Although there was some disagreement in the construct of the amendment in the committee, I would still reserve my objection to the gentleman's amendment; and I think it is a policy matter for the House to determine whether we would accept any relief from the requirement for the free credit report or would we accept the gentleman's position to require all entities regardless of economic consequence to provide the mandated credit report.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself 1 minute and would say first that the gentleman has correctly stated it. And, frankly, I relied when that amendment was offered on what he now concedes was a misinterpretation. That is not a good way to legislate. And I am disappointed that the gentleman is going to try to keep the advantage of that misunderstanding.

Secondly, it is inaccurate to say that this amendment that I am now offering would cover everybody. I have agreed to exempt in this amendment the local credit agencies. I am talking about the national specialized ones. They are the primary difference between us.

The gentleman acknowledges and he explained an amendment that I did not think and I guess he did not think covered people like MIB. We did not object to it. It was not carefully read. We accepted the description. He says through inadvertence it went too far. That happens. But I think it is frankly inappropriate in terms of our legislatively working together to insist on that, particularly since I am not trying to restore the original language. I am excluding the small ones.

Mr. Chairman, what this does is this covers the few regional ones, but mostly it covers national specialized agencies which do not merit the description of those who are too poor.

So I think, once again, if we reject this amendment, we have what the gentleman concedes is an inadvertent amendment that was adopted that excludes a number of agencies and we cannot say that it gives everybody free credit reports.

Mr. Chairman, I reserve the balance of my time.

Mr. BAKER. Mr. Chairman, I yield myself 2 minutes.

I simply point out in fairness to the gentleman that the discussion of regional reporting entities was not really a discussion point within the committee discourse. My concern was the economic consequences on the very small. And upon reflection of the impact of the amendment addressing the question of regionals and economic concerns, the arguments are the same.

I still feel that the exemption that I am attempting to preserve in the bill is appropriate and understand the gentleman's philosophic view that all of these enterprises at the regional level should be required to provide the free report.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. BAKER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Put aside the regionals. What about the national specialized agencies, like MIB? This amendment could be amended under the rules. An amendment could be offered to amend this, a second degree amendment. Would the gentleman agree to exclude the regionals and cover the specialized national ones?

Mr. BAKER. Mr. Chairman, reclaiming my time, let me suggest this to the gentleman, in light of everyone here present and observing this. I will be most happy not to repeat the same mistake I made at the committee and agree with the gentleman that in fact a description and analysis of the specialties does result in the view that they are large enough and sufficient in scope; I will commit to work with the gentleman going forward.

Mr. FRANK of Massachusetts. Where? This is the end of the bill.

Mr. BAKER. Well, it will likely be in conference, I would suggest, because there will be no assurance that the bill we pass here will seek Senate approval or uniformity with the Senate.

I would suggest to the gentleman that adopting here at the moment, without having a full listing of those specialty organizations, would be difficult for me to assess the effect. But I am not trying to obstruct the gentleman's interest and believe that the bill as constructed in its current form is appropriate.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself 1 minute to express my extreme disappointment.

I relied on an explanation the gentleman now acknowledges was erroneous when this amendment was adopted. The gentleman says it goes too far. I have offered to try to compromise. He now tells me that after the bill has passed, he will work with me. That offer is worth about as much as the explanation I got, apparently. And it may or may not be a conferencable item. I do not know whether the Senate will have any language in this.

So I must express my extreme disappointment. This is not conducive to a cooperative working relationship, I must say to the gentleman from Louisiana. We tried to do this through negotiations in the manager's amendment; we have tried to repair this. And the gentleman has at every point said, no, I won because there was a misunderstanding, and that is it.

□ 1900

Mr. Chairman, I cannot consider that to be a reasonable offer to work together.

Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Chairman, I thank the gentleman from Massachusetts (Mr. FRANK) for yielding me this time.

Mr. Chairman, I rise in strong support of the Frank amendment. As we have heard, the base bill would allow every American access to a free annual consumer report upon request from the three national credit reporting agencies, and I salute the provision, as does the ranking member.

But as we all know, while the Fair Credit Reporting Act deals primarily with credit-reporting agencies, the underlying statute we are amending today through the FAIR Act deals with all consumer reporting agencies. These include credit investigative medical tenant reporting agencies, among many others.

Unfortunately, this bill inadvertently limits consumers to requesting

and reviewing only one free credit report annually from the three national reporting agencies, meaning this bill does not permit consumers to obtain free reports from hundreds of specialized national consumer reporting agencies that compile information on consumers for noncredit purposes.

This provision is necessary in order to correct this oversight and ensure free annual consumer reports from all entities covered by the Fair Credit Reporting Act, whether they be credit agencies or other information-gathering agencies.

We need to ensure that this legislation lives up to the spirit of what all of its supporters intended, including myself, that of allowing Americans access to all consumer reports compiled on them by information-reporting bureaus, not just credit reports, but medical reports and other reports about people's personal information.

I do recognize that the Medical Information Bureau, which I have worked closely with, for their agreement to provide these free annual reports upon request, but even with this agreement, there are too many information-gathering agencies which are exempt and will remain unresponsive from these provisions without passage of this amendment.

These consumer-reporting agencies include but are not limited to companies that compile consumer information relating to medical records, employment background checks, tenant screening, driving records, insurance claims, criminal records and check-writing history. In fact, in recent years, it has become evident that two companies, only two companies almost dictate which consumers can open checking accounts based upon the reports and scores they provide to financial institutions.

These information gatherers must be included under the obligation to ensure free annual reports to individuals upon the consumer's request. This will ensure greater accuracy and transparency, what I believe is the basic goal of the underlying bill today.

Everyone should support this amendment. It does not change the bill, but rather clarifies the intent of all of its supporters, of which I am one. I urge my colleagues to support this amendment.

Mr. BAKER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I wish to address the view of the gentleman with regard to the consequences of these determinations. The focus of the bill was to provide those individuals without financial resources or for just cause access to a credit report without having to pay for it.

In our negotiations or discussions about resolution of the matter, I am willing and would support an amendment that would preserve that right for those protected classes under the bill to have access to a free credit report, regardless of the nature of that credit-reporting entity.

What I did not want to require was a broad-based requirement for either the specialty or the small business credit reporting agency to be under a monetary obligation to provide all requesters a free credit report. I think that is a fair position, given my concerns about the economic impact on these business enterprises, and would be reluctant not to provide that measure of equity to the regional reporting agencies without understanding better the economic consequences.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY of Oregon. Mr. Chairman, I rise in support of the Frank amendment to the Fair Credit Reporting Act. One of the things that happened in committee, and it is unfortunate because of a misunderstanding, all of a sudden we are restricting these free credit reports.

One of the big deals about passing this bill was that everyone got a free credit report. The Frank amendment allows all consumers to obtain a free annual credit report from any nationwide consumer reporting agency. It eliminates the provision in the bill that restricts consumers to getting their free annual credit report from just three national consumer reporting agencies. The amendment also restores the right of consumers who are unemployed or on public assistance or believe they have been a victim of fraud to obtain a free credit report from any consumer reporting agency. Right now they can get that from all of the major credit reporting agencies. Under this bill, as it is currently written without this amendment, they will be restricted. They will only be able to get these free reports from local or regional consumer reporting agencies.

I believe I speak for both sides of the aisle when I say it was never the intention of the Committee on Financial Services to strip away these rights that these disadvantaged groups have under current law, and these groups are already entitled to a free credit report from the national agencies. We should not be restricting access to credit reports for the disadvantaged, while at the same time, giving the rest of the Nation's consumers even more access to their credit information. This amendment will restore the additional access to credit information that these disadvantaged groups currently enjoy, and this amendment should have been part of Fair Credit Transaction Act from day one.

Again, one of the primary intentions of this legislation was to increase access to information for all Americans, and by supporting the Frank amendment, we will be doing just that. I urge Members to vote yes on the Frank amendment.

Mr. BAKER. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Chairman, let me just say, having participated obviously in the markup and listening to the debate on the floor, I think all Members want to preserve the protected class. I do not think that is really an issue. Also, I think there is some concern that very small agencies ought to have some exemption from the free credit report.

I would indicate to the gentleman from Massachusetts (Mr. FRANK) my efforts to try to solve that problem. I think it is going to be impossible at this point in the process, but going forward, particularly in conference, I have every reason to think that we can come to a good conclusion. We all, I think, recognize that the protected class should continue to have access to free credit reports, as they always have had, as the gentlewoman from Oregon (Ms. HOOLEY) so carefully pointed out.

The real issue is the exemptions of the small agencies that represent approximately 10 percent of those credit reports. I do not think at the end of the day the position of the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Louisiana (Mr. BAKER) are all that different, and I would simply say that I would pledge my efforts towards reaching a good conclusion towards both gentlemen's aims.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I guess I must look pretty stupid to be told that people are going to work with me at the end of the bill.

This process has been going on since we finished the markup. My staff was negotiating with the staff of the majority. We offered all kinds of things. We had the manager's amendment opportunity. This amendment was filed last night. It was subject to secondary degree amendment. It could have been changed.

The gentleman from Ohio (Mr. OXLEY) said there is no real difference between my position and the position of the gentleman from Louisiana. Let me correct the gentleman, there is no difference between my position and the position the gentleman from Louisiana explained when the amendment was offered; but there is a big difference between my position and what the law says if we pass this bill this way.

We talk about the protected classes, people who have been the victims of fraud, people who are unemployed, if you pass this bill and defeat this amendment, they will have less rights thanks to your work than they have today. The amendment of the gentleman from Louisiana (Mr. BAKER), he said through inadvertence, took away their rights. Whatever they use to take away their rights, whether it was inadvertence, advertence, or anything else, they have lost their rights.

Now after saying no to a negotiation before, no to the manager's amendment, and no to an amendment here, now the other side says we will see you in conference. Let me make a commitment to the gentleman. If you want to

use your majority to defeat this amendment, I probably cannot stop you; but if this is not substantially repaired in conference, this bipartisan consensus is coming to an end.

Mr. BAKER. Mr. Chairman, I yield myself such time as I may consume.

Let me return to the basis of the current law and what the effect of the amendment would be if adopted. Today, any person who is the subject of an adverse action, you get turned down, you have an absolute right to a free credit report regardless of your economic status.

If you are a consumer who suspects fraudulent conduct regardless of your economic status, you get a free credit report. If you are unemployed, you get a free credit report. If you are subject to public welfare, you get a free credit report. The amendment adopted I proposed in committee does not, in any way, limit or affect those rights that exist under current law. The bill as proposed without the amendment I offered would have established one more level for a free credit report.

I was and am willing, as is the current law with regard to these categories, to say that with regard to the one additional credit report, that the protected classes may have access to that information without charge. But it is not a correct view of the effect of the Baker amendment as adopted to suggest that it rolls back current protections and authorities of those desiring to get a free credit report. It would with regard to the new right being adopted by passage of the Act. That is the state of affairs if we defeat the Frank amendment, which I hope the House will engage in; and again, renew the pledge to the gentleman, despite his difficulties with the manner under which this has proceeded, if we are fortunate enough to be on such a conference, to work with the gentleman toward appropriate resolution, and would hope the House would reject the Frank amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. CULBERSON). The question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Massachusetts (Mr. FRANK) will be postponed.

AMENDMENT NO. 9 OFFERED BY MRS. TAUSCHER

Mrs. TAUSCHER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mrs. TAUSCHER:

Page 69, after line 5, insert the following new section (and conform the table of contents accordingly):

SEC. 510. REQUESTS BY CONSUMERS FOR REASONABLE PROCEDURES FOR ESTABLISHING NEW CREDIT.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by inserting after subsection (e) (as added by section 403 of this Act) the following new subsection:

"(f) REQUESTS BY CONSUMERS FOR REASONABLE PROCEDURES FOR ESTABLISHING NEW CREDIT.-

"(1) IN GENERAL.- Any consumer may submit a request to a consumer reporting agency that any person who uses a consumer report of such consumer to establish a new credit plan in the name of the consumer utilize reasonable policies and procedures described in paragraph (4).

"(2) PLACEMENT IN FILE.- Any consumer reporting agency that receives a request from a consumer shall include the request in the file of the consumer.

"(3) NOTICE TO USERS.- No person who obtains any information from a file of any consumer from a consumer reporting agency that includes a request from the consumer under this subsection may establish a new credit plan in the name of the consumer for a person other than the consumer without utilizing reasonable policies and procedures described in paragraph (4).

"(4) REASONABLE POLICIES AND PROCEDURES.- The notice included by the consumer reporting agency pursuant to the request of the consumer shall state that the consumer does not authorize establishing any new credit plan in the name of the consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person for whom such new plan is established, which may include obtaining authorization or preauthorization of the consumer at a telephone number designated by the consumer or by such other reasonable means agreed to.".

The CHAIRMAN pro tempore. Pursuant to the order of Committee of today, the gentlewoman from California (Mrs. TAUSCHER) and a Member opposed to the amendment each will control 5 minutes.

The Chair recognizes the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today to ask my colleagues to support a simple amendment. Currently only consumers who can prove that they already have been victims of identity theft can ask the credit industry to confirm the identity of a person before issuing new credit accounts under the consumer's name. My amendment would simply allow any consumer the option to require the credit industry to use the reasonable policies and procedures identification standards established in the fraud alert provision. This amendment would give all consumers,, students, military, the elderly and families, a meaningful way to protect their own personal credit records.

Proponents of this bill claim that the fraud alert provision creates powerful consumer protection tools to prevent identity thieves from opening accounts in their names. They fail to mention that the tools are available only after one becomes a victim. Talk about closing the barn door after the horse is out.

□ 1915

The credit industry argues that the public needs education to learn how to protect their data. While there are some precautions individuals can take, individual consumers have little or no means to protect themselves from the fastest-growing type of identification theft, theft from poorly protected databases. Since 1990, 33 million Americans, or one in six adults, have been victims of identity theft. This year businesses will lose $4.2 billion to this crime, losses that will ultimately be passed on to other customers. Earlier this year, the major credit card companies confirmed that a hacker broke into their systems and accessed 8 million credit card records. My amendment would provide all consumers an option to proactively protect their personal information against fraudulent use by identity thieves, organized crime and terrorist organizations.

Mr. Chairman, I would like to ask the distinguished ranking member from Massachusetts to work with me and the members of the committee during conference to implement the spirit of my amendment in the final report.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentlewoman yield?

Mrs. TAUSCHER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentlewoman for her spirit of cooperation. I think she is very much right on the substance. We did have to try to work out a balance out of committee. Some of us, as you recently saw, were more willing to stick to our commitments than others; but I would say to the gentlewoman, I think that in substance she has a very good idea and, yes, I would welcome the chance to try to work with her in conference assuming that there is something conferencable about this, as there may well be.

Mrs. TAUSCHER. I thank the gentleman.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN pro tempore (Mr. CULBERSON). Is there objection to the request of the gentlewoman from California?

There was no objection.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment No. 4 offered by the gentleman from Vermont (Mr. SANDERS), amendment No. 1 offered by the gentleman from Pennsylvania (Mr. KANJORSKI), amendment No. 6 offered by the gentleman from Massachusetts (Mr. FRANK), and amendment No. 12 offered by the gentleman from Ohio (Mr. NEY).

The first electronic vote will be conducted as a 15-minute vote. The remaining electronic votes in this series will be conducted as 5-minute votes.

AMENDMENT NO. 4 OFFERED BY MR. SANDERS

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Vermont (Mr. SANDERS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were- ayes 142, noes 272, answered "present" 1, not voting 19, as follows:

[Roll No. 495]

AYES- 142

Abercrombie
Ackerman
Aderholt
Bachus
Baldwin
Ballance
Barton (TX)
Becerra
Bereuter
Berman
Bishop (NY)
Blumenauer
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Carson (IN)
Clay
Conyers
Cooper
Costello
Cubin
Cummings
Davis (AL)
Davis (CA)
DeFazio
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Duncan
Edwards
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hoeffel
Honda
Hyde
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson, E. B.
Jones (NC)
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
LaHood
Lampson
Langevin
Lantos
Larson (CT)
LaTourette
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Maloney
Matsui
McCarthy (MO)
McGovern
McNulty
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller, George
Mollohan
Moran (KS)
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Otter
Owens
Pallone
Pascrell
Pastor
Payne
Pomeroy
Rahall
Reyes
Rodriguez
Rogers (AL)
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Slaughter
Solis
Stark
Strickland
Taylor (MS)
Tierney
Udall (NM)
Van Hollen
Visclosky
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Whitfield
Wu

NOES- 272

Akin
Alexander
Allen
Andrews
Baca
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Bass
Beauprez
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clyburn
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cunningham
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeGette
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Dunn
Ehlers
Emanuel
Engel
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hefley
Hensarling
Herger
Hill
Hinojosa
Hobson
Holden
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Issa
Istook
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Kanjorski
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Larsen (WA)
Latham
Leach
Lewis (CA)
Lewis (KY)
LoBiondo
Lucas (KY)
Lucas (OK)
Majette
Manzullo
Marshall
Matheson
McCarthy (NY)
McCollum
McCotter
McCrery
McHugh
McInnis
McIntyre
Meeks (NY)
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Oxley
Paul
Pearce
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Sanchez, Loretta
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Upton
Velazquez
Vitter
Walden (OR)
Walsh
Weldon (FL)
Weller
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

ANSWERED "PRESENT"- 1

Ruppersberger

NOT VOTING- 19

Burton (IN)
Davis (IL)
Emerson
Gephardt
Hayworth
Hoekstra
Holt
Janklow
Linder
Lipinski
Markey
McDermott
McKeon
Pelosi
Pence
Rangel
Thompson (MS)
Udall (CO)
Woolsey

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. CULBERSON) (during the vote). Members are advised they have 2 minutes within which to record their vote.

□ 1937

Messrs. CARDOZA, BARTLETT of Maryland, SANDLIN, CLYBURN, MICHAUD, ENGEL and INSLEE changed their vote from "aye" to "no."

Mr. ADERHOLT and Mr. BECERRA changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. HOLT. Mr. Chairman, I was unavoidably detained and failed to vote on rollcall No. 495 (the Sanders amendment to the Fair and Accurate Credit Transactions Act). Had I been present I would have voted "aye."

AMENDMENT NO. 1 OFFERED BY MR. KANJORSKI

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were- ayes 112, noes 310, answered "present" 1, not voting 11, as follows:

[Roll No. 496]

AYES- 112

Abercrombie
Ackerman
Baca
Baldwin
Barton (TX)
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Brady (PA)
Capps
Capuano
Cardin
Conyers
Cummings
DeFazio
DeGette
Delahunt
DeLauro
Doggett
Doyle
Emanuel
Eshoo
Etheridge
Farr
Fattah
Filner
Flake
Frank (MA)
Grijalva
Harman
Hastings (FL)
Hefley
Hinojosa
Hoeffel
Holden
Holt
Honda
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larson (CT)
Lee
Lewis (GA)
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
McCarthy (MO)
McDermott
McGovern
McNulty
Meehan
Millender-McDonald
Miller, George
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Price (NC)
Radanovich
Rahall
Rodriguez
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sanchez, Linda T.
Sanders
Schakowsky
Scott (VA)
Sherman
Slaughter
Solis
Stark
Stupak
Taylor (MS)
Thompson (CA)
Tierney
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner

NOES- 310

Aderholt
Akin
Alexander
Allen
Andrews
Bachus
Baird
Baker
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Bass
Beauprez
Bell
Bereuter
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (OH)
Brown (SC)

Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Engel
English
Evans
Everett
Feeney
Ferguson
Fletcher
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Hill
Hinchey
Hobson
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Ortiz
Osborne
Ose
Otter
Oxley
Pearce
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Sabo
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Strickland
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

ANSWERED "PRESENT"- 1

Ruppersberger

NOT VOTING- 11

Davis (IL)
Emerson
Gephardt
Hoekstra
Janklow
Lipinski
Pelosi
Pence
Rangel
Udall (CO)
Woolsey

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1944

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 6 OFFERED BY MR. FRANK OF MASSACHUSETTS

The CHAIRMAN pro tempore (Mr. CULBERSON). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr. FRANK) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were- ayes 235, noes 186, answered "present" 1, not voting 12, as follows:

[Roll No. 497]

AYES- 235

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Barton (TX)
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Boehlert
Bono
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Burton (IN)
Buyer
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Coble
Conyers
Cooper
Costello
Cramer
Crowley
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Dreier
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gerlach
Gilchrest
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Isakson
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kirk
Kleczka
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (GA)
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Peterson (MN)
Petri
Platts
Pomeroy
Price (NC)
Putnam
Quinn
Rahall
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shaw
Sherman
Shimkus
Simmons
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (NM)
Upton
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wicker
Wu
Wynn

NOES- 186

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Bass
Beauprez
Bereuter
Billirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Cole
Collins
Crane
Crenshaw
Cubin
Cunningham
Davis, Jo Ann
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Duncan
Dunn
Ehlers
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hostettler
Houghton
Hulshof
Hunter
Hyde
Issa
Istook
Jenkins
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
Latham
Lewis (CA)
Lewis (KY)
Linder
Lucas (OK)
Manzullo
McCotter
McCrery
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Peterson (PA)
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sessions
Shadegg
Shays
Sherwood
Shuster
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Sullivan
Tancredo
Tauzin
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

ANSWERED "PRESENT"- 1

Ruppersberger

NOT VOTING- 12

Cox	Hoekstra	Pence
Davis (IL)	Janklow	Rangel
Emerson	Lipinski	Udall (CO)
Gephardt	Pelosi	Woolsey

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised there are 2 minutes remaining on this vote.

□ 1953

Messrs. DREIER, PETRI, TERRY, BURTON of Indiana, KIRK, SHIMKUS, LoBIONDO, and Mrs. BONO changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 12 OFFERED BY MR. NEY

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Ohio (Mr. NEY) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were- ayes 233, noes 189, answered "present" 1, not voting 11, as follows:

[Roll No. 498]

AYES- 233

Abercrombie	Case	Gallegly
Aderholt	Castle	Garrett (NJ)
Akin	Chabot	Gerlach
Allen	Chocola	Gibbons
Bachus	Coble	Gilchrest
Baker	Cole	Gillmor
Ballenger	Collins	Gingrey
Barrett (SC)	Cooper	Gordon
Bartlett (MD)	Cox	Goss
Bass	Cramer	Granger
Beauprez	Crane	Graves
Bereuter	Crenshaw	Green (WI)
Biggert	Cubin	Greenwood
Bilirakis	Culberson	Gutknecht
Bishop (UT)	Cunningham	Harman
Blackburn	Davis (AL)	Harris
Blunt	Davis (TN)	Hart
Boehlert	Davis, Jo Ann	Hastings (WA)
Boehner	Davis, Tom	Hayes
Bonilla	Deal (GA)	Hayworth
Bonner	DeLay	Hensarling
Bono	DeMint	Herger
Boozman	Diaz-Balart, L.	Hobson
Boswell	Diaz-Balart, M.	Holden
Boucher	Dicks	Hostettler
Bradley (NH)	Doolittle	Houghton
Brady (TX)	Dreier	Hulshof
Brown (SC)	Dunn	Hunter
Brown-Waite, Ginny	Edwards	Hyde
	Ehlers	Isakson
Burgess	English	Issa
Burns	Etheridge	Istook
Burr	Everett	Jenkins
Burton (IN)	Feeney	Johnson (CT)
Buyer	Ferguson	Johnson (IL)
Calvert	Fletcher	Johnson, Sam
Cannon	Foley	Jones (NC)
Cantor	Forbes	Keller
Capito	Ford	Kelly
Carter	Fossella	Kennedy (MN)
King (IA)	Oxley	Sherwood
King (NY)	Pearce	Shimkus
Kirk	Peterson (PA)	Shuster
Kline	Petri	Simmons
Knollenberg	Pickering	Simpson
Kolbe	Pitts	Smith (MI)
LaHood	Platts	Smith (NJ)
Latham	Pombo	Smith (TX)
Leach	Pomeroy	Souder
Lewis (CA)	Porter	Stearns
Lewis (KY)	Portman	Stenholm
Linder	Pryce (OH)	Strickland
LoBiondo	Putnam	Sullivan
Lucas (KY)	Quinn	Sweeney
Lucas (OK)	Radanovich	Tanner
Manzullo	Rahall	Tauzin
Marshall	Ramstad	Taylor (MS)
McCotter	Regula	Taylor (NC)
McCrery	Rehberg	Terry
McHugh	Renzi	Thomas
McInnis	Reynolds	Thornberry
McKeon	Rogers (AL)	Tiahrt
Mica	Rogers (KY)	Tiberi
Michaud	Rogers (MI)	Toomey
Miller (MI)	Rohrabacher	Turner (OH)
Miller, Gary	Ros-Lehtinen	Upton
Mollohan	Royce	Vitter
Moran (KS)	Ryan (WI)	Walden (OR)
Moran (VA)	Ryun (KS)	Walsh
Murphy	Sandlin	Weldon (PA)
Nethercutt	Saxton	Weller
Neugebauer	Schrock	Whitfield
Ney	Scott (GA)	Wicker
Northup	Sensenbrenner	Wilson (NM)
Nunes	Sessions	Wilson (SC)
Nussle	Shadegg	Wolf
Osborne	Shaw	Young (AK)
Ose	Shays	Young (FL)

NOES- 189

Ackerman	Goodlatte	Meeks (NY)
Alexander	Green (TX)	Menendez
Andrews	Grijalva	Millender-McDonald
Baca	Gutierrez	
Baird	Hall	Miller (FL)
Baldwin	Hastings (FL)	Miller (NC)
Ballance	Hefley	Miller, George
Barton (TX)	Hill	Moore
Becerra	Hinchey	Murtha
Bell	Hinojosa	Musgrave
Berkley	Hoeffel	Myrick
Berman	Holt	Nadler
Berry	Honda	Napolitano
Bishop (GA)	Hooley (OR)	Neal (MA)
Bishop (NY)	Hoyer	Norwood
Blumenauer	Inslee	Oberstar
Boyd	Israel	Obey
Brady (PA)	Jackson (IL)	Olver
Brown (OH)	Jackson-Lee (TX)	Ortiz
Brown, Corrine		Otter
Camp	Jefferson	Owens
Capps	John	Pallone
Capuano	Johnson, E. B.	Pascrell
Cardin	Jones (OH)	Pastor
Cardoza	Kanjorski	Paul
Carson (IN)	Kaptur	Payne
Carson (OK)	Kennedy (RI)	Peterson (MN)
Clay	Kildee	Price (NC)
Clyburn	Kilpatrick	Reyes
Conyers	Kind	Rodriguez
Costello	Kingston	Ross
Crowley	Kleczka	Rothman
Cummings	Kucinich	Roybal-Allard
Davis (CA)	Lampson	Rush
Davis (FL)	Langevin	Ryan (OH)
DeFazio	Lantos	Sabo
DeGette	Larsen (WA)	Sanchez, Linda T.
Delahunt	Larson (CT)	
DeLauro	LaTourette	Sanchez, Loretta
Deutsch	Lee	Sanders
Dingell	Levin	Schakowsky
Doggett	Lewis (GA)	Schiff
Dooley (CA)	Lofgren	Scott (VA)
Doyle	Lowey	Serrano
Duncan	Lynch	Sherman
Emanuel	Majette	Skelton
Engel	Maloney	Slaughter
Eshoo	Markey	Smith (WA)
Evans	Matheson	Snyder
Farr	Matsui	Solis
Fattah	McCarthy (MO)	Spratt
Filner	McCarthy (NY)	Stark
Flake	McCollum	Stupak
Frank (MA)	McDermott	Tancredo
Franks (AZ)	McGovern	Tauscher
Frelinghuysen	McIntyre	Thompson (CA)
Frost	McNulty	Thompson (MS)
Gonzalez	Meehan	Tierney
Goode	Meek (FL)	Towns
Turner (TX)	Wamp	Weiner
Udall (NM)	Waters	Weldon (FL)
Van Hollen	Watson	Wexler
Velazquez	Watt	Wu
Visclosky	Waxman	Wynn

ANSWERED "PRESENT"- 1

Ruppersberger

NOT VOTING- 11

Davis (IL)	Janklow	Rangel
Emerson	Lipinski	Udall (CO)
Gephardt	Pelosi	Woolsey
Hoekstra	Pence	

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. CULBERSON) (during the vote). Members are advised there are 2 minutes in which to record their votes.

□ 2001

Mr. ROHRABACHER changed his vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. Are there any other amendments?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. CULBERSON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, pursuant to House Resolution 360, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

Mr. SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

Mr. SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OXLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were- yeas 392, nays 30,

answered "present" 1, not voting 11, as follows:

[Roll No. 499]

YEAS- 392

Abercrombie	DeLay	Jones (OH)
Ackerman	DeMint	Kanjorski
Akin	Deutsch	Kaptur
Alexander	Diaz-Balart, L.	Keller
Allen	Diaz-Balart, M.	Kelly
Andrews	Dicks	Kennedy (MN)
Baca	Dingell	Kennedy (RI)
Bachus	Doggett	Kildee
Baird	Dooley (CA)	Kilpatrick
Baker	Doolittle	Kind
Baldwin	Doyle	King (IA)
Ballance	Dreier	King (NY)
Ballenger	Duncan	Kingston
Barrett (SC)	Dunn	Kirk
Bartlett (MD)	Edwards	Kleczka
Barton (TX)	Ehlers	Kline
Bass	Emanuel	Knollenberg
Beauprez	Engel	Kolbe
Becerra	English	LaHood
Bell	Etheridge	Lampson
Bereuter	Evans	Langevin
Berkley	Everett	Lantos
Berry	Fattah	Larsen (WA)
Biggert	Feeney	Larson (CT)
Bilirakis	Ferguson	Latham
Bishop (GA)	Fletcher	LaTourette
Bishop (NY)	Foley	Leach
Bishop (UT)	Forbes	Levin
Blackburn	Ford	Lewis (CA)
Blumenauer	Fossella	Lewis (GA)
Blunt	Frank (MA)	Lewis (KY)
Boehlert	Franks (AZ)	Linder
Boehner	Frelinghuysen	LoBiondo
Bonilla	Frost	Lowey
Bonner	Gallegly	Lucas (KY)
Bono	Garrett (NJ)	Lucas (OK)
Boozman	Gerlach	Lynch
Boswell	Gibbons	Majette
Boucher	Gilchrest	Maloney
Boyd	Gillmor	Manzullo
Bradley (NH)	Gingrey	Marshall
Brady (PA)	Gonzalez	Matheson
Brady (TX)	Goode	McCarthy (MO)
Brown (OH)	Goodlatte	McCarthy (NY)
Brown (SC)	Gordon	McCollum
Brown, Corrine	Goss	McCotter
Brown-Waite, Ginny	Granger	McCrery
	Graves	McDermott
Burgess	Green (TX)	McGovern
Burns	Green (WI)	McHugh
Burr	Greenwood	McInnis
Burton (IN)	Grijalva	McIntyre
Buyer	Gutierrez	McKeon
Calvert	Gutknecht	McNulty
Camp	Hall	Meehan
Cannon	Harris	Meek (FL)
Cantor	Hart	Meeks (NY)
Capito	Hastings (FL)	Menendez
Capps	Hastings (WA)	Mica
Capuano	Hayes	Michaud
Cardin	Hayworth	Miller (FL)
Cardoza	Hefley	Miller (MI)
Carson (IN)	Hensarling	Miller (NC)
Carson (OK)	Herger	Miller, Gary
Carter	Hill	Mollohan
Case	Hinchey	Moore
Castle	Hinojosa	Moran (KS)
Chabot	Hobson	Moran (VA)
Chocola	Hoeffel	Murphy
Clay	Holden	Murtha
Clyburn	Holt	Musgrave
Coble	Hooley (OR)	Myrick
Cole	Hostettler	Napolitano
Collins	Houghton	Neal (MA)
Cooper	Hoyer	Nethercutt
Costello	Hulshof	Neugebauer
Cox	Hunter	Ney
Cramer	Hyde	Northup
Crane	Inslee	Norwood
Crenshaw	Isakson	Nunes
Crowley	Israel	Nussle
Cubin	Issa	Oberstar
Culberson	Istook	Obey
Cummings	Jackson-Lee (TX)	Olver
Cunningham		Ortiz
Davis (AL)	Jefferson	Osborne
Davis (FL)	Jenkins	Ose
Davis (TN)	John	Otter
Davis, Jo Ann	Johnson (CT)	Owens
Davis, Tom	Johnson (IL)	Oxley
Deal (GA)	Johnson, E. B.	Pallone
DeGette	Johnson, Sam	Pascrell
DeLauro	Jones (NC)	Pastor
Payne	Sabo	Tauzin
Pearce	Sanchez, Linda T.	Taylor (MS)
Pelosi		Taylor (NC)
Peterson (MN)	Sanchez, Loretta	Terry
Peterson (PA)	Sandlin	Thomas
Petri	Saxton	Thompson (MS)
Pickering	Schrock	Thornberry
Pitts	Scott (GA)	Tiahrt
Platts	Scott (VA)	Tiberi
Pombo	Sensenbrenner	Tierney
Pomeroy	Serrano	Toomey
Porter	Sessions	Towns
Portman	Shadegg	Turner (OH)
Price (NC)	Shaw	Turner (TX)
Pryce (OH)	Shays	Udall (NM)
Putnam	Sherman	Upton
Quinn	Sherwood	Van Hollen
Radanovich	Shimkus	Velazquez
Rahall	Shuster	Visclosky
Ramstad	Simmons	Vitter
Regula	Simpson	Walden (OR)
Rehberg	Skelton	Walsh
Renzi	Slaughter	Wamp
Reyes	Smith (MI)	Watt
Reynolds	Smith (NJ)	Weiner
Rodriguez	Smith (TX)	Weldon (FL)
Rogers (AL)	Smith (WA)	Weldon (PA)
Rogers (KY)	Snyder	Weller
Rogers (MI)	Solis	Wexler
Rohrabacher	Souder	Whitfield
Ros-Lehtinen	Spratt	Wicker
Ross	Stearns	Wilson (NM)
Rothman	Stenholm	Wilson (SC)
Roybal-Allard	Strickland	Wolf
Royce	Stupak	Wu
Rush	Sullivan	Wynn
Ryan (OH)	Sweeney	Young (AK)
Ryan (WI)	Tancredo	Young (FL)
Ryun (KS)	Tanner	

NAYS- 30

Berman	Jackson (IL)	Sanders
Conyers	Kucinich	Schakowsky
Davis (CA)	Lee	Schiff
DeFazio	Lofgren	Stark
Delahunt	Markey	Tauscher
Eshoo	Matsui	Thompson (CA)
Farr	Millender-McDonald	Waters
Filner		Watson
Flake	Miller, George	Waxman
Harman	Nadler	
Honda	Paul	

ANSWERED "PRESENT"- 1

Ruppersberger

NOT VOTING- 11

Aderholt	Hoekstra	Rangel
Davis (IL)	Janklow	Udall (CO)
Emerson	Lipinski	Woolsey
Gephardt	Pence	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 2019

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 2622, FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Mr. LATOURETTE. Mr. Speaker, on a gratifying endorsement of my oratorical skills, the Chairman of the full committee has asked that I ask unanimous consent that in the engrossment of the bill, H.R. 2622, the Clerk be authorized to correct section numbers, punctuation, and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mr. OSE. Mr. Speaker, on September 4, I recorded a "yes" vote on rollcall vote No. 463. My vote should have been "no."

PERSONAL EXPLANATION

Mr. WAMP. Mr. Speaker, on September 4, I recorded a "yes" vote on rollcall vote No. 463 ordered on the previous question for H. Res. 351. My vote should have been "no."

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1472

Mr. WAMP. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1472.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 1588, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

Mr. EDWARDS. Mr. Speaker, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. EDWARDS moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1588 be instructed to agree to the provisions contained in sections 606 and 619 of the Senate amendment (relating to the rates of pay for the family separation allowance and imminent danger pay).

The SPEAKER pro tempore. Pursuant to clause 7(b) of rule XX, the gentleman from Texas (Mr. EDWARDS) and a Member of the opposing party each will control 30 minutes.

Mr. MCHUGH. Mr. Speaker, I rise to control the time in opposition.

The SPEAKER pro tempore. The gentleman from New York (Mr. MCHUGH) will control the time in opposition.

The Chair recognizes the gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, my motion would instruct the conferees working on the Defense authorization bill to recede to the Senate bill on section 606 and 619. Specifically, Section 606 would make permanent the increase of military separation pay from $100 per month to $250 a month. Section 619 would make permanent the increase to hostile fire and imminent danger special pay from $150 a month to $225 a month.

Mr. Speaker, what we are really talking about here is that in the past year, Congress voted to show respect to our

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, WEDNESDAY, NOVEMBER 5, 2003 No. 159

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BASS).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 5, 2003.

I hereby appoint the Honorable CHARLES F. BASS to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend James Thomas, Pastor, Jefferson Street Missionary Baptist Church, Nashville, Tennessee, offered the following prayer:

Our God, who has given this Nation the democratic ideals by which our destiny is fashioned, we thank You, that You have blessed our land to survive the infectious climate of confusion, uncertainty, poverty, war and numerous of other ills; but raising up among us capable leaders from the North, South, East and West, our best who have been elected by us.

We set them before thee. Bless each one, one by one. Give them the shoes for the journey and strength for their feet. Let us never forget the least, the less, and the left out, whose side You are on.

We ask a special prayer for our sons and daughters on the battlefield, whose days are darker than our nights. We pray for the mighty who have fallen. We pray for the hurt of their families and remind them that hurt goes away, but memories will last forever. Humble us as a people to know the high costs of freedom.

Now we ask that You be not just another guest this day, but You be the host. Make us nothing that You may be everything. God bless America. In Your name we pray.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Florida (Mr. FOLEY) come forward and lead the House in the Pledge of Allegiance.

Mr. FOLEY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3365. An act to amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1720. An act to provide for Federal court proceedings in Plano, Texas.

HONORING THE REVEREND JAMES THOMAS

(Mr. COOPER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COOPER. Mr. Speaker, the Congress of the United States is honored today to have Pastor James Thomas, the reverend of Jefferson Street Missionary Baptist Church, to deliver the opening prayer.

Pastor Thomas has been a force for good in the Nashville community since 1964 when he hitchhiked from Texas with $4 in his pocket to attend American Baptist Theological Seminary.

NOTICE

Effective January 1, 2004, the subscription price of the Congressional Record will be $503 per year or $252 for six months. Individual issues may be purchased at the following costs: Less than 200 pages, $10.50; Between 200 and 400 pages, $21.00; Greater than 400 pages, $31.50. Subscriptions in microfiche format will be $146 per year with single copies priced at $3.00. This price increase is necessary based upon the cost of printing and distribution.

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McCrery	Pitts	Smith (NJ)
McDermott	Platts	Smith (TX)
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McIntyre	Price (NC)	Souder
McKeon	Pryce (OH)	Spratt
McNulty	Putnam	Stark
Meehan	Quinn	Stearns
Meek (FL)	Radanovich	Stenholm
Meeks (NY)	Rahall	Strickland
Menendez	Ramstad	Stupak
Mica	Rangel	Sullivan
Michaud	Regula	Sweeney
Millender-McDonald	Rehberg	Tancredo
	Renzi	Tanner
Miller (FL)	Reynolds	Tauscher
Miller (MI)	Rodriguez	Tauzin
Miller (NC)	Rogers (AL)	Taylor (MS)
Miller, Gary	Rogers (KY)	Terry
Miller, George	Rogers (MI)	Thomas
Mollohan	Rohrabacher	Thompson (CA)
Moore	Ros-Lehtinen	Thompson (MS)
Moran (KS)	Ross	Thornberry
Moran (VA)	Rothman	Tiahrt
Murphy	Roybal-Allard	Tiberi
Musgrave	Royce	Tierney
Myrick	Ruppersberger	Toomey
Nadler	Rush	Towns
Napolitano	Ryan (OH)	Turner (OH)
Neal (MA)	Ryan (WI)	Udall (CO)
Nethercutt	Ryun (KS)	Udall (NM)
Neugebauer	Sabo	Upton
Ney	Sanchez, Linda T.	Van Hollen
Northup		Velazquez
Norwood	Sanchez, Loretta	Visclosky
Nunes	Sanders	Vitter
Nussle	Sandlin	Walden (OR)
Oberstar	Saxton	Walsh
Obey	Schakowsky	Wamp
Olver	Schiff	Waters
Ortiz	Schrock	Watson
Osborne	Scott (GA)	Watt
Ose	Scott (VA)	Waxman
Otter	Sensenbrenner	Weiner
Owens	Serrano	Weldon (FL)
Oxley	Sessions	Weldon (PA)
Pallone	Shadegg	Weller
Pascrell	Shaw	Wexler
Pastor	Shays	Whitfield
Paul	Sherman	Wicker
Payne	Sherwood	Wilson (NM)
Pearce	Shimkus	Wilson (SC)
Pelosi	Shuster	Wolf
Pence	Simmons	Woolsey
Peterson (MN)	Simpson	Wu
Peterson (PA)	Skelton	Wynn
Petri	Slaughter	Young (AK)
Pickering	Smith (MI)	Young (FL)

NOT VOTING- 14

Boehlert	Kaptur	Reyes
Fattah	Kucinich	Taylor (NC)
Fletcher	LaTourette	Turner (TX)
Gephardt	Lewis (KY)	
Jackson-Lee (TX)	Murtha	
	Portman	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1832

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monohan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2622. An act to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2622) "An Act to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SHELBY, Mr. BENNETT, Mr. ALLARD, Mr. ENZI, Mr. SARBANES, Mr. DODD, and Mr. JOHNSON, to be the conferees on the part of the Senate.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3308

Mr. DOOLEY of California. Mr. Speaker, I ask unanimous consent that the gentleman from Texas (Mr. RODRIGUEZ) be removed as a cosponsor from my bill, H.R. 3308. The gentleman from Texas had asked me to be a cosponsor of H.R. 3242, which I introduced, and was mistakenly added as a cosponsor of H.R. 3308.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from California?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2366

Mr. DOOLEY of California. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 2366.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. BELL. Pursuant to clause 7(c) of House rule XXII, I hereby notify the House of my intention tomorrow to offer the following motion to instruct House conferees on H.R. 2660, the fiscal year 2004 Labor, Health and Human Services, Education and Related Agencies Appropriations Act.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2660, be instructed to insist on the highest funding levels possible for the National Institutes of Health.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 6, ENERGY POLICY ACT OF 2003

Mr. FILNER. Mr. Speaker, pursuant to rule XXII, clause 7(c), I hereby announce my intention to offer a motion to instruct conferees on H.R. 6, the Energy Policy Act.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill, H.R. 6, be instructed to reject section 12403 of the House bill, relating to the definition of oil and gas exploration and production in the Federal Water Pollution Control Act.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

Mr. CARDOZA. Mr. Speaker, subject to rule XXII, clause 7(c), I hereby announce my intention to offer a motion to instruct on H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill;

(2) To reject the provisions of section 231 of the Senate amendment

(3) Within the scope of conference, to increase payments under the medicaid program for inpatient hospital services furnished by disproportionate share hospitals by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions

(4) To insist upon section 1001 of the House bill and section 602 of the Senate bill.

RECOGNIZING CONTINUED IMPORTANCE OF TRANSATLANTIC RELATIONSHIP AND PROMOTING STRONGER RELATIONS WITH EUROPE

Mr. BEREUTER. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the resolution (H. Res. 390) recognizing the continued importance of the transatlantic relationship and promoting stronger relations with Europe by reaffirming the need for a continued and meaningful dialogue between the United States and Europe, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

Mr. WEXLER. Mr. Speaker, reserving the right to object, I yield to the gentleman from Nebraska for purposes of a description of the resolution.

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, THURSDAY, NOVEMBER 6, 2003 No. 160

House of Representatives

The House met at 10 a.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, by reflecting on our faith story in the past both as individuals and as a Nation, You help us in our discernment of present issues.

By coming to understand who we truly are in relationship to You, Almighty God, and how we are drawn together as a people, You enable us to accept the light and the darkness within ourselves, the strong and the weak, the godly and the sinful, the wounded and the healthy.

In taking possession of ourselves in the mirror of Your own word, we see Your mighty hand guiding our history.

And Your dealings with us in the past help Congress today to lead us on the path to freedom.

Our true freedom is the ability to truly become the people You have destined us to be, to determine the shape of things to come and find direction for our life now and forever. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Oregon (Ms. HOOLEY) come forward and lead the House in the Pledge of Allegiance.

Ms. HOOLEY of Oregon led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1442. An act to authorize the design and construction of a visitor center for the Vietnam Veterans Memorial.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 589. An act to strengthen and improve the management of national security, encourage Government service in areas of critical national security, and to assist government agencies in addressing deficiencies in personnel possessing specialized skills important to national security and incorporating the goals and strategies for recruitment and retention for such skilled personnel into the strategic and performance management systems of Federal agencies.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain up to 10 one-minute requests on each side.

REEXAMINING A STREAMLINED PROCESS

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, our companies that develop drugs that treat life-threatening illnesses must go through a rigorous process to ensure the safety and effectiveness of their drugs. Only after these FDA requirements are met, can the drug be put on the market. Under rare circumstances, medications can be approved through an accelerated process known as Subpart H which was adopted to streamline the approval of desperately needed drugs intended to treat serious and life-threatening illnesses.

RU-486, an abortion drug, was approved under this streamlined process.

Several weeks ago, Holly Patterson, a California teenager, died from an infection caused by fragments of her baby's corpse left in her uterus after she took RU-486 at a Planned Parenthood facility.

Mr. Speaker, the Food and Drug Administration should not have authorized this dangerous drug. Legislation is being introduced today that takes RU-

NOTICE

Effective January 1, 2004, the subscription price of the Congressional Record will be $503 per year or $252 for six months. Individual issues may be purchased at the following costs: Less than 200 pages, $10.50; Between 200 and 400 pages, $21.00; Greater than 400 pages, $31.50. Subscriptions in microfiche format will be $146 per year with single copies priced at $3.00. This price increase is necessary based upon the cost of printing and distribution.

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work. Under no circumstances may the Secretary or Administrator request funds from a separate account exceeding the total money in the account established under paragraph (2) or (3). The Secretary and the Administrator shall maintain an inventory of funds available for such purposes. Funds provided under this paragraph shall be available without further appropriation and shall remain available until expended.''.

(g) AREAS I AND II.- Section 8908(a) of title 40, United States Code, is amended-

(1) by striking ''Secretary of the Interior and Administrator of General Services'' and inserting ''Secretary of the Interior or the Administrator of General Services (as appropriate)''; and

(2) by striking ''numbered 869/86581, and dated May 1, 1986'' and inserting ''entitled 'Commemorative Areas Washington, DC and Environs', numbered 869/86501 B, and dated June 24, 2003''.

SEC. 204. SITE AND DESIGN CRITERIA.

Section 8905(b) of title 40, United States Code (as amended by section 203(e)), is amended by adding at the end the following:

''(5) MUSEUMS.- No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park as depicted on the map referenced in section 8902(2).

''(6) SITE-SPECIFIC GUIDELINES.- The National Capital Planning Commission and the Commission of Fine Arts may develop such criteria or guidelines specific to each site that are mutually agreed upon to ensure that the design of the commemorative work carries out the purposes of this chapter.

''(7) DONOR CONTRIBUTIONS.- Donor contributions to commemorative works shall not be acknowledged in any manner as part of the commemorative work or its site.''.

SEC. 205. NO EFFECT ON PREVIOUSLY APPROVED SITES.

Except for the provision in the amendment made by section 202(b) prohibiting a visitor center from being located in the Reserve (as defined in section 8902 of title 40, United States Code), nothing in this title shall apply to a commemorative work for which a site was approved in accordance with chapter 89 of title 40, United States Code, prior to the date of enactment of this title.

SEC. 206. NATIONAL PARK SERVICE REPORTS.

Within six months after the date of enactment of this title, the Secretary of the Interior, in consultation with the National Capital Planning Commission and the Commission of Fine Arts, shall submit to the Committee on Energy and Natural Resources of the United States Senate, and to the Committee on Resources of the United States House of Representatives reports setting forth plans for the following:

(1) To relocate, as soon as practicable after the date of enactment of this Act, the National Park Service's stable and maintenance facilities that are within the Reserve (as defined in section 8902 of title 40, United States Code).

(2) To relocate, redesign or otherwise alter the concession facilities that are within the Reserve to the extent necessary to make them compatible with the Reserve's character.

(3) To limit the sale or distribution of permitted merchandise to those areas where such activities are less intrusive upon the Reserve, and to relocate any existing sale or distribution structures that would otherwise be inconsistent with the plan.

(4) To make other appropriate changes, if any, to protect the character of the Reserve.

Mr. POMBO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, I was unavoidably detained in my district on November 4. On rollcall vote 603, H. Con. Res. 94, if I had been present, I would have voted aye.

I was unavoidably detained in my district on November 4. For rollcall vote 602, H. Con. Res. 176, if I had been present, I would have voted aye.

I was unavoidably detained in my district on official business on November 5. On rollcall vote 609, H.R. 3365, if I had been present, I would have voted aye.

I was unavoidably detained in my district on official business on November 5. On rollcall vote 608, H.R. 3214, if I had been present, I would have voted aye.

I was unavoidably detained in my district on official business on November 5. On rollcall vote 607, H.R. 2620, if I had been present, I would have voted aye.

I was unavoidably detained in my district on official business on November 5. On rollcall vote 606, H.R. 2559, had I been present, I would have voted aye.

I was unavoidably detained in my district on November 5. On rollcall vote 605, H.J. Res. 76, had I been present, I would have voted aye.

On November 5, rollcall vote 604, H.R. 2443, I was detained in my district on official business. If I had been present, I would have voted aye.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

□ 1645

APPOINTMENT OF CONFEREES ON H.R. 2622, FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Mr. OXLEY. Mr. Speaker, by direction of the Committee on Financial Services and pursuant to clause 1 of rule XXII of the rules of the House of Representatives for the 108th Congress, I move to take from the Speaker's table the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. SIMMONS). The gentleman from Ohio (Mr. OXLEY) is recognized for 1 hour.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a simple motion to get us into conference with the Senate on H.R. 2622, the Fair and Accurate Credit Transactions Act, which the Senate passed yesterday. We have a lot of work to do in a short amount of time.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY).

The motion was agreed to.

MOTION TO INSTRUCT CONFEREES OFFERED BY MR. FRANK of massachusetts

Mr. FRANK of Massachusetts. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. FRANK of Massachusetts moves that the managers on the part of the House in the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 2622 be instructed as follows:

1. That the House conferees insist that section 304 of the House bill relating to the duties of furnishers of information be included in the conference report.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Ohio (Mr. OXLEY) each will control 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I should inform the membership that it is the earnest hope and, indeed, intention of the gentleman from Ohio and myself to control most of those 30 minutes apiece somewhere else other than on the floor of this House.

I very much appreciated the ability to work with the chairman. We had a difficult issue, the fair credit bill. It is not everything I would have liked to have seen. It is different than it would have been if our side was in the majority. But nevertheless it was a genuinely legislated bill. There was give and take. It is, I think, an improvement over current law. The other body has also passed a bill which has similar characteristics. It is an eminently conferencable bill because both Houses have legislated on similar subjects not in diametrically opposite ways, but in similar ways.

This instruction motion, and we have discussed this with the majority side, has been cut down, as a clever deduction would lead you to believe, since if you read the instruction motion, it consists of a paragraph numbered 1. Ordinarily one does not number a paragraph 1 unless one has a 2. We did have

a 2; it has gone in the interest of conciliation and compromise, so we now have one. And it is that the House stick by its position on a very important subject, and I appreciate the gentleman from Ohio's support on this.

What we have done in this bill, in both bodies, is to increase the information to consumers about credit reports. We have in various ways, by increasing the flow of information, given the consumers a better chance to know what is being said about them. But there was one flaw that came to me as I read the volumes of testimony that we got, namely, there was a problem with the input of the information at the outset, the accuracy. What we have is, in the law, a very low standard of care that the initial furnishers of the information have to have.

I understand they are having problems. We are not trying to overburden them. Indeed, I have talked to the gentleman from California (Mr. ROYCE) about some ways later on to modify this to keep people from being flooded; but essentially what the motion says is that we stick by the language in our bill that makes it easier, if you get this information and it tells you that there was some inaccuracy about you, this bill, this language, makes it easier for you to get that corrected. It means that you are entitled to more cooperation than under current law to get inaccurate information about you corrected. That is what we do. I appreciate the gentleman from Ohio's support.

Mr. OXLEY. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Ohio.

Mr. OXLEY. I thank my friend from Massachusetts for yielding.

Mr. Speaker, let me say to my good friend that this is a bill that passed this House a few weeks ago with, I think, 392 votes and had strong bipartisan support because of the work that the committee did in working with all sectors of the committee on this important issue. All of us know that we need to reauthorize the Fair Credit Reporting Act by the end of this year, and so time is of the essence. I am prepared to not only associate myself with the remarks of the gentleman from Massachusetts but also to support his motion to instruct.

Mr. MOORE. Mr. Speaker, I rise in support of the motion to instruct conferees being offered by the ranking Democratic member of the financial Services Committee, Mr. FRANK. As a member of that committee, I was deeply involved in the drafting and consideration of the Fair and Accurate Credit Transactions Act.

I was pleased to join with my colleagues, Representatives BACHUS, HOOLEY and BIGGERT, in introducing this bipartisan measure. This bill was approved in subcommittee on a vote of 41–0, in full committee by a vote of 63–3 and by the full House by a vote of 392–30 with one voting present. Earlier this week, the Senate approved a similar version of this bill by 95–2.

Mr. Speaker, this is the way Congress should work. This is the way our constituents want us to conduct their business. Consideration of this bill consistently has been bipartisan and thoughtful. All members of the committee with opinions and proposals on the issues raised by H.R. 2622 were able to offer amendments and participate in debate. The way in which this measure was handled made this a stronger piece of legislation than the version we introduced. I commend our committee's leadership, Chairman OXLEY and Ranking Democrat FRANK, for making this proposal.

The instructions before us today urge the conferees to agree to provisions in the House bill that will enhance the accuracy of information which creditors, retailers and other furnishers of information provide to consumer reporting agencies. They also add new requirements that provide consumers with an additional option to correct their consumer files by disputing information directly with individual furnishers of that information.

Mr. Speaker, the problems of inaccurate and incomplete information that plague the current credit reporting system are of great personal concern to those of our constituents who have suffered them. I'm sure each of us could relate instances involving constituents who have faced tremendous difficulty and aggravation in correcting inaccurate credit histories.

This legislation directly addresses these very real problems faced by people every day of the year. The provisions of the motion to instruct will ensure that the new law does so meaningfully.

Our credit system is the envy of every other country in the world. Our country, overall, does an excellent job of making credit available quickly and fairly to consumers and businesses. Enactment of H.R. 2622 will preserve and strengthen this system. I urge my colleagues to support the Frank motion and to support the conference report that should be before us within a few weeks.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Massachusetts (Mr. FRANK).

The motion to instruct was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: For consideration of the House bill and the Senate amendment, and modifications committed to conference: Messrs. OXLEY, BEREUTER, BACHUS, CASTLE, ROYCE, NEY, Mrs. KELLY, Mr. GILLMOR, Mr. LATOURETTE, Mrs. BIGGERT, Messrs. SESSIONS, FRANK of Massachusetts, KANJORSKI, SANDERS, Ms. WATERS, Mr. WATT, Mr. GUTIERREZ, Ms. HOOLEY of Oregon and Mr. MOORE.

There was no objection.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the motion to go to conference and the motion to instruct on the bill, H.R. 2622, and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. BELL. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. BELL moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2660, be instructed to insist on the highest funding levels possible for the National Institutes of Health.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Texas (Mr. BELL) and the gentleman from Ohio (Mr. REGULA) each will control 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. BELL).

Mr. BELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to address an issue that affects every Member in the House as well as every American that we speak for in this body. I am talking about the future health of our Nation and our commitment as a society to cure disease, end suffering, and improve the quality of life for our fellow citizens.

Disease does not discriminate in America. It is not partisan. It takes as its victims men and women of every race and ethnicity, every socioeconomic bracket, rich or poor, Republican or Democrat, young or old. Disease can strike anyone: cancer, Alzheimer's, Parkinson's, AIDS, diabetes, depression, ALS, multiple sclerosis, sickle-cell anemia, heart disease. The most talented, the most brilliant, the most loving and the most giving people in the world have been and continue to be victims of these baffling diseases. These are diseases that have affected America's best and brightest.

Health is the principal building block to our Nation's wealth and welfare. Our ability to produce, create, innovate, contribute, and lead this great country through the next generations and the true measure of greatness of our free society which promises life, liberty and the pursuit of happiness are in large part dependent on the commitment we in the United States Congress make to the future of health and science research and discovery. I am talking about the funding level this body determines for the National Institutes of Health, or NIH as it is known.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, FRIDAY, NOVEMBER 21, 2003 No. 170

House of Representatives

The House met at 9 a.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord our God, grant Your servants patience and perseverance.

Patience calms the soul within.

Perseverance reaches beyond oneself to accomplish the task at hand.

Humbled by our own frailty and sometimes overwhelmed by the expectations laid upon us, we need Your mighty assistance.

Unsure which comes first, perseverance or patience, touch each Member of this House personally that all may contribute to the ways of freedom and the work of justice.

May virtue flourish here that all may see that by helping others to persevere we find the strength and purpose to persevere ourselves; for we are Your servants, both now and forever.

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Georgia (Mr. GINGREY) come forward and lead the House in the Pledge of Allegiance.

Mr. GINGREY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain five 1-minute speeches on each side.

ST. URSULA BULLDOGS WIN OHIO STATE VOLLEYBALL CHAMPIONSHIP

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 23, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerkhouse.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60 of the Capitol.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Mrs. WILSON in supporting a good consumer protection bill that I hope will help us, as consumers, fight the scourge that is spam.

No one disputes the great utility of e-mail, the fact that it has brought great efficiency and productivity gains, not only to our professional lives but also our personal lives. Nonetheless, our daily routine of scouring through and reviewing our e-mail also tells us that e-mail as a critical communications medium is under assault from unwanted e-mail—most peddling goods or services ranging from the real to the absurd. I do not have a problem with e-marketing per se, after all, our consumer based economy is highly dependent on marketing. However, e-mail communications make accountability more difficult. Therefore, unscrupulous people use it to advance fraudulent and deceptive acts and even good commercial actors are tempted to take advantage of this lack of accountability.

Effective and narrowly tailored legislation, like the one before us today, can help bring greater accountability to e-mail solicitations. That greater accountability is achieved by making sure that fraud and deception is prosecuted and subjected to severe penalties.

Legislation is only part of the solution, and in my view a smaller part. Rather, technology, consumer education, and industry cooperation, in my view, are the key tools in combating spam and injecting real and effective accountability. Finally, combating spam requires international cooperation. I think my bi-partisan bill, H.R. 3143, which strengthens the Federal Trade Commission's ability to address the growing problem of transnational fraud, will go a long way in fighting spam that is not home grown.

Mr. TAUZIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. TAUZIN) that the House suspend the rules and pass the Senate bill, S. 877, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. TAUZIN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

CONFERENCE REPORT ON H.R. 2622, FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Mr. OXLEY (during consideration of H. Res. 458) submitted the following conference report and statement on the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes:

CONFERENCE REPORT (H. REPT. 108-396)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2622), to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.- This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.- The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS.

As used in this Act-

(1) the term "Board" means the Board of Governors of the Federal Reserve System;

(2) the term "Commission", other than as used in title V, means the Federal Trade Commission;

(3) the terms "consumer", "consumer report", "consumer reporting agency", "creditor", "Federal banking agencies", and "financial institution" have the same meanings as in section 603 of the Fair Credit Reporting Act, as amended by this Act; and

(4) the term "affiliates" means persons that are related by common ownership or affiliated by corporate control.

SEC. 3. EFFECTIVE DATES.

Except as otherwise specifically provided in this Act and the amendments made by this Act-

(1) before the end of the 2-month period beginning on the date of enactment of this Act, the Board and the Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act; and

(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible, while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall any such effective date be later than 10 months after the date of issuance of such regulations in final form.

TITLE I—IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

Subtitle A—Identity Theft Prevention

SEC. 111. AMENDMENT TO DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following:

"(q) DEFINITIONS RELATING TO FRAUD ALERTS.-

"(1) ACTIVE DUTY MILITARY CONSUMER.- The term 'active duty military consumer' means a consumer in military service who-

"(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

"(B) is assigned to service away from the usual duty station of the consumer.

''(2) FRAUD ALERT; ACTIVE DUTY ALERT.- The terms 'fraud alert' and 'active duty alert' mean a statement in the file of a consumer that-

''(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and

''(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

''(3) IDENTITY THEFT.- The term 'identity theft' means a fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation.

''(4) IDENTITY THEFT REPORT.- The term 'identity theft report' has the meaning given that term by rule of the Commission, and means, at a minimum, a report-

''(A) that alleges an identity theft;

''(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and

''(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

''(5) NEW CREDIT PLAN.- The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.

''(r) CREDIT AND DEBIT RELATED TERMS-

''(1) CARD ISSUER.- The term 'card issuer' means-

''(A) a credit card issuer, in the case of a credit card; and

''(B) a debit card issuer, in the case of a debit card.

''(2) CREDIT CARD.- The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act.

''(3) DEBIT CARD.- The term 'debit card' means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

''(4) ACCOUNT AND ELECTRONIC FUND TRANSFER.- The terms 'account' and 'electronic fund transfer' have the same meanings as in section 903 of the Electronic Fund Transfer Act.

''(5) CREDIT AND CREDITOR.- The terms 'credit' and 'creditor' have the same meanings as in section 702 of the Equal Credit Opportunity Act.

''(s) FEDERAL BANKING AGENCY.- The term 'Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(t) FINANCIAL INSTITUTION.- The term 'financial institution' means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

''(u) RESELLER.- The term 'reseller' means a consumer reporting agency that-

''(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

''(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

''(v) COMMISSION.- The term 'Commission' means the Federal Trade Commission.

''(w) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.- The term 'nationwide specialty consumer reporting agency' means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to-

''(1) medical records or payments;

''(2) residential or tenant history;

''(3) check writing history;

''(4) employment history; or

''(5) insurance claims.''.

SEC. 112. FRAUD ALERTS AND ACTIVE DUTY ALERTS.

(a) FRAUD ALERTS.- The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 605 the following:

''§ 605A. Identity theft prevention; fraud alerts and active duty alerts

''(a) ONE-CALL FRAUD ALERTS.-

''(1) INITIAL ALERTS.- Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 603(p) that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall-

''(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, for a period of not less than 90 days, beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose; and

''(B) refer the information regarding the fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

''(2) ACCESS TO FREE REPORTS.- In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall-

''(A) disclose to the consumer that the consumer may request a free copy of the file of the consumer pursuant to section 612(d); and

''(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

''(b) EXTENDED ALERTS.-

''(1) IN GENERAL.- Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who submits an identity theft report to a consumer reporting agency described in section 603(p) that maintains a file on the consumer, if the agency has received appropriate proof of the identity of the requester, the agency shall-

''(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, during the 7-year period beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of the identity of the requester for such purpose;

''(B) during the 5-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or such representative requests that such exclusion be rescinded before the end of such period; and

''(C) refer the information regarding the extended fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

''(2) ACCESS TO FREE REPORTS.- In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall-

''(A) disclose to the consumer that the consumer may request 2 free copies of the file of the consumer pursuant to section 612(d) during the 12-month period beginning on the date on which the fraud alert was included in the file; and

''(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

''(c) ACTIVE DUTY ALERTS.- Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, a consumer reporting agency described in section 603(p) that maintains a file on the active duty military consumer and has received appropriate proof of the identity of the requester shall-

''(1) include an active duty alert in the file of that active duty military consumer, and also provide that alert along with any credit score generated in using that file, during a period of not less than 12 months, or such longer period as the Commission shall determine, by regulation, beginning on the date of the request, unless the active duty military consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose;

''(2) during the 2-year period beginning on the date of such request, exclude the active duty military consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer requests that such exclusion be rescinded before the end of such period; and

''(3) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

''(d) PROCEDURES.- Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with this section, including procedures that inform consumers of the availability of initial, extended, and active duty alerts and procedures that allow consumers and active duty military consumers to request initial, extended, or active duty alerts (as applicable) in a simple and easy manner, including by telephone.

''(e) REFERRALS OF ALERTS.- Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert or active duty alert from another consumer reporting agency pursuant to this section shall, as though the agency received the request from the consumer directly, follow the procedures required under-

''(1) paragraphs (1)(A) and (2) of subsection (a), in the case of a referral under subsection (a)(1)(B);

''(2) paragraphs (1)(A), (1)(B), and (2) of subsection (b), in the case of a referral under subsection (b)(1)(C); and

''(3) paragraphs (1) and (2) of subsection (c), in the case of a referral under subsection (c)(3).

''(f) DUTY OF RESELLER TO RECONVEY ALERT.- A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.

''(g) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.- If a consumer contacts any consumer reporting agency that is not described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on

how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this section.

''(h) LIMITATIONS ON USE OF INFORMATION FOR CREDIT EXTENSIONS..-

''(1) REQUIREMENTS FOR INITIAL AND ACTIVE DUTY ALERTS.-

''(A) NOTIFICATION.- Each initial fraud alert and active duty alert under this section shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B).

''(B) LIMITATION ON USERS.-

''(i) IN GENERAL.- No prospective user of a consumer report that includes an initial fraud alert or an active duty alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.

''(ii) VERIFICATION.- If a consumer requesting the alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension described in clause (i) in the name of such consumer, a user of such consumer report shall contact the consumer using that telephone number or take reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft.

''(2) REQUIREMENTS FOR EXTENDED ALERTS.-

''(A) NOTIFICATION.- Each extended alert under this section shall include information that provides all prospective users of a consumer report relating to a consumer with-

''(i) notification that the consumer does not authorize the establishment of any new credit plan or extension of credit described in clause (i), other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B); and

''(ii) a telephone number or other reasonable contact method designated by the consumer.

''(B) LIMITATION ON USERS.- No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended fraud alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method described in subparagraph (A)(ii) to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.''.

(b) RULEMAKING.- The Commission shall prescribe regulations to define what constitutes appropriate proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the Fair Credit Reporting Act, as amended by this Act.

SEC. 113. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

''(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.-

''(1) IN GENERAL.- Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

''(2) LIMITATION.- This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

''(3) EFFECTIVE DATE.- This subsection shall become effective-

''(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

''(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.''.

SEC. 114. ESTABLISHMENT OF PROCEDURES FOR THE IDENTIFICATION OF POSSIBLE INSTANCES OF IDENTITY THEFT.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended-

(1) by striking ''(e)'' at the end; and

(2) by adding at the end the following:

''(e) RED FLAG GUIDELINES AND REGULATIONS REQUIRED.-

''(1) GUIDELINES.- The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621-

''(A) establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

''(B) prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A), to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers; and

''(C) prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer, in accordance with reasonable policies and procedures-

''(i) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

''(ii) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

''(iii) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subparagraph (B).

''(2) CRITERIA.-

''(A) IN GENERAL.- In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

''(B) INACTIVE ACCOUNTS.- In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall consider including reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or financial institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.

''(3) CONSISTENCY WITH VERIFICATION REQUIREMENTS.- Guidelines established pursuant to paragraph (1) shall not be inconsistent with the policies and procedures required under section 5318(l) of title 31, United States Code.''.

SEC. 115. AUTHORITY TO TRUNCATE SOCIAL SECURITY NUMBERS.

Section 609(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)(1)) is amended by striking ''except that nothing'' and inserting the following: ''except that-

''(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

''(B) nothing''.

Subtitle B—Protection and Restoration of Identity Theft Victim Credit History

SEC. 151. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.-

(1) SUMMARY.- Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following:

''(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.-

''(1) IN GENERAL.- The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.

''(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.- Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Commission pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Commission under paragraph (1), and information on how to contact the Commission to obtain more detailed information.

''(e) INFORMATION AVAILABLE TO VICTIMS.-

''(1) IN GENERAL.- For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy

of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to-

"(A) the victim;

"(B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or

"(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

"(2) VERIFICATION OF IDENTITY AND CLAIM.- Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity-

"(A) as proof of positive identification of the victim, at the election of the business entity-

"(i) the presentation of a government-issued identification card;

"(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

"(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

"(B) as proof of a claim of identity theft, at the election of the business entity-

"(i) a copy of a police report evidencing the claim of the victim of identity theft; and

"(ii) a properly completed-

"(I) copy of a standardized affidavit of identity theft developed and made available by the Commission; or

"(II) an affidavit of fact that is acceptable to the business entity for that purpose.

"(3) PROCEDURES.- The request of a victim under paragraph (1) shall-

"(A) be in writing;

"(B) be mailed to an address specified by the business entity, if any; and

"(C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including-

"(i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and

"(ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.

"(4) NO CHARGE TO VICTIM.- Information required to be provided under paragraph (1) shall be so provided without charge.

"(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.- A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that-

"(A) this subsection does not require disclosure of the information;

"(B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

"(C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

"(D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

"(6) LIMITATION ON LIABILITY.- Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

"(7) LIMITATION ON CIVIL LIABILITY.- No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.

"(8) NO NEW RECORDKEEPING OBLIGATION.- Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

"(9) RULE OF CONSTRUCTION.-

"(A) IN GENERAL.- No provision of subtitle A of title V of Public Law 106-102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

"(B) LIMITATION.- Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

"(10) AFFIRMATIVE DEFENSE.- In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that-

"(A) the business entity has made a reasonably diligent search of its available business records; and

"(B) the records requested under this subsection do not exist or are not reasonably available.

"(11) DEFINITION OF VICTIM.- For purposes of this subsection, the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

"(12) EFFECTIVE DATE.- This subsection shall become effective 180 days after the date of enactment of this subsection.

"(13) EFFECTIVENESS STUDY.- Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.".

(2) RELATION TO STATE LAWS.- Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1), as so redesignated) is amended by adding at the end the following new subparagraph:

"(G) section 609(e), relating to information available to victims under section 609(e);".

(b) PUBLIC CAMPAIGN TO PREVENT IDENTITY THEFT.- Not later than 2 years after the date of enactment of this Act, the Commission shall establish and implement a media and distribution campaign to teach the public how to prevent identity theft. Such campaign shall include existing Commission education materials, as well as radio, television, and print public service announcements, video cassettes, interactive digital video discs (DVD's) or compact audio discs (CD's), and Internet resources.

SEC. 152. BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.

(a) IN GENERAL.- The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 605A, as added by this Act, the following:

"§605B. Block of information resulting from identity theft

"(a) BLOCK.- Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of-

"(1) appropriate proof of the identity of the consumer;

"(2) a copy of an identity theft report;

"(3) the identification of such information by the consumer; and

"(4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

"(b) NOTIFICATION.- A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a)-

"(1) that the information may be a result of identity theft;

"(2) that an identity theft report has been filed;

"(3) that a block has been requested under this section; and

"(4) of the effective dates of the block.

"(c) AUTHORITY TO DECLINE OR RESCIND.-

"(1) IN GENERAL.- A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that-

"(A) the information was blocked in error or a block was requested by the consumer in error;

"(B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or

"(C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

"(2) NOTIFICATION TO CONSUMER.- If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 611(a)(5)(B).

"(3) SIGNIFICANCE OF BLOCK.- For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

"(d) EXCEPTION FOR RESELLERS.-

"(1) NO RESELLER FILE.- This section shall not apply to a consumer reporting agency, if the consumer reporting agency-

"(A) is a reseller;

"(B) is not, at the time of the request of the consumer under subsection (a), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

"(C) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

"(2) RESELLER WITH FILE.- The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if-

"(A) the consumer, in accordance with the provisions of subsection (a), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

"(B) the consumer reporting agency is a reseller of the identified information.

"(3) NOTICE.- In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

"(e) EXCEPTION FOR VERIFICATION COMPANIES.- The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a), a check services company shall not

report to a national consumer reporting agency described in section 603(p), any information identified in the subject identity theft report as resulting from identity theft.

''(f) ACCESS TO BLOCKED INFORMATION BY LAW ENFORCEMENT AGENCIES.- No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.''.

(b) CLERICAL AMENDMENT.- The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after the item relating to section 605 the following new items:

''605A. Identity theft prevention; fraud alerts and active duty alerts.

''605B. Block of information resulting from identity theft.''.

SEC. 153. COORDINATION OF IDENTITY THEFT COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following:

''(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.-

''(1) IN GENERAL.- Each consumer reporting agency described in section 603(p) shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the agency alleging identity theft, or requesting a fraud alert under section 605A or a block under section 605B.

''(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.- The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

''(3) ANNUAL SUMMARY REPORTS.- Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.''.

SEC. 154. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

(a) PREVENTION OF REINSERTION OF ERRONEOUS INFORMATION.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended by adding at the end the following:

''(6) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED INFORMATION.-

''(A) REASONABLE PROCEDURES.- A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

''(B) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.- If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.''.

(b) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.- Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

''(f) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.-

''(1) IN GENERAL.- No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 605B has resulted from identity theft.

''(2) APPLICABILITY.- The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).

''(3) RULE OF CONSTRUCTION.- Nothing in this subsection shall be construed to prohibit-

''(A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

''(B) the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or

''(C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.''.

SEC. 155. NOTICE BY DEBT COLLECTORS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

''(g) DEBT COLLECTOR COMMUNICATIONS CONCERNING IDENTITY THEFT.- If a person acting as a debt collector (as that term is defined in title VIII) on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person shall-

''(1) notify the third party that the information may be fraudulent or may be the result of identity theft; and

''(2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.''.

SEC. 156. STATUTE OF LIMITATIONS.

Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

''§ 618. Jurisdiction of courts; limitation of actions

''An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of-

''(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

''(2) 5 years after the date on which the violation that is the basis for such liability occurs.''.

SEC. 157. STUDY ON THE USE OF TECHNOLOGY TO COMBAT IDENTITY THEFT.

(a) STUDY REQUIRED.- The Secretary of the Treasury shall conduct a study of the use of biometrics and other similar technologies to reduce the incidence and costs to society of identity theft by providing convincing evidence of who actually performed a given financial transaction.

(b) CONSULTATION.- The Secretary of the Treasury shall consult with Federal banking agencies, the Commission, and representatives of financial institutions, consumer reporting agencies, Federal, State, and local government agencies that issue official forms or means of identification, State prosecutors, law enforcement agencies, the biometric industry, and the general public in formulating and conducting the study required by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.- There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 2004, such sums as may be necessary to carry out the provisions of this section.

(d) REPORT REQUIRED.- Before the end of the 180-day period beginning on the date of enactment of this Act, the Secretary shall submit a report to Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative actions as may be appropriate.

TITLE II—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

SEC. 211. FREE CONSUMER REPORTS.

(a) IN GENERAL.- Section 612 of the Fair Credit Reporting Act (15 U.S.C. 1681j) is amended-

(1) by redesignating subsection (a) as subsection (f), and transferring it to the end of the section;

(2) by inserting before subsection (b) the following:

''(a) FREE ANNUAL DISCLOSURE.-

''(1) NATIONWIDE CONSUMER REPORTING AGENCIES.-

''(A) IN GENERAL.- All consumer reporting agencies described in subsections (p) and (w) of section 603 shall make all disclosures pursuant to section 609 once during any 12-month period upon request of the consumer and without charge to the consumer.

''(B) CENTRALIZED SOURCE.- Subparagraph (A) shall apply with respect to a consumer reporting agency described in section 603(p) only if the request from the consumer is made using the centralized source established for such purpose in accordance with section 211(c) of the Fair and Accurate Credit Transactions Act of 2003.

''(C) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.-

''(i) IN GENERAL.- The Commission shall prescribe regulations applicable to each consumer reporting agency described in section 603(w) to require the establishment of a streamlined process for consumers to request consumer reports under subparagraph (A), which shall include, at a minimum, the establishment by each such agency of a toll-free telephone number for such requests.

''(ii) CONSIDERATIONS.- In prescribing regulations under clause (i), the Commission shall consider-

''(I) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

''(II) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

''(III) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

''(iii) DATE OF ISSUANCE.- The Commission shall issue the regulations required by this subparagraph in final form not later than 6 months after the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.

''(iv) CONSIDERATION OF ABILITY TO COMPLY.- The regulations of the Commission under this subparagraph shall establish an effective date by which each nationwide specialty consumer reporting agency (as defined in section 603(w)) shall be required to comply with subsection (a), which effective date-

''(I) shall be established after consideration of the ability of each nationwide specialty consumer reporting agency to comply with subsection (a); and

''(II) shall be not later than 6 months after the date on which such regulations are issued in final form (or such additional period not to exceed 3 months, as the Commission determines appropriate).

''(2) TIMING.- A consumer reporting agency shall provide a consumer report under paragraph (1) not later than 15 days after the date on which the request is received under paragraph (1).

''(3) REINVESTIGATIONS.- Notwithstanding the time periods specified in section 611(a)(1), a reinvestigation under that section by a consumer

reporting agency upon a request of a consumer that is made after receiving a consumer report under this subsection shall be completed not later than 45 days after the date on which the request is received.

''(4) EXCEPTION FOR FIRST 12 MONTHS OF OPERATION.- This subsection shall not apply to a consumer reporting agency that has not been furnishing consumer reports to third parties on a continuing basis during the 12-month period preceding a request under paragraph (1), with respect to consumers residing nationwide.'';

(3) by redesignating subsection (d) as subsection (e);

(4) by inserting before subsection (e), as redesignated, the following:

''(d) FREE DISCLOSURES IN CONNECTION WITH FRAUD ALERTS.- Upon the request of a consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 without charge to the consumer, as provided in subsections (a)(2) and (b)(2) of section 605A, as applicable.'';

(5) in subsection (e), as redesignated, by striking ''subsection (a)'' and inserting ''subsection (f)''; and

(6) in subsection (f), as redesignated, by striking ''Except as provided in subsections (b), (c), and (d), a'' and inserting ''In the case of a request from a consumer other than a request that is covered by any of subsections (a) through (d), a''.

(b) CIRCUMVENTION PROHIBITED.- The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after section 628, as added by section 216 of this Act, the following new section:

''§629. Corporate and technological circumvention prohibited

''The Commission shall prescribe regulations, to become effective not later than 90 days after the date of enactment of this section, to prevent a consumer reporting agency from circumventing or evading treatment as a consumer reporting agency described in section 603(p) for purposes of this title, including-

''(1) by means of a corporate reorganization or restructuring, including a merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

''(2) by maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 603(p), in the manner described in section 603(p).''.

(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.- Section 609(c) of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended to read as follows:

''(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.-

''(1) COMMISSION SUMMARY OF RIGHTS REQUIRED.-

''(A) IN GENERAL.- The Commission shall prepare a model summary of the rights of consumers under this title.

''(B) CONTENT OF SUMMARY.- The summary of rights prepared under subparagraph (A) shall include a description of-

''(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

''(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 612;

''(iii) the right of a consumer to dispute information in the file of the consumer under section 611;

''(iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;

''(v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Commission prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and

''(vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 603(w), as provided in the regulations of the Commission prescribed under section 612(a)(1)(C).

''(C) AVAILABILITY OF SUMMARY OF RIGHTS.- The Commission shall-

''(i) actively publicize the availability of the summary of rights prepared under this paragraph;

''(ii) conspicuously post on its Internet website the availability of such summary of rights; and

''(iii) promptly make such summary of rights available to consumers, on request.

''(2) SUMMARY OF RIGHTS REQUIRED TO BE INCLUDED WITH AGENCY DISCLOSURES.- A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section-

''(A) the summary of rights prepared by the Commission under paragraph (1);

''(B) in the case of a consumer reporting agency described in section 603(p), a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;

''(C) a list of all Federal agencies responsible for enforcing any provision of this title, and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

''(D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and

''(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 605 or cannot be verified.''.

(d) RULEMAKING REQUIRED.-

(1) IN GENERAL.- The Commission shall prescribe regulations applicable to consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act, to require the establishment of-

(A) a centralized source through which consumers may obtain a consumer report from each such consumer reporting agency, using a single request, and without charge to the consumer, as provided in section 612(a) of the Fair Credit Reporting Act (as amended by this section); and

(B) a standardized form for a consumer to make such a request for a consumer report by mail or through an Internet website.

(2) CONSIDERATIONS.- In prescribing regulations under paragraph (1), the Commission shall consider-

(A) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

(B) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

(C) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

(3) CENTRALIZED SOURCE.- The centralized source for a request for a consumer report from a consumer required by this subsection shall provide for-

(A) a toll-free telephone number for such purpose;

(B) use of an Internet website for such purpose; and

(C) a process for requests by mail for such purpose.

(4) TRANSITION.- The regulations of the Commission under paragraph (1) shall provide for an orderly transition by consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act to the centralized source for consumer report distribution required by section 612(a)(1)(B), as amended by this section, in a manner that-

(A) does not temporarily overwhelm such consumer reporting agencies with requests for disclosures of consumer reports beyond their capacity to deliver; and

(B) does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

(5) TIMING.- Regulations required by this subsection shall-

(A) be issued in final form not later than 6 months after the date of enactment of this Act; and

(B) become effective not later than 6 months after the date on which they are issued in final form.

(6) SCOPE OF REGULATIONS.-

(A) IN GENERAL.- The Commission shall, by rule, determine whether to require a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act, to make free consumer reports available upon consumer request, and if so, whether such consumer reporting agencies should make such free reports available through the centralized source described in paragraph (1)(A).

(B) CONSIDERATIONS.- Before making any determination under subparagraph (A), the Commission shall consider-

(i) the number of requests for consumer reports to, and the number of consumer reports generated by, the consumer reporting agency, in comparison with consumer reporting agencies described in subsections (p) and (w) of section 603 of the Fair Credit Reporting Act;

(ii) the overall scope of the operations of the consumer reporting agency;

(iii) the needs of consumers for access to consumer reports provided by consumer reporting agencies free of charge;

(iv) the costs of providing access to consumer reports by consumer reporting agencies free of charge; and

(v) the effects on the ongoing competitive viability of such consumer reporting agencies if such free access is required.

SEC. 212. DISCLOSURE OF CREDIT SCORES.

(a) STATEMENT ON AVAILABILITY OF CREDIT SCORES.- Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding at the end the following new paragraph:

''(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.''.

(b) DISCLOSURE OF CREDIT SCORES.- Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

''(f) DISCLOSURE OF CREDIT SCORES.-

''(1) IN GENERAL.- Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include-

''(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

''(B) the range of possible credit scores under the model used;

''(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

''(D) the date on which the credit score was created; and

''(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

''(2) DEFINITIONS.- For purposes of this subsection, the following definitions shall apply:

''(A) CREDIT SCORE.- The term 'credit score'-

''(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a 'risk predictor' or 'risk score'); and

''(ii) does not include-

''(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

''(II) any other elements of the underwriting process or underwriting decision.

''(B) KEY FACTORS.- The term 'key factors' means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.

''(3) TIMEFRAME AND MANNER OF DISCLOSURE.- The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).

''(4) APPLICABILITY TO CERTAIN USES.- This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not-

''(A) distribute scores that are used in connection with residential real property loans; or

''(B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.

''(5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.-

''(A) IN GENERAL.- This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

''(B) EXCEPTION.- This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

''(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.- This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

''(7) COMPLIANCE IN CERTAIN CASES.- In complying with this subsection, a consumer reporting agency shall-

''(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

''(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

''(8) FAIR AND REASONABLE FEE.- A consumer reporting agency may charge a fair and reasonable fee, as determined by the Commission, for providing the information required under this subsection.

''(9) USE OF ENQUIRIES AS A KEY FACTOR.- If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.''.

(c) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.- Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

''(g) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.-

''(1) IN GENERAL.- Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the 'lender') shall provide the following to the consumer as soon as reasonably practicable:

''(A) INFORMATION REQUIRED UNDER SUBSECTION (f).-

''(i) IN GENERAL.- A copy of the information identified in subsection (f) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

''(ii) NOTICE UNDER SUBPARAGRAPH (D).- In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

''(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.-

''(i) IN GENERAL.- If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

''(ii) NUMERICAL CREDIT SCORE.- However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

''(iii) ENTERPRISE DEFINED.- For purposes of this subparagraph, the term 'enterprise' has the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

''(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.- A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

''(D) NOTICE TO HOME LOAN APPLICANTS.- A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

'' 'NOTICE TO THE HOME LOAN APPLICANT

'' 'In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

'' 'The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

'' 'Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

'' 'If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

'' 'If you have questions concerning the terms of the loan, contact the lender.'.

''(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.- This subsection shall not require any person to-

''(i) explain the information provided pursuant to subsection (f);

''(ii) disclose any information other than a credit score or key factors, as defined in subsection (f);

''(iii) disclose any credit score or related information obtained by the user after a loan has closed;

''(iv) provide more than 1 disclosure per loan transaction; or

''(v) provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

''(F) NO OBLIGATION FOR CONTENT.-

''(i) IN GENERAL.- The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

''(ii) LIMIT ON LIABILITY.- No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

''(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.- As used in this subsection, the term 'person' does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

''(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.-

''(A) IN GENERAL.- Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

''(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.- A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.''.

(d) INCLUSION OF KEY FACTOR IN CREDIT SCORE INFORMATION IN CONSUMER REPORT.- Section 605(d) of the Fair Credit Reporting Act (15 U.S.C. 1681c(d)) is amended-

(1) by striking ''DISCLOSED.- Any consumer reporting agency'' and inserting ''DISCLOSED.-

''(1) TITLE II INFORMATION.- Any consumer reporting agency''; and

(2) by adding at the end the following new paragraph:

''(2) KEY FACTOR IN CREDIT SCORE INFORMATION.- Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(f)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic

fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.- Section 625(b) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)), as so designated by section 214 of this Act, is amended-

(1) by striking ''or'' at the end of paragraph (2); and

(2) by striking paragraph (3) and inserting the following:

''(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 609, or subsection (f) of section 609 relating to the disclosure of credit scores for credit granting purposes, except that this paragraph-

''(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);

''(B) shall not apply with respect to sections 5-3-106(2) and 212-14.3-104.3 of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); and

''(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

''(4) with respect to the frequency of any disclosure under section 612(a), except that this paragraph shall not apply-

''(A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

''(B) with respect to section 10-1-393(29)(C) of the Georgia Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

''(C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

''(D) with respect to sections 14-1209(a)(1) and 14-1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

''(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

''(F) with respect to section 56:11-37.10(a)(1) of the New Jersey Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); or

''(G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); or''.

SEC. 213. ENHANCED DISCLOSURE OF THE MEANS AVAILABLE TO OPT OUT OF PRESCREENED LISTS.

(a) NOTICE AND RESPONSE FORMAT FOR USERS OF REPORTS.- Section 615(d)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)(2)) is amended to read as follows:

''(2) DISCLOSURE OF ADDRESS AND TELEPHONE NUMBER; FORMAT.- A statement under paragraph (1) shall-

''(A) include the address and toll-free telephone number of the appropriate notification system established under section 604(e); and

''(B) be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.''.

(b) RULEMAKING SCHEDULE.- Regulations required by section 615(d)(2) of the Fair Credit Reporting Act, as amended by this section, shall be issued in final form not later than 1 year after the date of enactment of this Act.

(c) DURATION OF ELECTIONS.- Section 604(e) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)) is amended in each of paragraphs (3)(A) and (4)(B)(i)), by striking ''2-year period'' each place that term appears and inserting ''5-year period''.

(d) PUBLIC AWARENESS CAMPAIGN.- The Commission shall actively publicize and conspicuously post on its website any address and the toll-free telephone number established as part of a notification system for opting out of prescreening under section 604(e) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)), and otherwise take measures to increase public awareness regarding the availability of the right to opt out of prescreening.

(e) ANALYSIS OF FURTHER RESTRICTIONS ON OFFERS OF CREDIT OR INSURANCE.-

(1) IN GENERAL.- The Board shall conduct a study of-

(A) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

(B) the potential impact that any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

(2) REPORT.- The Board shall submit a report summarizing the results of the study required under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, together with such recommendations for legislative or administrative action as the Board may determine to be appropriate.

(3) CONTENT OF REPORT.- The report described in paragraph (2) shall address the following issues:

(A) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

(B) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

(C) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

(D) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

(E) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect-

(i) the cost consumers pay to obtain credit or insurance;

(ii) the availability of credit or insurance;

(iii) consumers' knowledge about new or alternative products and services;

(iv) the ability of lenders or insurers to compete with one another; and

(v) the ability to offer credit or insurance products to consumers who have been traditionally underserved.

SEC. 214. AFFILIATE SHARING.

(a) LIMITATION.- The Fair Credit Reporting Act (15 U.S.C. 1601 et seq.) is amended-

(1) by redesignating sections 624 (15 U.S.C. 1681t), 625 (15 U.S.C. 1681u), and 626 (15 U.S.C. 6181v) as sections 625, 626, and 627, respectively; and

(2) by inserting after section 623 the following:

''§ 624. Affiliate sharing

''(a) SPECIAL RULE FOR SOLICITATION FOR PURPOSES OF MARKETING.-

''(1) NOTICE.- Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A), may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless-

''(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and

''(B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.

''(2) CONSUMER CHOICE.-

''(A) IN GENERAL.- The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all solicitations referred to in such paragraph, and may allow the consumer to choose from different options when electing to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

''(B) FORMAT.- Notwithstanding subparagraph (A), the notice required under paragraph (1) shall be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) shall be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

''(3) DURATION.-

''(A) IN GENERAL.- The election of a consumer pursuant to paragraph (1)(B) to prohibit the making of solicitations shall be effective for at least 5 years, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

''(B) NOTICE UPON EXPIRATION OF EFFECTIVE PERIOD.- At such time as the election of a consumer pursuant to paragraph (1)(B) is no longer effective, a person may not use information that the person receives in the manner described in paragraph (1) to make any solicitation for marketing purposes to the consumer, unless the consumer receives a notice and an opportunity, using a simple method, to extend the opt-out for another period of at least 5 years, pursuant to the procedures described in paragraph (1).

''(4) SCOPE.- This section shall not apply to a person-

''(A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

''(B) using information to facilitate communications to an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

''(C) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not be construed as permitting a person to send solicitations on behalf of another person, if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);

''(D) using information in response to a communication initiated by the consumer;

''(E) using information in response to solicitations authorized or requested by the consumer; or

''(F) if compliance with this section by that person would prevent compliance by that person with any provision of State insurance laws pertaining to unfair discrimination in any State in which the person is lawfully doing business.

''(5) NO RETROACTIVITY.- This subsection shall not prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with regulations implementing this subsection.

''(b) NOTICE FOR OTHER PURPOSES PERMISSIBLE.- A notice or other disclosure under this section may be coordinated and consolidated with any other notice required to be issued under any other provision of law by a person that is subject to this section, and a notice or other disclosure that is equivalent to the notice required by subsection (a), and that is provided by a person described in subsection (a) to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of subsection (a).

''(c) USER REQUIREMENTS.- Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of this section, constitute requirements with respect to the exchange of information among persons affiliated by common ownership or common corporate control, within the meaning of section 625(b)(2).

''(d) DEFINITIONS.- For purposes of this section, the following definitions shall apply:

''(1) PRE-EXISTING BUSINESS RELATIONSHIP.- The term 'pre-existing business relationship' means a relationship between a person, or a person's licensed agent, and a consumer, based on-

''(A) a financial contract between a person and a consumer which is in force;

''(B) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;

''(C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or

''(D) any other pre-existing customer relationship defined in the regulations implementing this section.

''(2) SOLICITATION.- The term 'solicitation' means the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a), and is intended to encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.''.

(b) RULEMAKING REQUIRED.-

(1) IN GENERAL.- The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and the Securities and Exchange Commission, and in coordination as described in paragraph (2), shall prescribe regulations to implement section 624 of the Fair Credit Reporting Act, as added by this section.

(2) COORDINATION.- Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

(3) CONSIDERATIONS.- In promulgating regulations under this subsection, each agency referred to in paragraph (1) shall-

(A) ensure that affiliate sharing notification methods provide a simple means for consumers to make determinations and choices under section 624 of the Fair Credit Reporting Act, as added by this section;

(B) consider the affiliate sharing notification practices employed on the date of enactment of this Act by persons that will be subject to that section 624; and

(C) ensure that notices and disclosures may be coordinated and consolidated, as provided in subsection (b) of that section 624.

(4) TIMING.- Regulations required by this subsection shall-

(A) be issued in final form not later than 9 months after the date of enactment of this Act; and

(B) become effective not later than 6 months after the date on which they are issued in final form.

(c) TECHNICAL AND CONFORMING AMENDMENTS.-

(1) DEFINITIONS.- Section 603(d)(2)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681(d)(2)(A)) is amended by inserting ''subject to section 624,'' after ''(A)''.

(2) RELATION TO STATE LAWS.- Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1)), as so designated by subsection (a) of this section, is amended-

(A) by striking ''or'' after the semicolon at the end of subparagraph (E); and

(B) by adding at the end the following new subparagraph:

''(H) section 624, relating to the exchange and use of information to make a solicitation for marketing purposes; or''.

(3) CROSS REFERENCE CORRECTION.- Section 627(d) of the Fair Credit Reporting Act (15 U.S.C. 1681v(d)), as so designated by subsection (a) of this section, is amended by striking ''section 625'' and inserting ''section 626''.

(4) TABLE OF SECTIONS.- The table of sections for title VI of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by striking the items relating to sections 624 through 626 and inserting the following:

''624. Affiliate sharing.
''625. Relation to State laws.
''626. Disclosures to FBI for counterintelligence purposes.
''627. Disclosures to governmental agencies for counterintelligence purposes.''

(e) STUDIES OF INFORMATION SHARING PRACTICES.-

(1) IN GENERAL.- The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates.

(2) MATTERS FOR STUDY.- In conducting the studies required by paragraph (1), the agencies described in paragraph (1) shall-

(A) identify-

(i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;

(ii) the types of information shared by such entities with their affiliates;

(iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and

(iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes-

(I) that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or

(II) of general publication of such information; and

(B) specifically examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

(3) REPORTS.-

(A) INITIAL REPORT.- Not later than 3 years after the date of enactment of this Act, the Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly submit a report to the Congress on the results of the initial study conducted in accordance with this subsection, together with any recommendations for legislative or regulatory action.

(B) FOLLOWUP REPORTS.- The Federal banking agencies, the National Credit Union Administration, and the Commission shall, not less frequently than once every 3 years following the date of submission of the initial report under subparagraph (A), jointly submit a report to the Congress that, together with any recommendations for legislative or regulatory action-

(i) documents any changes in the areas of study referred to in paragraph (2)(A) occurring since the date of submission of the previous report;

(ii) identifies any changes in the practices of financial institutions and other creditors and users of consumer reports in sharing consumer information with their affiliates for the purpose of making underwriting decisions or credit evaluations of consumers occurring since the date of submission of the previous report; and

(iii) examines the effects that changes described in clause (ii) have had, if any, on the degree to which such affiliate sharing practices reduce the need for financial institutions, creditors, and other users of consumer reports to rely on consumer reports for such decisions.

SEC. 215. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.

(a) STUDY REQUIRED.- The Commission and the Board, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of-

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

(2) the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal Credit Opportunity Act and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses experienced by businesses;

(3) the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit and insurance to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of protected classes under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact; and

(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

(b) PUBLIC PARTICIPATION.- The Commission shall seek public input about the prescribed methodology and research design of the study described in subsection (a), including from relevant Federal regulators, State insurance regulators, community, civil rights, consumer, and housing groups.

(c) REPORT REQUIRED.-

(1) IN GENERAL.- Before the end of the 24-month period beginning on the date of enactment of this Act, the Commission shall submit a detailed report on the study conducted pursuant to subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CONTENTS OF REPORT.- The report submitted under paragraph (1) shall include the findings and conclusions of the Commission, recommendations to address specific areas of concerns addressed in the study, and recommendations for legislative or administrative action that the Commission may determine to be necessary to ensure that credit and credit-based insurance scores are used appropriately and fairly to avoid negative effects.

SEC. 216. DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS.

(a) IN GENERAL.- The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended by this Act, is amended by adding at the end the following:

"§ 628. Disposal of records

"(a) REGULATIONS.-

"(1) IN GENERAL.- Not later than 1 year after the date of enactment of this section, the Federal banking agencies, the National Credit Union Administration, and the Commission with respect to the entities that are subject to their respective enforcement authority under section 621, and the Securities and Exchange Commission, and in coordination as described in paragraph (2), shall issue final regulations requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

"(2) COORDINATION.- Each agency required to prescribe regulations under paragraph (1) shall-

"(A) consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such agency are consistent and comparable with the regulations by each such other agency; and

"(B) ensure that such regulations are consistent with the requirements and regulations issued pursuant to Public Law 106-102 and other provisions of Federal law.

"(3) EXEMPTION AUTHORITY.- In issuing regulations under this section, the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission may exempt any person or class of persons from application of those regulations, as such agency deems appropriate to carry out the purpose of this section.

"(b) RULE OF CONSTRUCTION.- Nothing in this section shall be construed-

"(1) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

"(2) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.".

(b) CLERICAL AMENDMENT.- The table of sections for title VI of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by inserting after the item relating to section 627, as added by section 214 of this Act, the following:

"628. Disposal of records.
"629. Corporate and technological circumvention prohibited.".

SEC. 217. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) as amended by this Act, is amended by inserting after paragraph (6), the following new paragraph:

"(7) NEGATIVE INFORMATION.-

"(A) NOTICE TO CONSUMER REQUIRED.-

"(i) IN GENERAL.- If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

"(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.- After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

"(B) TIME OF NOTICE.-

"(i) IN GENERAL.- The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

"(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.- If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

"(C) COORDINATION WITH OTHER DISCLOSURES.- The notice required under subparagraph (A)-

"(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

"(ii) must be clear and conspicuous.

"(D) MODEL DISCLOSURE.-

"(i) DUTY OF BOARD TO PREPARE.- The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.- No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

"(iii) COMPLIANCE USING MODEL.- A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.

"(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.- No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

"(F) SAFE HARBOR.- A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

"(G) DEFINITIONS.- For purposes of this paragraph, the following definitions shall apply:

"(i) NEGATIVE INFORMATION.- The term 'negative information' means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

"(ii) CUSTOMER; FINANCIAL INSTITUTION.- The terms 'customer' and 'financial institution' have the same meanings as in section 509 Public Law 106-102.".

(b) MODEL DISCLOSURE FORM.- Before the end of the 6-month period beginning on the date of enactment of this Act, the Board shall adopt the model disclosure required under the amendment made by subsection (a) after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

TITLE III—ENHANCING THE ACCURACY OF CONSUMER REPORT INFORMATION

SEC. 311. RISK-BASED PRICING NOTICE.

(a) DUTIES OF USERS.- Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

"(h) DUTIES OF USERS IN CERTAIN CREDIT TRANSACTIONS.-

"(1) IN GENERAL.- Subject to rules prescribed as provided in paragraph (6), if any person uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person shall provide an oral, written, or electronic notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection.

"(2) TIMING.- The notice required under paragraph (1) may be provided at the time of an application for, or a grant, extension, or other provision of, credit or the time of communication of an approval of an application for, or grant, extension, or other provision of, credit, except as provided in the regulations prescribed under paragraph (6).

"(3) EXCEPTIONS.- No notice shall be required from a person under this subsection if-

"(A) the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report; or

"(B) the person has provided or will provide a notice to the consumer under subsection (a) in connection with the transaction.

"(4) OTHER NOTICE NOT SUFFICIENT.- A person that is required to provide a notice under subsection (a) cannot meet that requirement by providing a notice under this subsection.

"(5) CONTENT AND DELIVERY OF NOTICE.- A notice under this subsection shall, at a minimum-

"(A) include a statement informing the consumer that the terms offered to the consumer are set based on information from a consumer report;

"(B) identify the consumer reporting agency furnishing the report;

"(C) include a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge; and

"(D) include the contact information specified by that consumer reporting agency for obtaining such consumer reports (including a toll-free telephone number established by the agency in the case of a consumer reporting agency described in section 603(p)).

"(6) RULEMAKING.-

"(A) RULES REQUIRED.- The Commission and the Board shall jointly prescribe rules.

"(B) CONTENT.- Rules required by subparagraph (A) shall address, but are not limited to-

"(i) the form, content, time, and manner of delivery of any notice under this subsection;

"(ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable;

"(iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers;

"(iv) a model notice that may be used to comply with this subsection; and

"(v) the timing of the notice required under paragraph (1), including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report.

"(7) COMPLIANCE.- A person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the person maintained reasonable policies and procedures to comply with this section.

"(8) ENFORCEMENT.-

"(A) NO CIVIL ACTIONS.- Sections 616 and 617 shall not apply to any failure by any person to comply with this section.

"(B) ADMINISTRATIVE ENFORCEMENT.- This section shall be enforced exclusively under section 621 by the Federal agencies and officials identified in that section.".

(b) RELATION TO STATE LAWS.- Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1)), as so designated by section 214 of this Act, is amended by adding at the end the following:

''(I) section 615(h), relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;''.

SEC. 312. PROCEDURES TO ENHANCE THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES.

(a) ACCURACY GUIDELINES AND REGULATIONS.- Section 623 of the Fair Credit Reporting Act (15 U.S.C. 15 U.S.C. 1681s-2) is amended by adding at the end the following:

''(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.-

''(1) GUIDELINES.- The Federal banking agencies, the National Credit Union Administration, and the Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2)-

''(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

''(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

''(2) COORDINATION.- Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

''(3) CRITERIA.- In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall-

''(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

''(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

''(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and

''(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.''.

(b) DUTY OF FURNISHERS TO PROVIDE ACCURATE INFORMATION.- Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)(1)) is amended-

(1) in subparagraph (A), by striking ''knows or consciously avoids knowing that the information is inaccurate'' and inserting ''knows or has reasonable cause to believe that the information is inaccurate''; and

(2) by adding at the end the following:

''(D) DEFINITION.- For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.''.

(c) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)), as amended by this Act, is amended by adding at the end the following:

''(8) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.-

''(A) IN GENERAL.- The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

''(B) CONSIDERATIONS.- In prescribing regulations under subparagraph (A), the agencies shall weigh-

''(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

''(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

''(iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and

''(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3), including entities that would be a credit repair organization, but for section 403(3)(B)(i), are able to circumvent the prohibition in subparagraph (G).

''(C) APPLICABILITY.- Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

''(D) SUBMITTING A NOTICE OF DISPUTE.- A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that-

''(i) identifies the specific information that is being disputed;

''(ii) explains the basis for the dispute; and

''(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

''(E) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.- After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall-

''(i) conduct an investigation with respect to the disputed information;

''(ii) review all relevant information provided by the consumer with the notice;

''(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

''(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

''(F) FRIVOLOUS OR IRRELEVANT DISPUTE.-

''(i) IN GENERAL.- This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including-

''(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

''(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

''(ii) NOTICE OF DETERMINATION.- Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

''(iii) CONTENTS OF NOTICE.- A notice under clause (ii) shall include-

''(I) the reasons for the determination under clause (i); and

''(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

''(G) EXCLUSION OF CREDIT REPAIR ORGANIZATIONS.- This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i).''.

(d) FURNISHER LIABILITY EXCEPTION.- Section 623(a)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)(5)) is amended-

(1) by striking ''A person'' and inserting the following:

''(A) IN GENERAL.- A person'';

(2) by inserting ''date of delinquency on the account, which shall be the'' before ''month'';

(3) by inserting ''on the account'' before ''that immediately preceded''; and

(4) by adding at the end the following:

''(B) RULE OF CONSTRUCTION.- For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if-

''(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

''(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

''(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.''.

(e) LIABILITY AND ENFORCEMENT.-

(1) CIVIL LIABILITY.- Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s-2) is amended by striking subsections (c) and (d) and inserting the following:

''(c) LIMITATION ON LIABILITY.- Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of-

''(1) subsection (a) of this section, including any regulations issued thereunder;

''(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; or

''(3) subsection (e) of section 615.

''(d) LIMITATION ON ENFORCEMENT.- The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.''.

(2) STATE ACTIONS.- Section 621(c) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)) is amended-

(A) in paragraph (1)(B)(ii), by striking ''of section 623(a)'' and inserting ''described in any of paragraphs (1) through (3) of section 623(c)''; and

(B) in paragraph (5)-

(i) in each of subparagraphs (A) and (B), by striking ''of section 623(a)(1)'' each place that term appears and inserting ''described in any of paragraphs (1) through (3) of section 623(c)''; and

(ii) by amending the paragraph heading to read as follows:

''(5) LIMITATIONS ON STATE ACTIONS FOR CERTAIN VIOLATIONS.- ''.

(f) RULE OF CONSTRUCTION.- Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.

SEC. 313. FTC AND CONSUMER REPORTING AGENCY ACTION CONCERNING COMPLAINTS.

(a) IN GENERAL.- Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following:

''(e) TREATMENT OF COMPLAINTS AND REPORT TO CONGRESS.-

''(1) IN GENERAL.- The Commission shall-

''(A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 603(p) contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or otherwise utilized the procedures provided by subsection (a); and

''(B) transmit each such complaint to each consumer reporting agency involved.

''(2) EXCLUSION.- Complaints received or obtained by the Commission pursuant to its investigative authority under the Federal Trade Commission Act shall not be subject to paragraph (1).

''(3) AGENCY RESPONSIBILITIES.- Each consumer reporting agency described in section 603(p) that receives a complaint transmitted by the Commission pursuant to paragraph (1) shall-

''(A) review each such complaint to determine whether all legal obligations imposed on the consumer reporting agency under this title (including any obligation imposed by an applicable court or administrative order) have been met with respect to the subject matter of the complaint;

''(B) provide reports on a regular basis to the Commission regarding the determinations of and actions taken by the consumer reporting agency, if any, in connection with its review of such complaints; and

''(C) maintain, for a reasonable time period, records regarding the disposition of each such complaint that is sufficient to demonstrate compliance with this subsection.

''(4) RULEMAKING AUTHORITY.- The Commission may prescribe regulations, as appropriate to implement this subsection.

''(5) ANNUAL REPORT.- The Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report regarding information gathered by the Commission under this subsection.''.

(b) PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.-

(1) STUDY REQUIRED.- The Board and the Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(2) REPORT REQUIRED.- Before the end of the 12-month period beginning on the date of enactment of this Act, the Board and the Commission shall jointly submit a progress report to the Congress on the results of the study required under paragraph (1).

(3) CONSIDERATIONS.- In preparing the report required under paragraph (2), the Board and the Commission shall consider information relating to complaints compiled by the Commission under section 611(e) of the Fair Credit Reporting Act, as added by this section.

(4) RECOMMENDATIONS.- The report required under paragraph (2) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or administrative action, to ensure that-

(A) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

(B) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act; and

(C) consumer reporting agencies establish and maintain appropriate internal controls and management review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

SEC. 314. IMPROVED DISCLOSURE OF THE RESULTS OF REINVESTIGATION.

(a) IN GENERAL.- Section 611(a)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(5)(A)) is amended by striking ''shall'' and all that follows through the end of the subparagraph, and inserting the following: ''shall-

''(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

''(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.''.

(b) FURNISHER REQUIREMENTS RELATING TO INACCURATE, INCOMPLETE, OR UNVERIFIABLE INFORMATION.- Section 623(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(b)(1)) is amended-

(1) in subparagraph (C), by striking ''and'' at the end; and

(2) in subparagraph (D), by striking the period at the end and inserting the following: ''; and

''(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly-

''(i) modify that item of information;

''(ii) delete that item of information; or

''(iii) permanently block the reporting of that item of information.''.

SEC. 315. RECONCILING ADDRESSES.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c), as amended by this Act, is amended by adding at the end the following:

''(h) NOTICE OF DISCREPANCY IN ADDRESS.-

''(1) IN GENERAL.- If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

''(2) REGULATIONS.-

''(A) REGULATIONS REQUIRED.- The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

''(B) POLICIES AND PROCEDURES TO BE INCLUDED.- The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report-

''(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

''(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.''.

SEC. 316. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.- Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended-

(1) in paragraph (1)(A)-

(A) by striking ''If the completeness'' and inserting ''Subject to subsection (f), if the completeness'';

(B) by inserting '', or indirectly through a reseller,'' after ''notifies the agency directly''; and

(C) by inserting ''or reseller'' before the period at the end;

(2) in paragraph (2)(A)-

(A) by inserting ''or a reseller'' after ''dispute from any consumer''; and

(B) by inserting ''or reseller'' before the period at the end; and

(3) in paragraph (2)(B), by inserting ''or the reseller'' after ''from the consumer''.

(b) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.- Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), as amended by this Act, is amended by adding at the end the following:

''(f) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.-

''(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.- Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

''(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.- If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice, and free of charge-

''(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

''(B) if-

''(i) the reseller determines that the item of information is incomplete or inaccurate as a result

of an act or omission of the reseller, not later than 20 days after receiving the notice, correct the information in the consumer report or delete it; or

''(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.

''(3) RESPONSIBILITY OF CONSUMER REPORTING AGENCY TO NOTIFY CONSUMER THROUGH RESELLER.- Upon the completion of a reinvestigation under this section of a dispute concerning the completeness or accuracy of any information in the file of a consumer by a consumer reporting agency that received notice of the dispute from a reseller under paragraph (2)-

''(A) the notice by the consumer reporting agency under paragraph (6), (7), or (8) of subsection (a) shall be provided to the reseller in lieu of the consumer; and

''(B) the reseller shall immediately reconvey such notice to the consumer, including any notice of a deletion by telephone in the manner required under paragraph (8)(A).

''(4) RESELLER REINVESTIGATIONS.- No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.- Section 611(a)(2)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(2)(B)) is amended in the subparagraph heading, by striking ''FROM CONSUMER''.

SEC. 317. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking ''shall reinvestigate free of charge'' and inserting ''shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate''.

SEC. 318. FTC STUDY OF ISSUES RELATING TO THE FAIR CREDIT REPORTING ACT.

(a) STUDY REQUIRED.-

(1) IN GENERAL.- The Commission shall conduct a study on ways to improve the operation of the Fair Credit Reporting Act.

(2) AREAS FOR STUDY.- In conducting the study under paragraph (1), the Commission shall review-

(A) the efficacy of increasing the number of points of identifying information that a credit reporting agency is required to match to ensure that a consumer is the correct individual to whom a consumer report relates before releasing a consumer report to a user, including-

(i) the extent to which requiring additional points of such identifying information to match would-

(I) enhance the accuracy of credit reports; and

(II) combat the provision of incorrect consumer reports to users;

(ii) the extent to which requiring an exact match of the first and last name, social security number, and address and ZIP Code of the consumer would enhance the likelihood of increasing credit report accuracy; and

(iii) the effects of allowing consumer reporting agencies to use partial matches of social security numbers and name recognition software on the accuracy of credit reports;

(B) requiring notification to consumers when negative information has been added to their credit reports, including-

(i) the potential impact of such notification on the ability of consumers to identify errors on their credit reports; and

(ii) the potential impact of such notification on the ability of consumers to remove fraudulent information from their credit reports;

(C) the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, including-

(i) the extent to which providing such reports to consumers would increase the ability of consumers to identify errors in their credit reports; and

(ii) the extent to which providing such reports to consumers would increase the ability of consumers to remove fraudulent information from their credit reports;

(D) any common financial transactions that are not generally reported to the consumer reporting agencies, but would provide useful information in determining the credit worthiness of consumers; and

(E) any actions that might be taken within a voluntary reporting system to encourage the reporting of the types of transactions described in subparagraph (D).

(3) COSTS AND BENEFITS.- With respect to each area of study described in paragraph (2), the Commission shall consider the extent to which such requirements would benefit consumers, balanced against the cost of implementing such provisions.

(b) REPORT REQUIRED.- Not later than 1 year after the date of enactment of this Act, the chairman of the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study under this section, together with such recommendations for legislative or administrative actions as may be appropriate.

SEC. 319. FTC STUDY OF THE ACCURACY OF CONSUMER REPORTS.

(a) STUDY REQUIRED.- Until the final report is submitted under subsection (b)(2), the Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

(b) BIENNIAL REPORTS REQUIRED.-

(1) INTERIM REPORTS.- The Commission shall submit an interim report to the Congress on the study conducted under subsection (a) at the end of the 1-year period beginning on the date of enactment of this Act and biennially thereafter for 8 years.

(2) FINAL REPORT.- The Commission shall submit a final report to the Congress on the study conducted under subsection (a) at the end of the 2-year period beginning on the date on which the final interim report is submitted to the Congress under paragraph (1).

(3) CONTENTS.- Each report submitted under this subsection shall contain a detailed summary of the findings and conclusions of the Commission with respect to the study required under subsection (a) and such recommendations for legislative and administrative action as the Commission may determine to be appropriate.

TITLE IV—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

SEC. 411. PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM.

(a) IN GENERAL.- Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended to read as follows:

''(g) PROTECTION OF MEDICAL INFORMATION.-

''(1) LIMITATION ON CONSUMER REPORTING AGENCIES.- A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless-

''(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

''(B) if furnished for employment purposes or in connection with a credit transaction-

''(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

''(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

''(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devises, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).

''(2) LIMITATION ON CREDITORS.- Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

''(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.- Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed-

''(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

''(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106-102; or

''(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

''(4) LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.- Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

''(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).-

''(A) REGULATIONS REQUIRED.- Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

''(B) FINAL REGULATIONS REQUIRED.- The Federal banking agencies and the National Credit Union Administration shall issue the regulations required under subparagraph (A) in final form before the end of the 6-month period

beginning on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.

''(6) COORDINATION WITH OTHER LAWS.- No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.''.

(b) RESTRICTION ON SHARING OF MEDICAL INFORMATION.- Section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)) is amended-

(1) in paragraph (2), by striking ''The term'' and inserting ''Except as provided in paragraph (3), the term''; and

(2) by adding at the end the following new paragraph:

''(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.- Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is-

''(A) medical information;

''(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

''(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(c) DEFINITION.- Section 603(i) of the Fair Credit Reporting Act (15 U.S.C. 1681a(i)) is amended to read as follows:

''(i) MEDICAL INFORMATION.- The term 'medical information'-

''(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to-

''(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

''(B) the provision of health care to an individual; or

''(C) the payment for the provision of health care to an individual.

''(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.''.

(d) EFFECTIVE DATES.- This section shall take effect at the end of the 180-day period beginning on the date of enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as amended by subsection (a) of this section) shall take effect on the later of-

(1) the end of the 90-day period beginning on the date on which the regulations required under paragraph (5)(B) of such section 604(g) are issued in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

SEC. 412. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CONSUMER REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.- Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)), as amended by this Act, is amended by adding at the end the following:

''(9) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.- A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.''.

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.- Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding at the end the following:

''(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless-

''(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

''(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.''.

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.- Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking ''The provisions of subsection (a)'' and inserting ''The provisions of paragraphs (1) through (5) of subsection (a)''.

(d) COORDINATION WITH OTHER LAWS.- No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.- Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s), as amended by this Act, is amended by adding at the end the following:

''(g) FTC REGULATION OF CODING OF TRADE NAMES.- If the Commission determines that a person described in paragraph (9) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures, as necessary to ensure that such person complies with such paragraph.''.

(f) TECHNICAL AND CONFORMING AMENDMENTS.- Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)), as amended by section 411 of this Act, is amended-

(1) in paragraph (1), by inserting ''(other than medical contact information treated in the manner required under section 605(a)(6))'' after ''a consumer report that contains medical information''; and

(2) in paragraph (2), by inserting ''(other than medical information treated in the manner required under section 605(a)(6))'' after ''a creditor shall not obtain or use medical information''.

(g) EFFECTIVE DATE.- The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of enactment of this Act.

TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

SEC. 511. SHORT TITLE.

This title may be cited as the ''Financial Literacy and Education Improvement Act''.

SEC. 512. DEFINITIONS.

As used in this title-

(1) the term ''Chairperson'' means the Chairperson of the Financial Literacy and Education Commission; and

(2) the term ''Commission'' means the Financial Literacy and Education Commission established under section 513.

SEC. 513. ESTABLISHMENT OF FINANCIAL LITERACY AND EDUCATION COMMISSION.

(a) IN GENERAL.- There is established a commission to be known as the ''Financial Literacy and Education Commission''.

(b) PURPOSE.- The Commission shall serve to improve the financial literacy and education of persons in the United States through development of a national strategy to promote financial literacy and education.

(c) MEMBERSHIP.-

(1) COMPOSITION.- The Commission shall be composed of-

(A) the Secretary of the Treasury;

(B) the respective head of each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management; and

(C) at the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Federal Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

(2) ALTERNATES.- Each member of the Commission may designate an alternate if the member is unable to attend a meeting of the Commission. Such alternate shall be an individual who exercises significant decisionmaking authority.

(d) CHAIRPERSON.- The Secretary of the Treasury shall serve as the Chairperson.

(e) MEETINGS.- The Commission shall hold, at the call of the Chairperson, at least 1 meeting every 4 months. All such meetings shall be open to the public. The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this title.

(f) QUORUM.- A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) INITIAL MEETING.- The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

SEC. 514. DUTIES OF THE COMMISSION.

(a) DUTIES.-

(1) IN GENERAL.- The Commission, through the authority of the members referred to in section 513(c), shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy and education programs, grants, and materials of the Federal Government, including curricula for all Americans.

(2) AREAS OF EMPHASIS.- To improve financial literacy and education, the Commission shall emphasize, among other elements, basic personal income and household money management and planning skills, including how to-

(A) create household budgets, initiate savings plans, and make strategic investment decisions for education, retirement, home ownership, wealth building, or other savings goals;

(B) manage spending, credit, and debt, including credit card debt, effectively;

(C) increase awareness of the availability and significance of credit reports and credit scores in obtaining credit, the importance of their accuracy (and how to correct inaccuracies), their effect on credit terms, and the effect common financial decisions may have on credit scores;

(D) ascertain fair and favorable credit terms;

(E) avoid abusive, predatory, or deceptive credit offers and financial products;

(F) understand, evaluate, and compare financial products, services, and opportunities;

(G) understand resources that ought to be easily accessible and affordable, and that inform and educate investors as to their rights and avenues of recourse when an investor believes his or her rights have been violated by unprofessional conduct of market intermediaries;

(H) increase awareness of the particular financial needs and financial transactions (such as the sending of remittances) of consumers who are targeted in multilingual financial literacy and education programs and improve the development and distribution of multilingual financial literacy and education materials;

(I) promote bringing individuals who lack basic banking services into the financial mainstream by opening and maintaining an account with a financial institution; and

(J) improve financial literacy and education through all other related skills, including personal finance and related economic education,

with the primary goal of programs not simply to improve knowledge, but rather to improve consumers' financial choices and outcomes.

(b) WEBSITE.-

(1) IN GENERAL.- The Commission shall establish and maintain a website, such as the domain name "FinancialLiteracy.gov", or a similar domain name.

(2) PURPOSES.- The website established under paragraph (1) shall-

(A) serve as a clearinghouse of information about Federal financial literacy and education programs;

(B) provide a coordinated entry point for accessing information about all Federal publications, grants, and materials promoting enhanced financial literacy and education;

(C) offer information on all Federal grants to promote financial literacy and education, and on how to target, apply for, and receive a grant that is most appropriate under the circumstances;

(D) as the Commission considers appropriate, feature website links to efforts that have no commercial content and that feature information about financial literacy and education programs, materials, or campaigns; and

(E) offer such other information as the Commission finds appropriate to share with the public in the fulfillment of its purpose.

(c) TOLL-FREE HOTLINE.- The Commission shall establish a toll-free telephone number that shall be made available to members of the public seeking information about issues pertaining to financial literacy and education.

(d) DEVELOPMENT AND DISSEMINATION OF MATERIALS.- The Commission shall-

(1) develop materials to promote financial literacy and education; and

(2) disseminate such materials to the general public.

(e) COORDINATION OF EFFORTS.- The Commission shall take such steps as are necessary to coordinate and promote financial literacy and education efforts at the State and local level, including promoting partnerships among Federal, State, and local governments, nonprofit organizations, and private enterprises.

(f) NATIONAL STRATEGY.-

(1) IN GENERAL.- The Commission shall-

(A) not later than 18 months after the date of enactment of this Act, develop a national strategy to promote basic financial literacy and education among all American consumers; and

(B) coordinate Federal efforts to implement the strategy developed under subparagraph (A).

(2) STRATEGY.- The strategy to promote basic financial literacy and education required to be developed under paragraph (1) shall provide for-

(A) participation by State and local governments and private, nonprofit, and public institutions in the creation and implementation of such strategy;

(B) the development of methods-

(i) to increase the general financial education level of current and future consumers of financial services and products; and

(ii) to enhance the general understanding of financial services and products;

(C) review of Federal activities designed to promote financial literacy and education, and development of a plan to improve coordination of such activities; and

(D) the identification of areas of overlap and duplication among Federal financial literacy and education activities and proposed means of eliminating any such overlap and duplication.

(3) NATIONAL STRATEGY REVIEW.- The Commission shall, not less than annually, review the national strategy developed under this subsection and make such changes and recommendations as it deems necessary.

(g) CONSULTATION.- The Commission shall actively consult with a variety of representatives from private and nonprofit organizations and State and local agencies, as determined appropriate by the Commission.

(h) REPORTS.-

(1) IN GENERAL.- Not later than 18 months after the date of the first meeting of the Commission, and annually thereafter, the Commission shall issue a report, the Strategy for Assuring Financial Empowerment ("SAFE Strategy"), to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the progress of the Commission in carrying out this title.

(2) CONTENTS.- The report required under paragraph (1) shall include-

(A) the national strategy for financial literacy and education, as described under subsection (f);

(B) information concerning the implementation of the duties of the Commission under subsections (a) through (g);

(C) an assessment of the success of the Commission in implementing the national strategy developed under subsection (f);

(D) an assessment of the availability, utilization, and impact of Federal financial literacy and education materials;

(E) information concerning the content and public use of-

(i) the website established under subsection (b); and

(ii) the toll-free telephone number established under subsection (c);

(F) a brief survey of the financial literacy and education materials developed under subsection (d), and data regarding the dissemination and impact of such materials, as measured by improved financial decisionmaking;

(G) a brief summary of any hearings conducted by the Commission, including a list of witnesses who testified at such hearings;

(H) information about the activities of the Commission planned for the next fiscal year;

(I) a summary of all Federal financial literacy and education activities targeted to communities that have historically lacked access to financial literacy materials and education, and have been underserved by the mainstream financial systems; and

(J) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(3) INITIAL REPORT.- The initial report under paragraph (1) shall include information regarding all Federal programs, materials, and grants which seek to improve financial literacy, and assess the effectiveness of such programs.

(i) TESTIMONY.- The Commission shall annually provide testimony by the Chairperson to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 515. POWERS OF THE COMMISSION.

(a) HEARINGS.-

(1) IN GENERAL.- The Commission shall hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate to carry out this title.

(2) PARTICIPATION.- In hearings held under this subsection, the Commission shall consider inviting witnesses from, among other groups-

(A) other Federal Government officials;

(B) State and local government officials;

(C) consumer and community groups;

(D) nonprofit financial literacy and education groups (such as those involved in personal finance and economic education); and

(E) the financial services industry.

(b) INFORMATION FROM FEDERAL AGENCIES.- The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this title. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

(c) PERIODIC STUDIES.- The Commission may conduct periodic studies regarding the state of financial literacy and education in the United States, as the Commission determines appropriate.

(d) MULTILINGUAL.- The Commission may take any action to develop and promote financial literacy and education materials in languages other than English, as the Commission deems appropriate, including for the website established under section 514(b), at the toll-free number established under section 514(c), and in the materials developed and disseminated under section 514(d).

SEC. 516. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.- Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(b) TRAVEL EXPENSES.- The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) ASSISTANCE.-

(1) IN GENERAL.- The Director of the Office of Financial Education of the Department of the Treasury shall provide assistance to the Commission, upon request of the Commission, without reimbursement.

(2) DETAIL OF GOVERNMENT EMPLOYEES.- Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

SEC. 517. STUDIES BY THE COMPTROLLER GENERAL.

(a) EFFECTIVENESS STUDY.- Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of the Commission in promoting financial literacy and education.

(b) STUDY AND REPORT ON THE NEED AND MEANS FOR IMPROVING FINANCIAL LITERACY AMONG CONSUMERS.-

(1) STUDY REQUIRED.- The Comptroller General of the United States shall conduct a study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy among consumers.

(2) FACTORS TO BE INCLUDED.- The study required under paragraph (1) shall include the following issues:

(A) The number of consumers who view their credit reports.

(B) Under what conditions and for what purposes do consumers primarily obtain a copy of their consumer report (such as for the purpose of ensuring the completeness and accuracy of the contents, to protect against fraud, in response to an adverse action based on the report, or in response to suspected identity theft) and approximately what percentage of the total number of consumers who obtain a copy of their consumer report do so for each such primary purpose.

(C) The extent of consumers' knowledge of the data collection process.

(D) The extent to which consumers know how to get a copy of a consumer report.

(E) The extent to which consumers know and understand the factors that positively or negatively impact credit scores.

(3) REPORT REQUIRED.- Before the end of the 12-month period beginning on the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under this subsection, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate, including recommendations on methods for improving financial literacy among consumers.

SEC. 518. THE NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGN TO ENHANCE THE STATE OF FINANCIAL LITERACY.

(a) IN GENERAL.- The Secretary of the Treasury (in this section referred to as the "Secretary"), after review of the recommendations of the Commission, as part of the national strategy, shall develop, implement, and conduct a pilot national public service multimedia campaign to enhance the state of financial literacy and education in the United States.

(b) PROGRAM REQUIREMENTS.-

(1) PUBLIC SERVICE CAMPAIGN.- The Secretary, after review of the recommendations of the Commission, shall select and work with a nonprofit organization or organizations that are especially well-qualified in the distribution of public service campaigns, and have secured private sector funds to produce the pilot national public service multimedia campaign.

(2) DEVELOPMENT OF MULTIMEDIA CAMPAIGN.- The Secretary, after review of the recommendations of the Commission, shall develop, in consultation with nonprofit, public, or private organizations, especially those that are well qualified by virtue of their experience in the field of financial literacy and education, to develop the financial literacy national public service multimedia campaign.

(3) FOCUS OF CAMPAIGN.- The pilot national public service multimedia campaign shall be consistent with the national strategy, and shall promote the toll-free telephone number and the website developed under this title.

(c) MULTILINGUAL.- The Secretary may develop the multimedia campaign in languages other than English, as the Secretary deems appropriate.

(d) PERFORMANCE MEASURES.- The Secretary shall develop measures to evaluate the effectiveness of the pilot national public service multimedia campaign, as measured by improved financial decision making among individuals.

(e) REPORT.- For each fiscal year for which there are appropriations pursuant to the authorization in subsection (e), the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives, describing the status and implementation of the provisions of this section and the state of financial literacy and education in the United States.

(f) AUTHORIZATION OF APPROPRIATIONS.- There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2004, 2005, and 2006, for the development, production, and distribution of a pilot national public service multimedia campaign under this section.

SEC. 519. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this title, including administrative expenses of the Commission.

TITLE VI—PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

SEC. 611. CERTAIN EMPLOYEE INVESTIGATION COMMUNICATIONS EXCLUDED FROM DEFINITION OF CONSUMER REPORT.

(a) IN GENERAL.- Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a), as amended by this Act is amended by adding at the end the following:

"(x) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.-

"(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.- A communication is described in this subsection if-

"(A) but for subsection (d)(2)(D), the communication would be a consumer report;

"(B) the communication is made to an employer in connection with an investigation of-

"(i) suspected misconduct relating to employment; or

"(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

"(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

"(D) the communication is not provided to any person except-

"(i) to the employer or an agent of the employer;

"(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

"(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

"(iv) as otherwise required by law; or

"(v) pursuant to section 608.

"(2) SUBSEQUENT DISCLOSURE.- After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

"(3) SELF-REGULATORY ORGANIZATION DEFINED.- For purposes of this subsection, the term 'self-regulatory organization' includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.".

(b) TECHNICAL AND CONFORMING AMENDMENT.- Section 603(d)(2)(D) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(D)) is amended by inserting "or (x)" after "subsection (o)".

TITLE VII—RELATION TO STATE LAWS

SEC. 711. RELATION TO STATE LAWS.

Section 625 of the Fair Credit Reporting Act (15 U.S.C. 1681t), as so designated by section 214 of this Act, is amended-

(1) in subsection (a), by inserting "or for the prevention or mitigation of identity theft," after "information on consumers,";

(2) in subsection (b), by adding at the end the following:

"(5) with respect to the conduct required by the specific provisions of-

"(A) section 605(g);

"(B) section 605A;

"(C) section 605B;

"(D) section 609(a)(1)(A);

"(E) section 612(a);

"(F) subsections (e), (f), and (g) of section 615;

"(G) section 621(f);

"(H) section 623(a)(6); or

"(I) section 628."; and

(3) in subsection (d)-

(A) by striking paragraph (2);

(B) by striking "(c)- " and all that follows through "do not affect" and inserting "(c) do not affect"; and

(C) by striking "1996; and" and inserting "1996.".

TITLE VIII—MISCELLANEOUS

SEC. 811. CLERICAL AMENDMENTS.

(a) SHORT TITLE.- Section 601 of the Fair Credit Reporting Act (15 U.S.C. 1601 note) is amended by striking "the Fair Credit Reporting Act." and inserting "the 'Fair Credit Reporting Act'.".

(b) SECTION 604.- Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended in paragraphs (1) through (5), other than subparagraphs (E) and (F) of paragraph (3), by moving each margin 2 ems to the right.

(c) SECTION 605.-

(1) Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended by striking "(1) cases" and inserting "(1) Cases".

(2)(A) Section 5(1) of Public Law 105-347 (112 Stat. 3211) is amended by striking "Judgments which" and inserting "judgments which".

(B) The amendment made by subparagraph (A) shall be deemed to have the same effective date as section 5(1) of Public Law 105-347 (112 Stat. 3211).

(d) SECTION 609.- Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended-

(1) in paragraph (2), by moving the margin 2 ems to the right; and

(2) in paragraph (3)(C), by moving the margins 2 ems to the left.

(e) SECTION 617.- Section 617(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681o(a)(1)) is amended by adding "and" at the end.

(f) SECTION 621.- Section 621(b)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(1)(B)) is amended by striking "25(a)" and inserting "25A".

(g) TITLE 31.- Section 5318 of title 31, United States Code, is amended by redesignating the second item designated as subsection (l) (relating to applicability of rules) as subsection (m).

(h) CONFORMING AMENDMENT.- Section 2411(c) of Public Law 104-208 (110 Stat. 3009-445) is repealed.

And the Senate agreed to the same.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
DOUG BEREUTER,
SPENCER BACHUS,
MIKE CASTLE,
ED ROYCE,
ROBERT W. NEY,
SUE KELLY,
PAUL GILLMOR,
STEVEN C. LATOURETTE,
JUDY BIGGERT,
PETE SESSIONS,
BARNEY FRANK,
PAUL E. KANJORSKI,
MELVIN L. WATT,
LUIS V. GUTIERREZ,
DARLENE HOOLEY,
DENNIS MOORE,
Managers on the Part of the House.

RICHARD SHELBY,
ROBERT F. BENNETT,
WAYNE ALLARD,
MICHAEL B. ENZI,
PAUL SARBANES,
CHRISTOPHER J. DODD,
TIM JOHNSON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The Committee of Conference met on November

21, 2003 (the Senate Chairing) and resolved their differences. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

The Fair Credit Reporting Act was enacted in 1970, and substantially amended in 1996. The amendments made at that time were necessary to make the law relevant in an information age. Included in the 1996 amendment were a number of provisions that explicitly preempt state laws. These preemptions expire on January 1, 2004.

Since 1996, the national credit markets have undergone significant change. Most of these changes were the result of technological innovations. Technology has expanded the availability of credit, and permitted instant credit decisions. Mortgage financing that once took weeks now takes hours, and home ownership rates are at historic highs. Consumer credit can be obtained at the point of sale for major items like automobiles. Technology and the prudently-regulated free flow of consumer information under the FCRA has made much of this possible. We live in a mobile society in which 40 million Americans move annually. The FCRA permits consumers to transport their credit with them wherever they go. Both Committees of jurisdiction have developed detailed records regarding the benefits that our national credit reporting system has visited upon consumers of financial products.

Despite the myriad benefits of technology to the American consumer, there has been one drawback. Namely, the free flow information has enabled the explosive growth of a new crime- identity theft. Both Committees developed comprehensive hearing records regarding the growth of this crime, and the havoc it visits upon the lives of its victims. Law enforcement professionals are cognizant of the growth of this crime, and have worked with the affected industries to combat it. While criminal prosecutions and strict fraud detection protocols can curtail identity theft, and punish the wrongdoers, not enough had been done heretofore to aid the real victims of this crime- the consumer whose identity is assumed, and can spend months or years trying to rehabilitate their credit and re-order their affairs.

The House bill and the Senate amendment contain a number of identical provisions. In other instances, the provisions in the respective bills addressed the same issue in a slightly different manner. Both the House bill and the Senate amendment addressed the provisions of the FCRA that preempted state laws, and are due to expire on January 1, 2004. Both bills addressed identity theft, medical information privacy and promote greater consumer access to their credit reports.

The House bill, H.R. 2622, and the bill that served as the core of the Senate amendment (S. 1753) are each the result of an extensive deliberative and legislative process with a three-fold purpose: to assist the victims of identity theft; modernize the FCRA and; enhance the national credit reporting system. Readers should refer to the Committee Reports for the respective bills for further elaboration. The conference agreement contains provisions to accomplish these goals. It is the conferees' belief that this legislation will assist the victims of identity theft, and ensure the operational efficiency of our national credit system by creating a number of preemptive national standards.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
DOUG BEREUTER,
SPENCER BACHUS,
MIKE CASTLE,
ED ROYCE,
ROBERT W. NEY,
SUE KELLY,
PAUL GILLMOR
STEVEN C. LATOURETTE,
JUDY BIGGERT,
PETE SESSIONS,
BARNEY FRANK,
PAUL E. KANJORSKI,
MELVIN L. WATT,
LUIS V. GUTIERREZ,
DARLENE HOOLEY,
DENNIS MOORE,
Managers on the Part of the House.

RICHARD SHELBY,
ROBERT F. BENNETT,
WAYNE ALLARD,
MICHAEL B. ENZI,
PAUL SARBANES,
CHRISTOPHER J. DODD,
TIM JOHNSON,
Managers on the Part of the Senate.

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

The Clerk read the title of the bill.

(For conference report and statement, see prior proceedings of the House of today.)

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report and insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, I am proud to bring before the House today the conference report on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. This is a bipartisan bill that will foster economic growth and development throughout this country. When 9/11 hit our country, Congress responded quickly with the passage of the USA PATRIOT Act and the Terrorism Risk Insurance Act. When corporate scandals threatened to undermine the integrity of the stock market, we responded with the passage of the Sarbanes-Oxley Act. And today, as the laws governing our national credit markets are set to expire, we must again respond swiftly and responsibly with the passage of this bipartisan solution to keep the American economy stable and growing and assure that the American consumer continues to enjoy the benefits of a robust national credit granting system.

□ 1800

One of the hallmarks of the modern U.S. economy is quick and convenient access to consumer credit. Though it would seem unimaginable a generation ago, consumers can now qualify for a mortgage over the telephone, walk into a showroom and finance the purchase of a car in one sitting, and get department store credit within minutes. As the distinguished Federal Trade Commission chairman Tim Muris has stated, the "miracle of instant credit" created by our national credit reporting system has given American consumers a level of access to financial services and products that is unrivaled anywhere in the world. The protection and growth of these services, as provided for in this legislation, are critical to the success of our economy.

Since the Fair Credit Reporting Act's uniform national standards were established in 1996, we have achieved some of the lowest mortgage rates and credit rates on record, with more competition and more offerings for consumers than ever before. This has led to the record level of credit available today to all Americans, regardless of income level. Over the past 30 years, the availability of nonmortgage credit to households in the lowest income bracket has increased by nearly 70 percent, including a nearly threefold increase in the number of low-income households owning credit cards just in this last decade. The increase of available credit, coupled with the declining price of this credit, has also fueled the record homeownership levels we are experiencing today, again with the largest gains achieved by low- and moderate-income groups. These improvements in the credit and mortgage systems have saved consumers nearly $100 billion annually, according to some estimates.

In addition to preserving our vital national credit system, this legislation is an extremely comprehensive consumer protection bill. The protections are designed to meet head-on the growing crime of identity theft which has accompanied the expanding credit market in our country. The FTC released a study in early September which revealed the damaging extent of this crime in our country. Ten million Americans were victimized by identity thieves last year alone, costing consumers and businesses over $55 billion, not counting the 300 million hours spent by victims to try to repair damaged credit records. The financial costs are staggering, with over $10,000 stolen in the average fraud.

The Committee on Financial Services has worked tirelessly to explore and find solutions to this destructive crime. Over 100 witnesses have come before the committee since last April to discuss the renewal of the Fair Credit Reporting Act, and many of them focused their statements on the urgent

need to increase safeguards designed to protect consumers and businesses alike from this crime. With the bipartisan support in the House, as well as valuable input and assistance from our friends in the Senate, we have a bill before us today that empowers both consumers and businesses as we attempt to eliminate this terrible crime. Congress needs to pass strong, uniform identity theft protection; and it needs to do it now.

This conference report preserves many key elements designed to fight identity theft from the bill that passed the House with close to 400 votes. These strong new identity theft provisions standards established by the bill will be national, ensuring uniform protection for consumers in all 50 States.

This legislation includes provisions that allow consumers to place fraud alerts, allowing consumers to block information from being given to a credit bureau, providing identity theft victims with a summary of their rights, giving consumers the right to see their credit scores, giving all consumers the right to a free copy of their credit report, restricting access to consumers' sensitive health information, simplifying the way consumers can limit unsolicited marketing offers, ensuring improved accuracy of credit reporting procedures, and providing consumers with one-call-for-all protection by requiring credit bureaus to share consumer calls on identity theft, including requested fraud alert blocking.

This legislation also provides valuable tools and resources to financial institutions to ensure accuracy and prevent identity theft. These provisions include requiring creditors to take certain precautions before extending credit to consumers who have placed fraud alerts in their files; prohibiting merchants from printing more than the last five digits of a payment card on an electronic receipt, and others.

Mr. Speaker, this is a rather lengthy and long statement, and I will submit this for the RECORD.

I want to thank my ranking member, the gentleman from Massachusetts, for taking on this challenging and important legislation. Also to the chairman of our Subcommittee on Financial Institutions, the gentleman from Alabama (Mr. BACHUS), who sat through hours of hearings, over 100 witnesses in eight separate hearings; to Chairman SHELBY who chaired the conference committee and also, of course, is the chairman of the Banking Committee in the Senate, as well as Ranking Member Sarbanes for working in good faith on this effort.

Mr. Speaker, this was indeed truly a bipartisan, bicameral effort. We worked very closely with the White House and the Treasury to put together this conference report. This is good public policy. It is good for the country's economy, maintaining this constant flow of credit that we have come to take for granted. This is positive legislation, and I urge all Members to give it their strong support.

This legislation also provides valuable tools and resources to financial institutions to ensure accuracy and prevent identity theft. These provisions include:

Requiring creditors to take certain precautions before extending credit to consumers who have placed "fraud alerts" in their files; prohibiting merchants from printing more than the last 5 digits of a payment card on an electronic receipt; requiring banks to develop policies and procedures to identify potential instances of identity theft; and requiring financial institutions to reconcile potentially fraudulent consumer address information.

It is our duty to protect our national credit system and the economic growth that this system promotes by continuing to provide Americans with the most affordable and accessible credit market in the world today. We must ensure that the U.S. remains the engine of growth for the global economy.

I want to thank my ranking member from Massachusetts, Mr. FRANK, for taking on this challenging and imperative legislative project and for engaging all the major stakeholders in crafting a bipartisan piece of well balanced, highly effective legislation. I would also like to thank my friends from the Senate Banking Committee, Chairman SHELBY and Ranking Member SARBANES, for working in good faith to resolve differences between the House and Senate products. And finally, a huge debt of gratitude is owed by Members of this body to the gentleman from Alabama, SPENCER BACHUS, who wrote the House version of this bill; presided over countless hearings in his capacity as Chairman of the Financial Institutions and Consumer Credit Subcommittee; and helped lead the House conferees to a successful outcome in our negotiations with the Senate. Without the gentleman from Alabama, we would not be standing on the House floor today about to pass this historic consumer protection legislation.

The final FCRA legislation states that no requirement or prohibition may be imposed under the laws of any State with respect to the conduct required under the nine specific provisions included in the new identity theft preemption provision of the law. Accordingly, States cannot act to impose any requirements or prohibitions with respect to the conduct addressed by any of these provisions or the conduct addressed by any of the federal regulations adopted under these nine provisions. All of the rules and requirements governing the conduct of any person in these areas are governed solely by federal law and any State that attempts to impose requirements or prohibitions in these areas would be preempted.

I should note that the legislation lists the provisions to be preempted. However, to the extent such provisions would enjoy preemption under another provision in the FCRA, the other provision would control.

One of the central elements of the approach taken by the bill that the House passed overwhelmingly last September was to make the new fraud prevention and mitigation provisions contained in the legislation the new uniform national standards on those subject matters. The bill was drafted in this way because identity theft is a national concern, not only because of its impact on our system of granting credit, but because it knows no boundaries. The consumer victim may be in one State, the financial institution victim in another State, and the perpetrator may be in a third State. The credit bureaus that receive and report information relating to a fraudulent account may be in yet a fourth State.

In drafting the House bill, we were careful to stipulate—and to clarify in a colloquy on the House floor among the gentleman from Massachusetts, Mr. FRANK, the gentleman from Alabama, Mr. BACHUS, and myself—that the uniform national standards for identity theft were limited to the subject matters that the bill's provisions actually address, such as fraud alerts, blocking bad credit information, and truncating credit card account numbers at the point of sale. Thus, for example, this national uniformity would not affect State criminal statutes, or State laws governing the public display of social security numbers.

The conference committee further refined this standard, by providing that the new uniform national standards on identity theft created by this legislation apply with respect to the conduct required by those specific provisions.

I strongly urge my colleagues to vote for this Conference Report.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I am glad to yield 2½ minutes to the gentlewoman from Oregon (Ms. HOOLEY), a member of this committee who really did extraordinarily good work here and who early on became our task force head on identity theft, and this bill is really path-breaking in what it does for identity theft.

Ms. HOOLEY of Oregon. Mr. Speaker, I thank my good friend, the gentleman from Massachusetts, for yielding me this time.

During floor debate of the Fair and Accurate Credit Transaction Act back in September, I told a story of a constituent who had her purse stolen and ended up spending hours trying to clean up her credit files as a result. It got so bad, in fact, that the police officer suggested it would be easier for her to change her name than to deal with the damage caused by the result of a theft. At that time, I continued on to say that something is wrong with the law when a law enforcement official suggests changing your identity in order to protect yourself from identity theft.

Well, I am ecstatic to report to everyone that after 4 years' struggle, the law is changing. Today the House and Senate conferees met and approved the Fair and Accurate Credit Transaction Act, a bill that will do many things to protect consumers and safeguard our Nation's credit system. Above all, however, this legislation will put in place landmark protections against identity theft, the fastest-growing crime in the United States.

This legislation has been a long time coming and is the result of a lot of hard work by a number of Members of Congress. I would especially like to thank the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Ohio (Mr. OXLEY) for all of their incredible work; Senator SARBANES and Senator SHELBY for the leadership they have shown through a bipartisan conference process; and a special thanks to

the gentleman from Alabama (Mr. BACHUS) and the gentleman from Ohio (Mr. LATOURETTE) for the long hours they put in on this piece of legislation. Because of these leaders' work and the incredible staff that worked with us, we have a conference report that takes the best provisions from the Senate and the best provisions from the House to pass this piece of legislation.

I will share a few of the consumer protections it provides, and I will insert the remainder of this list in the CONGRESSIONAL RECORD.

First of all, it provides consumers with a free credit report, gives consumers the right to see their credit scores, provides consumers with broad new medical privacy rights, gives the consumers the ability to opt out of information-sharing between affiliated companies for marketing purposes, and establishes a financial literacy commission. Those are just a few.

I am proud of how the committee worked together. I think we were the poster child of how this process should be run. I am proud of the substance of this conference report that is good for consumers and good for businesses. I urge all of my colleagues on both sides of the aisle to support our Nation's consumers by voting "yes" for the conference report.

The agreement reached by conferees today will:

General Provisions:

Provide consumers with a free credit report every year from each of the three national credit bureaus, from a single centralized source;

Give consumers the right to see their credit scores;

Provide consumers with broad new medical privacy rights;

Give consumers the ability to opt-out of information sharing between affiliated companies for marketing purposes;

Establish a financial literacy commission and a national financial literacy campaign;

Ensure that consumers are notified if merchants are going to report negative information to the credit bureaus about them; and

Extend the seven expiring provisions of the Fair Credit Reporting Act.

Identify Theft Provisions:

Allow consumers to place "fraud alerts" in their credit reports to prevent identify thieves from opening accounts in their names; including special provisions to protect active duty military personnel;

Require creditors to take certain precautions before extending credit to consumers who have placed "fraud alerts" in their files;

Allow consumers to block information from being given to a credit bureau and from being reported by a credit bureau if such information results from identify theft;

Provide identify theft victims with a summary of their rights;

Provide consumers with one-call-for-all protection by requiring credit bureaus to share consumer calls on identify theft, including requested fraud alert blocking.

Prohibiting merchants from printing more than the last 5 digits of a payment care on an electronic receipt;

Require banks to develop policies and procedures to identify potential instances of identify theft;

Require financial institutions to reconcile potentially fraudulent consumer address information; and

Require lenders to disclose their contact information on consumer reports.

Mr. OXLEY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Alabama (Mr. BACHUS), the chairman of the Subcommittee on Financial Institutions and Consumer Credit, who has done such a wonderful job on this bill.

Mr. BACHUS. Mr. Speaker, I thank the chairman for yielding me this time.

I am going to limit my time to thanking Members, because this legislation I think more than anything is a testimony of what we as Members do when we all work in the best interests of the American public.

This bill contains sweeping new protections against identity fraud. It also will enable consumers, which make up 70 percent of our economy, to have available more credit and more choices. And as important as that is, it does a third thing. It has many different tools to ensure that our credit information is accurately reported and that our private information and confidential information such as medical records are not shared.

At this time, I would like to thank the cosponsors. This bill was introduced by me; the gentlewoman from Oregon (Ms. HOOLEY), whom we have heard from; the gentlewoman from Illinois (Mrs. BIGGERT); and the gentleman from Kansas (Mr. MOORE). The gentlewoman from Oregon (Ms. HOOLEY), the gentlewoman from Illinois (Mrs. BIGGERT), and the gentleman from Kansas (Mr. MOORE) all had significant input into this legislation. The gentleman from Ohio (Mr. LATOURETTE), a lot of the fraud provisions were drafted by him or the gentlewoman from Oregon (Ms. HOOLEY). The gentleman from Pennsylvania (Mr. KANJORSKI), the gentleman from Delaware (Mr. CASTLE), the gentlewoman from New York (Mrs. MALONEY), the gentleman from Arizona (Mr. SHADEGG), the gentleman from Tennessee (Mr. FORD), the gentleman from Ohio (Mr. TIBERI), the gentleman from Texas (Mr. HINOJOSA), the gentleman from Texas (Mr. HENSARLING), the gentleman from New York (Mr. CROWLEY), the gentleman from Texas (Mr. SESSIONS), the gentleman from Arizona (Mr. ROSS), the gentleman from Utah (Mr. MATHESON), the gentleman from Alabama (Mr. DAVIS), the gentleman from Louisiana (Mr. BAKER), the gentleman from New York (Mr. KING), the gentleman from Oklahoma (Mr. LUCAS), and the gentleman from Kentucky (Mr. LUCAS), the gentleman from Ohio (Mr. NEY), the gentlewoman from New York (Mrs. KELLY), the gentleman from North Carolina (Mr. JONES), the gentleman from New York (Mr. ISRAEL), the gentlewoman from Pennsylvania (Ms. HART), the gentleman from North Carolina (Mr. MILLER), the gentlewoman from West Virginia (Mrs. CAPITO), the gentlewoman from New York (Mrs. MCCARTHY), the gentleman from South Carolina (Mr. BARRETT), the gentleman from Florida (Mr. FEENEY), and the gentlewoman from Florida (Ms. HARRIS).

All of these Members participated in this process, and the bill, which was passed almost unanimously by the House, went over to the Senate; and I would like to credit the other body for working, I think, in a professional manner and improving what we thought was a wonderful bill. And then, in conference, I would finally like to salute the gentleman from Ohio (Chairman OXLEY), first, for giving me the opportunity of working on this legislation; and secondly, I would like to salute him and the gentleman from Massachusetts (Mr. FRANK), our conferees, Mr. SARBANES and Chairman SHELBY. All of the people I have named deserve particular praise for a wonderful piece of legislation.

Mr. Speaker, I rise in strong support of the conference report to H.R. 2622, the Fair and Accurate Credit Transactions Act ("FACT Act"). H.R. 2622 represents the culmination of my efforts, and those of my colleagues, to craft legislation to strengthen our economy and to provide consumers with meaningful identity theft protections. The FACT Act is the bi-partisan product of a thorough review of the Fair Credit Reporting Act ("FCRA"), identity theft, and related issues, Indeed, the legislation was approved overwhelmingly in the House by a vote of 392–30 and in the Senate by a vote of 95–2.

I want to express my deepest sense of gratitude to Chairman OXLEY who gave me the opportunity to introduce this landmark piece of legislation and then skillfully guided it through the legislative process. In my career as a legislator, it is only on a rare occasion when you get the chance to draft legislation in such a bipartisan and cooperative atmosphere. The Chairman deserves a lot of credit for establishing such a collegial process, and I think our legislative product is better because of his efforts.

As Chairman of the Subcommittee on Financial Institutions and Consumer Credit. I conducted 8 hearings on the FCRA and related issues over the past year, receiving testimony from nearly one hundred witnesses including consumer groups, businesses, law enforcement, and various government regulators. On June 26, 2003, I introduced H.R. 2622 with Representatives HOOLEY, BIGGERT, and MOORE. The FACT Act—a byproduct of our hearings and bipartisan cooperation—passed its version of FCRA legislation—S. 1753—by a vote of 95–2. This week, the conference report to H.R. 2622 was approved almost unanimously by the conferees from both the House and Senate. H.R. 2622 is supported by a broad coalition of interested parties, including large financial institutions, community banks, credit unions, retailers as well as the Administration.

H.R. 2622 will benefit consumers and our economy by ensuring the continuity of our national uniform credit system. Indeed, our economy depends on several national delivery systems—each represented by incredible amounts of investment and infrastructure. For example, the national interstate highway system and our telecommunications networks are all critical to our national economy. Today we can drive from state to state without worrying

about whether a road will come to an abrupt end at the state line. Our consumer credit system is similar to these examples—we do not really think about it, we just expect that it will work. Although not perfect, our consumer credit system makes life better, easier, and cheaper for American consumers.

Just as our highway and telecommunications networks have improved and become more efficient over the years, so has our credit system. Creditors have always needed to evaluate the likelihood that a borrower would repay a loan. As a result of the framework established by the FCRA, creditors, no longer need to "eyeball" an applicant and review application materials for days or weeks. Rather, our national credit system has produced a virtually seamless system whereby consumers can apply for, and receive a decision on, credit within minutes. The national uniform system has also lowered costs and increased choice and convenience for American consumers. By far the most striking result of our national credit system is the dramatically increased availability of credit—or the "democratization" of credit. However, this system could be put in jeopardy if the state law uniform standards in the FCRA were permitted to expire on January 1, 2004. H.R. 2622 would ensure the continuity of our national credit system by making these standards permanent.

The conference report also directly addresses the problem of identity theft.

Sec. 151 of the conference report requires that the FTC and the federal banking regulators provide identify theft victims with a summary of their rights. It is important for the agencies to let consumers know that identity thieves target home computers because they contain a goldmine of personal financial information about individuals. In educating the public about how to avoid becoming a victim of identity theft, the FTC and the federal banking regulators should inform consumers about the risks associated with having an 'always on' Internet connection not secured by a firewall, not protecting against viruses or other malicious codes, using peer-to-peer file trading software that might expose diverse contents of their hard drives without their knowledge, or failing to use safe computing practices in general.

Identity theft occurs when a criminal obtains enough information about an individual to allow the criminal to "assume" that individual's identity for nefarious purposes. My Subcommittee heard from two identity theft victims. Their stories were truly nightmarish, and we need to work to prevent countless others from joining the ranks of identity theft victims. Not only does identity theft harm the direct victims, but it also has an impact on all consumers. Financial institutions lose millions of dollars each year as a result of identity theft. This increased cost on financial institutions is absorbed, at least in part, through increased costs of financial products and services to all consumers.

H.R. 2622 will also improve consumers' access and understanding of their credit information by allowing consumers to request a free credit report annually from each credit bureau. In addition, consumers will have the opportunity to obtain their credit scores from credit bureaus. Transparency in the credit granting and reporting process will increase consumers' financial literacy and improve their confidence in the financial services system in general.

I want to commend Chairman OXLEY for the tremendous leadership he has shown in steering this complex bill through the legislative process. I also want to thank the Ranking Member of the Committee, Mr. FRANK, for his support of this important piece of legislation. In addition, let me commend Ms. HOOLEY, Ms. BIGGERT, Mr. MOORE, Mr. LATOURETTE and the Members of the Financial Services Committee on each of their efforts. I also appreciate the efforts of Mr. SANDERS, the Ranking Member on my subcommittee, for his work on this issue. Lastly, I want to mention my appreciation for the input we received from the Administration, particularly from Treasury Secretary John Snow and Treasury Assistant Secretary for Financial Institutions Wayne Abernathy.

Let me also take this opportunity to thank the staff members on the House Financial Services Committee who worked on this legislation. Both Chairman OXLEY and Ranking Member FRANK are to be commended for assembling such a talented group of staff to work on H.R. 2622. On the majority side, I would like to thank Bob Foster, Hugh Halpern, Carter McDowell, Jim Clinger; Robert Gordon, Charles Symington, Karen Lynch—who no longer works for the committee but did a lot of work on this issue before leaving—and Dina Ellis, my designee on the Committee. I would also like to thank Warren Tryon of my staff for his work on this issue. On the minority staff, I would like to thank the following staff members: Jeanne Roslanowick, Jaime Lizarraga, Ken Swab, Erika Jeffers, Dean Sagar and Warren Gunnels.

In conclusion, I would like to note that I am proud of the work we have done in crafting H.R. 2622. This has been, by necessity, a long and thorough process. I believe H.R. 2622 presents a solid achievement in protecting the security of consumers' personal information, enhancing the transparency of the credit reporting process, and ensuring continued access to a wide variety of financial products at low cost.

Mr. Speaker, our economy today is important to all of us. That goes without saying. But what a lot of people do not realize is that two-thirds of our economy is consumer spending. That is the driver in our economy today. And consumer spending today is contingent upon maintaining a national uniform credit reporting system. I urge all of my colleagues to support our economy by voting for H.R. 2622.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. THORNBERRY). The Chair would remind all Members it is inappropriate to characterize the other body, even in positive terms.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 2½ minutes to the gentleman from Vermont (Mr. SANDERS), the ranking member of the subcommittee from which this bill came.

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this bill has a number of important and positive provisions. The idea that consumers will receive free credit reports is important. The provision strengthening identity theft is also very important.

But basically, the positive provisions in this bill do not outweigh the negative. And, in my view, this bill should be defeated. It should be defeated because it preempts States throughout this country from going forward with stronger consumer protections. And to my mind, States, in fact, are the laboratories of democracy; and it is a bad idea, especially from our conservative friends, who year after year have told us how bad it was for the Federal Government to have all this power, to now give power to the Federal Government and tell the State of Vermont, the State of California, that if you have specific needs dealing with consumer issues, you may not go forward. That is wrong. And for that reason alone, this legislation should be defeated, sent back, and strengthened in terms of consumer needs.

I would point out that virtually every consumer organization in America, the Consumer Federation of America, U.S. Public Interest Research Group, et cetera, oppose the preemption aspects of this legislation.

Second of all, Mr. Speaker, one of the great rip-offs that is taking place in America now deals with credit cards which, at a time of very, very low interest rates, are charging people up to 25 or 29 percent interest. And one way they do it, Mr. Speaker, is they send out notices and they say, come in and sign up: zero interest rate. What they forget to tell the consumer is that for any reason whatsoever, through a bait-and-switch scam, they can raise interest rates. So 5 years before, you were late on a student loan, you were late on an automobile payment, suddenly, you are going to be paying 15, 20 percent interest, and you do not know it.

This legislation rejected any effort to protect consumers in that way, not only outlawing this bait-and-switch scam, but even preventing strong disclosure. This legislation should be defeated, sent back, and improved.

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Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York (Mrs. KELLY), the chairwoman of the Subcommittee on Oversight and Investigations.

(Mrs. KELLY asked and was given permission to revise and extend her remarks.)

Mrs. KELLY. Mr. Speaker, it happens I do not agree with the previous speaker. I rise in strong support of the conference report before us. I would like to commend the gentleman from Ohio (Chairman OXLEY) and the gentleman from Massachusetts (Ranking Member FRANK) and their counterparts in the Senate for moving this legislation with great thoroughness, deliberation, and really in a strong spirit of bipartisanship.

At the heart of the legislation is the permanent reauthorization of the Fair Credit Reporting Act. It has provided a national uniform credit reporting system that has effectively lowered the cost of credit. And it has increased the choice and convenience for millions of Americans across the country.

The FCRA has helped to address other vital security issues such as combating identity theft and blocking terrorist financing under the U.S.A. Patriot Act, both issues that I have held hearings on in my subcommittee.

Combating identity theft and drying up terrorist financing requires a collaborative effort of law enforcement and regulatory agencies, consumers, and financial institutions, all with access to appropriate information.

We have also made some other important improvements to the FCRA in order to protect the sanctity of privacy for the American people throughout the credit granting process. I believe that one of the most important pieces of that is medical information. The medical information of consumers should be kept private. It does not need to be shared or be distributed by creditors or listed on credit reports.

Individuals should know that their personal medical information belongs to them and it is not released for any other purposes, whether it is for the credit-granting process or employee background checks. And we have done that with our legislation by coding the information.

I would like to thank the gentleman from Arkansas (Mr. ROSS) and the gentleman from North Carolina (Mr. WATT) for working with me on this amendment that will protect medical information of individuals without disrupting the access to low-cost credit and the security of information.

By allowing consumers to benefit from reporting the financial aspects of their transactions to credit bureaus while maintaining the sanctity of their medical privacy, this legislation is a real win for all Americans.

Finally, I am pleased we were able to include a new title in the legislation, which creates a Commission on Financial Literacy and Education, or the SAFE Act. As a result of that strategy, we will have a clear vision of the future financial literacy that will be the benefit of all Americans.

Mr. Speaker, I strongly support this legislation.

Mr. Speaker, I rise in strong support of the Conference Report before us.

I would like to commend Chairman OXLEY and Ranking Member FRANK—and their counterparts in the Senate—for moving this legislation with great thoroughness and deliberation and in the spirit of bipartisanship.

The legislation, "The FACT Act", is the result of a dozen hearings, one hundred witnesses, and months of deliberations by my colleagues on both sides of the aisle, and both sides of the Capitol.

At the heart of the legislation is the permanent reauthorization of the Fair Credit Reporting Act, or FCRA. FCRA has provided a national uniform credit reporting system that has effectively lowered the cost of credit, and increased choice and convenience for millions of Americans across the country.

As a conferee on this report, I can tell you that we worked with many diverse interests before we reached a unified, solid product. And in this product, we have built on the framework of FCRA to ensure that the legislation continues to lower the cost of credit and help fuel our economy—while also creating new opportunities for populations who have never had access. That's why this legislation has overwhelmingly bipartisan support.

FCRA has also helped address other vital security issues, such as combating identity theft and blocking of terrorist financing under the USA PATRIOT Act—both issues which I have held numerous hearings on in my Oversight Subcommittee. Combating identity theft and drying up terrorist financing requires the collaborative effort of law enforcement and regulatory agencies, consumers and financial institutions—all with access to appropriate information.

I am extremely pleased that this conference report addresses these important issues, and improves our ability to combat identity theft and help law enforcement officials track down illicit money. The information-sharing under this legislation is essential to protecting the American people by detecting suspicious activity and weeding out wrongdoers.

The national uniform standards under FCRA have also facilitated a financial institution's ability to utilize additional authentications and identity verifications to protect consumer security. And the increased protections incorporated in this legislation are critically important in enabling victims to correct the damage to their credit histories created by identity thieves.

This legislation will further help law enforcement combat financial fraud and track down criminals and terrorists. And it adds new protections that are important to achieving these goals.

We have also made other important improvements to FCRA in order to protect the sanctity of privacy for the American people throughout the credit-granting process.

I believe the medical information of consumers should be kept private, and it does not need to be shared or distributed by creditors or listed on credit reports. Individuals should know that their personal medical information belongs to them and is not released for other purposes, whether it is for the credit granting process or employee background checks. And we have done this in our legislation by coding this information.

I would like to thank Reps. ROSS and WATT for working with me on an amendment that will protect the medical information of individuals without disrupting access to low cost credit and the security of information.

By allowing consumers to benefit from reporting the financial aspects of their transactions to credit bureaus while maintaining the sanctity of their medical privacy, this legislation is a real win for all Americans.

Finally, I am pleased that we were able to include a new title in the legislation, which creates a Commission on Financial Literacy and Education to improve the financial literacy of millions of Americans of all ages.

At the crux of this language is the creation of the first ever national strategy for financial literacy—which will facilitate new public, private and nonprofit partnerships to help educate all Americans in financial literacy. The national strategy, and its subsequent report to Congress, will be known as "The Strategy for Assuring Financial Empowerment" or "SAFE strategy", based on legislation that I introduced—H.R. 3520, "The SAFE Act".

As as result, the "SAFE strategy" will provide a clear vision for the future of financial literacy. The vision will provide a systematic approach to identify effective ways to increase the general education level of current, and future, consumers of financial services and products. The Commission and the "SAFE strategy" will be goal-oriented and subject to reviews by Congress through annual testimony.

Mr. Speaker, I strongly support this legislation that is crucial to the economy and the security of the American people.

I thank you for addressing these important issues and urge my colleagues to support this conference report.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 1½ minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), who is the second ranking member of the full committee and the ranking member of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises and who has a major input to this bill.

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. KANJORSKI. Mr. Speaker, just as an aside, if I may, I urge all my colleagues on this side of the aisle and on the other side of the aisle to support one of the most bipartisan pieces of legislation. I want to congratulate the chairman of the committee, the gentleman from Ohio (Mr. OXLEY), the ranking member of the committee, the gentleman from Massachusetts (Mr. FRANK), and the chairman of the subcommittee, the gentleman from Alabama (Mr. BACHUS), and the ranking member of the subcommittee on our side of the aisle for a job well done.

And the fact that we set a new course of activity here in the House as to how this function of legislation should be done from not only the subcommittee, the full committee, the House and Senate, and the conference committee, but now as they work back today, I urge all my colleagues to support the legislation.

Mr. Speaker, I would like to enter into a colloquy with the gentleman from Alabama (Mr. BACHUS) on the Federal FTC advertising campaign.

Section 213 of the bill directs the Federal Trade Commission to increase public awareness regarding the availability of consumer rights to opt out of receiving prescreened credit offer solicitations. Is that his understanding as well?

I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Speaker, it is, yes.

Mr. KANJORSKI. Mr. Speaker, does the gentleman share with me the understanding that the FTC's public awareness campaign is to be designed to increase public awareness, not only of the right to opt out of receiving prescreened solicitations, but also of the benefits and consequences of opting out?

Mr. BACHUS. Mr. Speaker, yes, I share that understanding. Not only

should consumers know they can opt out of getting these offers, they should also know that opting out or not affects their chances of getting additional credit offers with competitive terms.

Mr. KANJORSKI. Mr. Speaker, and if the FTC's public awareness campaign increases their understanding of the opt-out, consumers will make more informed better decisions. Does the gentleman agree?

Mr. BACHUS. Mr. Speaker, yes, I agree.

Mr. KANJORSKI. Mr. Speaker, I thank the gentleman from Alabama (Mr. BACHUS).

Mr. Speaker, I rise in very strong support of the conference report for H.R. 2622, the Fair and Accurate Credit Transactions Act.

The bill before us is an excellent piece of legislation. It advances consumer protection. It combats identity theft. And it allows businesses to operate efficiently when offering credit.

Moreover, the bill before us is a model of how the legislative process should work on a bipartisan basis. We held numerous hearings on the legislation. We deliberated on these matters thoroughly. We worked with one another on a bipartisan basis. The results of our efforts produced a bill that originally passed the House overwhelmingly.

If we fail to extend the expiring provisions of the Fair Credit Reporting Act before the end of this year, conflicting state laws could place financial institutions in a difficult compliance position, and the current efficiencies in obtaining credit could significantly decrease. We would, moreover, create more difficulties for our already struggling economy.

The Fair Credit Reporting Act and its 1996 amendments, in my view, have created a nationwide consumer credit system that works increasingly well. This law has expanded access to credit, lowered the price of credit, and accelerated decisions to grant credit. One reason that the law works so well is the establishment of a uniform system of national standards for credit reporting. As my colleagues may recall, Mr. Speaker, I strongly supported creating these state preemptions in the early 1990s. I also believe that we should extend them now.

In addition to extending the expiring preemptions of state law, H.R. 2622 will make a number of important improvements to current law with respect to consumer protection. These provisions, among other things, will improve the accuracy of and correction process for credit reports, and establish strong privacy protections for consumers' sensitive medical information.

Furthermore, identity theft is a growing problem in our country. A recent report by the Federal Trade Commission found that 27.3 million Americans have been victims of identity theft in the last five years. I am therefore particularly pleased that H.R. 2622 includes several provisions designed to combat these crimes and aid consumers.

Before I close, Mr. Speaker, I want to again commend the Ranking Member of the Committee [Mr. FRANK] for his work leading to a very strong bill, as well as the gentlelady from Oregon [Ms. HOOLEY] for her important work on identity theft. As I have already noted, we also worked on a bipartisan basis and in a pragmatic way with the Chairman of the Committee [Mr. OXLEY] and the Chairman of the Subcommittee [Mr. BACHUS] to produce a very worthwhile legislative product in the House and in the conference with the Senate on which I served.

Mr. Speaker, H.R. 2622 contains many important consumer protection provisions in a framework of uniform national standards. It is a good bill. I encourage my colleagues to support its passage.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I would like to commend the hard work that the gentleman from Ohio (Chairman OXLEY) and the gentleman from Alabama (Mr. BACHUS), subcommittee chairman, the gentleman from Massachusetts (Ranking Member FRANK), and the committee staff have done on this extremely important piece of legislation.

Mr. Speaker, to its sponsors and its cosponsors, every bill is an important bill. But there are few bills that we will take up this session or this Congress that are as critically important to our economy as reauthorizing and making permanent the expiring protections contained in the Fair Credit Reporting Act.

The FCRA may not be a household word, but it nonetheless touches virtually every aspect of our lives and our economy.

Without this reauthorization, there can be no national credit system, without a national credit system there will be less credit, slower credit, inaccurate credit, inefficient credit, and in some cases, no credit at all. Less, slower, inefficient and no credit will lead inevitably to less spending, slower growth, lower incomes, and fewer jobs.

That would be noticed by the American consumer and it would be a disaster for the American economy. That is why FCRA is a must-pass bill for this session.

This conference report addresses the challenges and problems created by new technologies as well. Chief among these are the provisions addressing identity theft. I am particularly pleased that this conference report contains language addressing the challenges of financial literacy.

As a member of the Committee on Financial Services and the Committee on Education and the Workforce, I have come to recognize the positive impact that a marriage of financial literacy and basic economics can have on millions of future investors.

I especially want to thank Senators Enzi and Sarbanes for working with me to perfect this language included in this conference report. H.R. 2622 is a good bill that provides important new protections for consumers and stops identity theft before it happens. I urge my colleagues to support this legislation and yield back the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 1½ minutes to the gentleman from Illinois (Mr. EMANUEL), who was very active particularly with regard to the medical privacy provision of this bill.

Mr. EMANUEL. Mr. Speaker, I would like to commend the Members on both sides of the aisle who worked in a bipartisan way to draft a good, strong bill with new identity theft protections and consumer protection. A special thanks to the gentleman from Ohio (Chairman OXLEY), to the gentleman from Massachusetts (Mr. FRANK), and to my colleague, the gentleman from California (Mr. OSE) for cosponsoring the amendment ensuring that this conference report has landmark provisions preventing banks and insurance companies from accessing and using the most sensitive private information of a consumer, medical information.

This medical privacy bill gives consumers a safe harbor they deserve by blacking out the use of medical information and making it off limits to banks and insurance companies. They cannot access it, period. This agreement makes that the law.

These new protections should go a long way to addressing America's concerns that their medical, mental health, or DNA information could be shared or used against them by banks and credit bureaus, when they apply for a mortgage, rent an apartment, or join a club. No one applying for a home should have to worry about a bank using their past cancer treatments against them. When this becomes law, they will not have to. This is a win for consumers and for the financial services industry.

Mr. OXLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Florida (Ms. HARRIS).

Ms. HARRIS. Mr. Speaker, I want to discuss some of the exciting opportunities in the FCRA, specifically the aspects that Florida has engaged in. And I would like to enter a colloquy with the gentleman from Alabama (Mr. BACHUS) to discuss those.

Mr. Speaker, I would yield to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Speaker, if the gentlewoman would yield, I would be glad to engage in a colloquy. I think what the gentlewoman from Florida (Ms. HARRIS) was inquiring into was that the Florida Banking Association has created a system that permits banks to combat identity theft, check fraud, and other criminal activity. And as I understand it, this system it produces reports that banks use exclusively to fight fraud not for the purpose, either in whole or part, of determining an individual's eligibility for credit insurance and employment.

And she has asked me to confirm that information that is provided for the exclusive purpose of detecting, preventing, or deterring a financial crime identity theft, or the funding of a criminal activity does not constitute a consumer report under the Fair Credit Reporting Act, even as amended by

this bill. And my response to that is that is correct. Such information was not a consumer report under the Fair Credit Reporting Act as it existed before this legislation, nor will it constitute a consumer report as amended by this bill.

Ms. HARRIS. Mr. Speaker, reclaiming my time, I think that many people were confused by that, so I really appreciate the clarification that this information is not a consumer report under the Fair Credit Act neither before it was passed nor after it has been amended. So I really appreciate that clarification.

In fact, I think one of the biggest problems has been that the fraud and identity theft has created billions of dollars of losses in the U.S. economy and continues to create serious problems for individuals. The technology allows criminals to perpetuate this fraud with increasing rapidity.

Financial institutions and law enforcement need to fight the increases in fraud and identity theft with technology. So the proposed amendment would free the antifraud networks from compliance with certain requirements of the Fair Credit Reporting Act. But the amendment preserves the consumer protection features in the Fair Credit Reporting Act because it requires a notice to consumers and an opportunity to respond.

What is exciting about the Florida bankers is they actually created something called Fraud Net in 2000 and it was implemented in 2002. This is really sort of a neighborhood watch for bankers, if you will. Because banks post alerts when they experience a fraudulent or criminal act. It does not deal with individual transactions, opening accounts, credit insurance, or employment. Today 14 States are employing the specific program, and they expect 10 additional users next year.

So I thank the gentleman from Alabama (Mr. BACHUS) for clarifying.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 2 minutes to the gentlewoman from Indiana (Ms. CARSON), one of our most active and energetic members of our committee.

Ms. CARSON of Indiana. Mr. Speaker, I would like to thank the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Alabama (Mr. BACHUS) for the bipartisan spirit to move the bill to the floor.

Mr. Speaker, the Fair Credit Reporting Act has been crucial to extending credit services to underserved populations and in protecting consumers from egregious abuses of their financial and personal privacy. However, the violations and abuses continue to persist. I have assisted a number of constituents who have had credit problems because of inaccurate credit reporting. In many instances, people have no idea there is a problem until they try to secure a loan or credit.

What I found especially troubling is larger than expected numbers of inaccuracies credit reporting agencies have on consumers. So H.R. 2622 provides a number of new important consumer protections that will make credit reports less frustrating for our consumers. The bill would give every person in America the ability to consider request an annual free credit report.

I certainly hope every American takes advantage of this. The bill deals a tremendous blow to identity thieves whose crimes are rising rapidly. Consumers will be able to place fraud alerts on their credit report when erroneous information is present. I applaud the leadership on this bill, a very needed bill. I encourage the Members to support it.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SESSIONS), a distinguished member of the Committee on Rules, who has an important measure in this legislation.

Mr. SESSIONS. Mr. Speaker, I wish to thank the great chairman of the committee, the gentleman from Ohio (Mr. OXLEY), and also the gentleman from Massachusetts (Mr. FRANK) for working with me on an important aspect of this Fair Credit Reporting Act.

I learned, Mr. Speaker, from one of my constituents, Bill Asher back in Dallas, Texas, during a town hall meeting about how the Federal Trade Commission had applied privacy rules to workplace misconduct which meant that in a workplace misconduct circumstance, a person who violated another person or who broke the law would actually have to be given information about any investigation that might take place against that individual under privacy rules and regulations passed by and supported by the Federal Trade Commission.

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This Federal Trade Commission now will be reversed; their ruling will be reversed by this Fair Credit Reporting Act to make sure that misconduct in a workplace, privacy rules do not apply.

I want to thank the gentleman from Massachusetts (Mr. FRANK) for his work on this, to ensure this became law, and also our great chairman, the gentleman from Alabama (Mr. BACHUS), and our great chairman, the gentleman from Ohio (Mr. OXLEY).

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 1½ minutes to the gentleman from New York (Mr. CROWLEY), another member of our committee who played a very active role in this.

Mr. CROWLEY. Mr. Speaker, I would like to call this the comity before the storm. It is interesting that we have such comity here in the House on the floor dealing with the FACT Act, the Fair Credit Reporting Act. This has been a bipartisan piece of legislation.

It is interesting that we will take up a bill later on this evening that will not be as bipartisan, and it certainly will be a more partisan bill. I want to thank the gentleman from Ohio (Mr. OXLEY) for his extension of his arm. I wish the other committee, the Committee on Ways and Means, would act in kind; and hopefully that will happen at some point.

I want to thank the ranking member, the gentleman from Massachusetts (Mr. FRANK), for his work on this bill; the gentleman from Alabama (Mr. BACHUS), the subcommittee chairman; the ranking member, the gentleman from Vermont (Mr. SANDERS). Although he has indicated he will not support the bill, he certainly acted in a very bipartisan manner in helping to craft the legislation.

This bill represents the best of the House where Democrats, Republicans, and Independents work together to craft a bill that addresses real problems. But besides good procedure, this bill is also good policy.

It will provide permanency to our Nation's credit grantors to ensure the easy and available flow of capital to our constituents. It toughens up the law with respect to identity theft and ensures that health information is walled off and cannot be used in any credit-making decisions, ensuring the integrity of one's health privacy.

This bill is good for American consumers, and I am pleased to support it. I only wish that later on this evening I could also support a Medicare bill that was bipartisan as well.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. GILLMOR), a valuable member of the committee.

(Mr. GILLMOR asked and was given permission to revise and extend his remarks.)

Mr. GILLMOR. Mr. Speaker, I thank the gentleman for yielding me time.

I want to commend both the chairman and the subcommittee chairman, as well as the ranking members, for the great job they did on this bill.

I rise in strong support of the conference report. Passage of this legislation is essential to maintaining our current national credit reporting system. This legislation maintains the free flow of credit reporting information to lenders, financial services providers, while it also creates some strong new consumer protections.

It also includes a provision that I introduced, H.R. 2622, to improve the transparency of the credit scoring systems by mandating that if the number of credit inquiries on a consumers account negatively affect their score, it must be disclosed in their consumer report. This ensures a consumer and a prospective lender are fully informed; and this important new requirement will allow conscientious consumers to shop around for the best loans and rates.

I urge my colleagues to support the report.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 1½ minutes to the gentlewoman from New York (Mrs. MALONEY), who played an important role in this bill.

(Mrs. MALONEY asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY. Mr. Speaker, I thank the gentleman for yielding me time. I thank our ranking member and chair and my colleagues.

I rise in support of this legislation that permanently reauthorizes the Fair Credit and Reporting Act, which is extremely important to our economy and our national credit system. It also greatly enhances legal protections for identity theft victims, protects medical information, and provides groundbreaking new limits on the sharing of private consumer information among the affiliates of financial services companies.

My constituents need this legislation because New York City claims the sad distinction of having the largest number of identity theft cases of any city in the entire country. The FACT Act helps break the cycle of identity theft with new consumer protections including the right to a free annual credit report, a new consumer-initiated fraud alert system, new protections that will prevent the recycling or repollution of consumer information that is known to be the product of fraud, mandatory truncation of credit and debt card numbers to prevent theft.

In addition to identity theft, this bill contains groundbreaking limits on how financial services companies can share the sensitive consumer financial information among affiliates. These are important consumer protections given that some of today's largest financial companies have more than 1,000 affiliates. While the identity theft and privacy provisions will have the most direct impact on our constituents, the FACT Act also ensures the long-term viability of our national credit market by extending the FCRA beyond the end of the year.

Today I rise in support of legislation that permanently reauthorizes the Fair Credit Reporting Act (FCRA) which is very important to our economy and our national credit system. It also greatly enhances legal protections for identity theft victims, protects medical information, and provides groundbreaking new limits on the sharing of private consumer information among the affiliates of financial services companies.

My constituents need this legislation because New York City claims the sad distinction of having the largest number of identity theft cases of any city in the country.

In addition, this bill contains groundbreaking limits on how financial services companies can share their sensitive customer financial information among affiliates.

These are important consumer protections given that some of today's largest financial companies have more than 1,000 affiliates.

Finally, while the identity theft and privacy provisions will have the most direct impact on our constituents, the FACT Act also ensures the long-term viability of our national credit market by extending the FCRA beyond the end of this year.

Mr. OXLEY. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. LATOURETTE), a former prosecutor, who has done such great work, particularly in the identity theft part of the legislation.

(Mr. LATOURETTE asked and was given permission to revise and extend his remarks.)

Mr. LATOURETTE. Mr. Speaker, I want to first begin by commending the gentleman from Ohio (Mr. OXLEY) and the ranking member, the gentleman from Massachusetts (Mr. FRANK), for their hard work together with the conferees. I think the gentlewoman from Illinois (Mrs. BIGGERT) said earlier that this is the most important piece of legislation to come out of this committee this year, and I agree.

I also want to pay special tribute to the gentlewoman from Oregon (Ms. HOOLEY). When we began working in the 106th Congress on identity theft, some people had not heard of it. Today, I think every Member has a horror story about identity theft. In my district it was Maureen Mitchell. She and her husband found out that they owned not one, but two, luxury SUVs in the period of a couple of hours in Chicago, Illinois, that they had not participated in or purchased.

I think the conferees have produced a good bill. They have not only produced a good bill; they have produced a bill that does not have a one-size-fits-all remedy, and it still gives the regulators flexibility to deal with the ever-evolving strategies that identify thieves come up with.

Lastly, I want to pay tribute to the gentleman from Alabama (Mr. BACHUS), the chairman of the subcommittee, because he sat through hours and hours of hearings to make sure that we got it right; and, lastly, the ranking member, the gentleman from Vermont (Mr. SANDERS), I think he had some excellent ideas on bait and switch. I hope we revisit that in the next Congress.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas (Mr. HINOJOSA), another active member of our committee.

Mr. HINOJOSA. Mr. Speaker, I rise in strong support of the conference report to accompany the Fair and Accurate Transactions Act of 2003. And I congratulate the gentleman from Ohio (Mr. OXLEY) and the ranking member, the gentleman from Massachusetts (Mr. FRANK), the subcommittee chairman, the gentleman from Alabama (Mr. BACHUS), and the ranking member, the gentleman from Vermont (Mr. SANDERS), and all the committee staff for the wonderful work they did in completing this conference report.

This conference report will strengthen the provisions of the Fair Credit Reporting Act. I am proud to have been an original co-sponsor of this legislation, to have supported it in committee, and to have voted in favor of it on the House floor.

Let me take this opportunity to thank the conferees for including in the financial literacy provision of the legislation language that will allow the financial literacy commission the bill creates to take any action to develop and promote financial literacy and educational materials in languages other than English. This will apply to the hot line, Web site, and educational materials the commission produces or recommends.

It is imperative that financial literacy materials be created and disseminated in languages other than English to recognize the diversity of our great Nation. I especially want to thank the ranking member, the gentleman from Massachusetts (Mr. FRANK), for his assistance with this language and Jaime Lizarraga of his staff.

Rest assured that the Congressional Hispanic Caucus and the Hispanic community appreciate your efforts and the language you inserted into the conference report.

Mr. Speaker, I rise in strong support of the conference report to accompany The Fair and Accurate Transactions Act of 2003. I congratulate Chairman OXLEY and Ranking Member FRANK, Subcommittee Chairman BACHUS and Ranking Member SANDERS and all the House and Senate conferees on completing this conference report.

This conference report will strengthen the provisions of the Fair Credit Reporting Act. I am proud to have been an original cosponsor of this legislation, to have supported it in Committee and to have voted in favor of it on the House floor.

I want to read at this time a portion of a letter Federal Reserve Board Chairman Alan Greenspan sent to me dated February 28, 2003. Chairman Greenspan was responding to a question I submitted to him in writing asking what would happen to the U.S. economy if the exceptions to the Fair Credit Reporting Act were allowed to expire after January 1, 2004. In his letter, Chairman Greenspan warned that: "Limits on the flow of information among financial market participants, or increased costs resulting form restrictions that differ based on geography, may lead to an increase in the price or a reduction in the availability of credit, as well as a reduction in the optimal sharing of risk and reward."

I am very pleased that this conference report heeded Chairman Greenspan's warning, and I believe that its passage will help our struggling economy to improve.

Let me take this opportunity to thank the conferees for including in the financial literacy provision of the legislation language that will allow the Financial Literacy Commission the bill creates to "take any action to develop and promote financial literacy and education materials in languages other than English." This will apply to the hotline, website, and educational materials the Commission produces or recommends. It is imperative that financial literacy materials be created and disseminated in languages other than English to recognize the diversity of our great nation.

I especially want to thank Ranking Member FRANK for his assistance with this language and Jaime Lizarraga of his staff. Rest assured that the Congressional Hispanic Caucus and the Hispanic community appreciate your efforts and the language you inserted into the conference report.

The SPEAKER pro tempore (Mr. THORNBERRY). The gentleman from Ohio (Mr. OXLEY) has 1 minute remaining. The gentleman from Massachusetts (Mr. FRANK) has 6 minutes remaining.

Mr. OXLEY. Mr. Speaker, does the gentleman have any further speakers?

Mr. FRANK of Massachusetts. Mr. Speaker, I have several.

Mr. OXLEY. Mr. Speaker, I reserve the balance of my time.

I have the right to close, is that correct, Mr. Speaker?

The SPEAKER pro tempore. The gentleman is correct.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 1¼ minutes to the gentleman from Massachusetts (Mr. MARKEY), who has been so active on the privacy issue.

Mr. MARKEY. Mr. Speaker, I thank my friend, and I congratulate him for all the good things that are in this bill, all the credit report and the negative statement issues that are dealt with.

But there is one concern which I have which is consumers are, by this bill, going to see the California privacy law preempted, as they are going to see as well other States who want to make stronger privacy protection for their constituents something that is part of the law.

My concern is that increasingly what we see with companies like TransUnion and Equifax is that they are sending the records off shore. For example, TransUnion, one of the three major credit reporting agencies' spokesman said last month, 100 percent of our mail regarding customer disputes is going to India at some point. We expect to sign that contract by the end of the year.

My hope is that as the years go by we will be able to return to this issue because the globalization of the information marketplace is going to make clear that Americans are going to want more protection as their information is going to be put in the hands of foreigners with no laws on the books or the ability to police them.

I rise to opposition to this legislation.

I understand that some good things have been done in this bill, such as the provisions granting consumers free access to copies of their credit report, notice of negative statements being added to their credit reports, or adverse credit decisions being made based on their credit report. I support these provisions, and I also support stronger protections against identify theft.

The problem is that consumers are being asked to pay a price for these provisions—their privacy. As I read this bill, we are permanently pre-empting any stronger state privacy laws, such as the California law, in favor of a federal standard that provides consumers with only a very narrow "opt-out" right to block affiliate sharing of the consumer's information for marketing purposes. I do not believe that an "Opt Out" is appropriate. Companies should have to obtain the affirmative consent of the consumer—an "Opt In" before they share information about their transactions or experiences with the consumer with other affiliates or with unaffiliated third parties.

Moreover, I am concerned that by limiting the ability of a consumer to exercise their Opt-Out solely to marketing, this bill allows affiliates to share information about the consumers for other purposes without any consumer right to say "No." I am also concerned that even after a consumer has "opted out," their decision to do so gets sunsetted after 5 years and they have to "opt out" again. If the consumer has said no, that should mean no illness and until the consumer says yes.

I also want to raise a concern about some statements I have seen in the press from the credit reporting agencies suggesting that if these companies are forced to provide consumers with free credit reports, they will accelerate their current efforts to transfer their databases and back office operations off-shore.

TransUnion and Equifax, two out of the three major credit reporting agencies already are in the process of offshoring the processing of detailed credit files on 220 million U.S. consumers.

Earlier this month, a TransUnion spokesman said that "A hundred percent of our mail regarding customer disputes is going to go to India at some point. We expect to sign that contract by the end of the year."

Equifax has had a vendor in Jamaica for four years, where Jamacian workers handle data entry at the beginning of the reinvestigation process for disputed credit reports.

Experian, the third of the three major credit reporting agencies, is considering whether to offshore some of its operations: "We definitely are evaluating every option on the table, and offshoring is one of them. I don't want to be quoted as saying we'll never do it."

Privacy experts are concerned about offshoring of the Social Security numbers, addresses and other personal information contained in credit reports:

"Consumers should be worried. The infrastructure to protect information just isn't there in a lot of these places." (Beth Givens, director, Privacy Rights Clearing House)

"The problem is not that they're in India, the problem is that American laws are not going to be enforced in India." (Chris Hoofnagle, Electronic Privacy Information Center)

"If you're an international crime ring, and you want Social Security numbers for identity theft, you're going to look at the weakest link, and that's quite possibly these overseas companies." (Beth Givens)

In October, a Pakistani woman threatened to post UCSF patient files on the Internet, unless she was paid for the medical transcription services she had performed. In the email she sent to UCSF, the woman wrote: "Your patient records are out in the open to be exposed, so you better track that person and make him pay my dues or otherwise I will expose all the voice files and patient records on the Internet."

That is the future that we are looking at with the credit reporting agencies. Consumers may be able to call up to get a free copy of their credit report, but the person on the other end of the line may be in Karachi or New Delhi, where U.S. privacy standards do not apply.

Indeed, this bill may provide Americans with the most expensive "free" credit report they'll ever get. They'll pay with their privacy.

That is why I think that we need to put the consumer back in control of their own information. We need an "opt-in" not a limited "opt-out", and we need to ensure that American's privacy does not get offshored at the same time that their jobs are getting offshored.

I urge the defeat of this legislation.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I want to begin by saying that if we on the Democratic side were in the majority, this would be a different bill. We are not, so we have the bill that we have here.

Given that, given that there are some differences, I must tell you that this is a better bill than I had hoped we would see. And I am very appreciative of my colleagues on the other side. They did not give in on any issues of principle that are important to them. We have on both sides of the aisle a strong commitment to making sure that the free-market system in this country can work.

These credit allocations have become a very important part of that free-mark system. And this bill, I believe, preserves that system, the credit allocation system for individuals as well as need be.

We also, though, have, as we often do with the free market, a situation where the market does well what it is supposed to do, but it does not do everything. There are areas where we need to step in and help the market. What is important is for us to do that in ways that do not impinge on the market function.

I believe that working together we have come closer in doing that in this bill than I had thought. I would like if there had been fewer preemptions in the field, for instance, of identity theft; but as a result of a meeting which we had this morning, I think we agreed to preserve the integrity of the identity theft provisions that we have in there, to make sure that they can function without interference and without distraction, but did not unduly preempt if the States want to be additive in other areas. So there is, in fact, room for States to do something as long as the scheme that has been set forward in this bill is not interfered with, detracted from, and in particular, companies are not subjected to conflicting or confusing multiple requirements.

We have done other things. People, as a result of this, will be able to get a lot more information. Until recently, credit and credit scoring have been kind of mystical things to a lot of people. Consumers, home buyers, automobile buyers, others have found their lives affected financially by factors of which they were only dimly aware. As a result of several provisions in this bill, the system will be allowed to work, but consumers will have a lot more information about it. And they will get that information in many cases early enough to act on it.

Frankly, one of the things that some of our friends in the business community were skeptical of I think will wind up helping them. A requirement that people be notified if something they have either done or failed to do will cause them to have a negative comment on the credit report, I think that will have an incentivizing effect. I think the first time someone is late unneccessarily with a payment for a mortgage and is notified that this will

be on your credit report, you are likely to see much less lateness. We also took steps to improve the accuracy of the data.

The system on the whole works very well, but no system works perfectly. I think this credit system was a little bit flawed in that it did not adequately give people a chance to correct errors. We do a much better job of this. I would have liked there to have been a sunset on the preemptions.

I think this bill benefits from the fact that it was here today. Congress did this 7 years ago. There was a sunset. And as a result, we are here today doing what everybody agrees is improving the bill. I would have liked, and my colleague from Pennsylvania (Mr. KANJORSKI) offered an amendment to give us a chance to do that again. We lost on the floor, and that is the way the votes went. But I do hope and I believe that we may very well from experience learn that more has to be done or things have to be done differently.

□ 1845

When this bill was passed in 1996, identity theft was not a big issue. The fact that it was sunsetted gave us a chance to deal with identity theft I think in a very effective way. This will not be the last time that the crooked people in this world will think of a way to swindle the great majority of the honest ones.

So I just want to make it clear that while we will not have this automatically coming up, I hope we are all committed, and I believe we are, that as new problems come up we will be able to deal with them.

Given the fact that the majority is the majority, I believe that we did a good job, not a perfect one, in adding consumer protections and safety factors to this general system of allowing the credit allocation to individuals to work, and for that reason, I would urge Members to vote for the bill.

Mr. OXLEY. Mr. Speaker, I yield myself the remaining time.

First of all, I want to thank the staff. I always tend to forget to do that, and we have been through a lot on this bill. This is a complicated piece of legislation that got more complicated as we took on this whole issue of identity theft, and throughout this process, the staff on both sides of the aisle have been just superb, working late nights and early mornings to get us where we are today, and I want to personally thank them for their efforts. They know who they are, and I know who they are and we most appreciate it, and also to the Members, I think this is, Mr. Speaker, perhaps a textbook example of how the legislative process ought to work in terms of hearings, in terms of everybody having an opportunity to have their say, involving Members on both sides of the aisle, many of them newer Members, freshmen Members, to really get their feet wet on an important piece of legislation that we bring to the floor today and this conference report that will close it out.

This is truly a historic day, and I think in the real traditional way that we have started in the Committee on Financial Services of turning out good legislation in a bipartisan manner, and for that, I am very thankful to all concerned.

Mr. BEREUTER. Mr. Speaker, as a member of the Financial Services Committee and a conferee, this member rises today to express his strong support for the conference report of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). This important legislation permanently extends those provisions in the Fair Credit Reporting Act (FCRA) which relate to the preemption of State laws—a very necessary step in this instance. The current provisions in the FCRA are set to expire on December 31, 2003. Thus when this conference report is enacted into law, it will continue the nationwide credit system while providing important consumer protections.

This member would like to thank the distinguished gentleman from Alabama, Mr. BACHUS, the chairman of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit on which this member serves, for introducing the legislation on which this conference report is largely based. Furthermore, this member would like to thank both the distinguished gentleman from Ohio, Mr. OXLEY, the chairman of the House Financial Services Committee, and the distinguished gentleman from Massachusetts, Mr. FRANK, the ranking member of this committee, for their outstanding effort in bringing this excellent conference report to the House floor. As was suggested at the conclusion of the conference, this may be an instance where most of the conferees from both the House and Senate believe the conference report is better than either original Chamber's product.

The FCRA is the Federal law which governs the furnishing of reports on the credit worthiness of consumers. This member supports this conference report which would permanently extend the FCRA for many reasons. However, he would like to focus on the following three reasons.

First, this conference report provides for a free credit report annually for consumers. Typically, credit reporting agencies charge consumers up to $9 for the disclosure of the information in their credit files. Under current law, a consumer may receive a free consumer report from a reporting agency only under certain circumstances, such as when a consumer receives a notice of an adverse action by a reporting agency. The FACT Act would provider a free credit report annually for consumers for any reason. This member believes that this provision will promote consumer awareness of a person's credit history as well as provide an opportunity for the consumer to correct any inaccurate information on one's credit report.

Second, this conference report provides important provisions to curb identity theft. To illustrate the need for these provisions, the Federal Trade Commission (FTC) released a survey at the beginning of September of this year which showed that a staggering 27.3 million Americans had been victims of identity theft in the last 5 years, including 9.9 million people in the last year alone. This conference report, among other things, allows consumers to place "fraud alerts" in their credit reports to prevent identity thieves from opening accounts in their names.

Lastly, this conference report continues the Federal preemption of State laws as it relates to the corporate affiliate sharing of financial information. During the consideration of the 1996 amendments to the FCRA, this member authored a provision, which was signed into law, that required a consumer opt-out when nontransactional information is shared among corporate affiliates. Examples of nontransaction information include data from a consumer credit report and information on an application such as a consumer's income or assets. This provision on consumer notice is very important as it was the first consumer "opt out" on the sharing of financial information that this member is aware of that was signed into Federal Law.

Mr. Speaker, in conclusion, for the reasons stated above and many others, this member encourages his colleagues to support the conference report of H.R. 2622.

Mr. CANTOR. Mr. Speaker, I rise today on behalf of the Fair and Accurate Credit Transactions Act, H.R. 2622. This sound piece of legislation will aid in the prevention of identity theft. Additionally, it will guarantee that consumers have access to affordable credit.

I do have one concern, and I would like to clarify congressional intent in regard to this legislation. It is vitally important for consumers that the information reported about them to credit bureaus is accurate. When errors occur, they must be corrected. The overwhelming majority of disputes are properly handled through existing procedures as defined in section 611 of the Fair Credit Reporting Act. Nevertheless, a very small percentage of unusual disputes are not completely resolved through the reinvestigation process. Section 312 of the conference report for the bill provides a means by which some of these cases could be submitted directly to the furnisher for possible resolution.

I recognize that there are potential risks in the adoption of this section. For example, I am very concerned that any mechanism designed to address these few cases is not burdensome. If it becomes burdensome, furnishers may become discouraged from reporting complete and accurate information in the first instance. Additionally, this could lead to misuse by credit repair clinics to overwhelm furnishers in an attempt to cause them to change accurate information.

The conference report for H.R. 2622 has charged the relevant agencies with issuing rules only after they have determined the benefits of a direct resolution process. Congress has provided the agencies with four criteria to review in connection with any rulemaking pertaining to the direct reinvestigation of consumer disputes with furnishers. This criteria must be satisfied before any rules are to be issued.

I believe it is a positive piece of legislation that will give consumers the tools to fight identity theft and continue to access affordable credit.

Mr. Speaker, I urge passage of this legislation.

The SPEAKER pro tempore (Mr. THORNBERRY). The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and agree to the conference report on the bill, H.R. 2622.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of

those present have voted in the affirmative.

Mr. SANDERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1741. An act to provide a site for the National Women's History Museum in the District of Columbia.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2115) "An Act to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes."

VITIATION OF MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

The SPEAKER pro tempore. Under clause 8 of rule XX, the filing of the conference report on H.R. 1 has vitiated the motion to instruct conferees offered by the gentleman from Washington (Mr. INSLEE) which was debated yesterday and on which further proceedings were postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, and the Chair's prior announcement, the Chair will now put each question on which further proceedings were postponed earlier today in the following order:

Previous question on H. Res. 459, by the yeas and nays;

H. Res. 459, if ordered;

Previous question on H. Res. 458, by the yeas and nays;

H. Res. 458, if ordered;

H. Con. Res. 206, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

The SPEAKER pro tempore. The pending business is the vote on ordering the previous question on H. Res. 459, on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The vote was taken by electronic device, and there were- yeas 225, nays 202, not voting 7, as follows:

[Roll No. 659]

YEAS- 225

Aderholt	Gillmor	Otter
Akin	Gingrey	Oxley
Bachus	Goode	Paul
Baker	Goodlatte	Pearce
Ballenger	Goss	Pence
Barrett (SC)	Granger	Peterson (PA)
Bartlett (MD)	Graves	Petri
Barton (TX)	Green (WI)	Pickering
Bass	Greenwood	Pitts
Beauprez	Gutknecht	Platts
Bereuter	Harris	Pombo
Biggert	Hart	Porter
Bilirakis	Hastings (WA)	Portman
Bishop (UT)	Hayes	Pryce (OH)
Blackburn	Hayworth	Putnam
Blunt	Hefley	Quinn
Boehlert	Hensarling	Radanovich
Boehner	Herger	Ramstad
Bonilla	Hobson	Regula
Bonner	Hoekstra	Rehberg
Bono	Hostettler	Renzi
Boozman	Houghton	Reynolds
Bradley (NH)	Hulshof	Rogers (AL)
Brady (TX)	Hunter	Rogers (KY)
Brown (SC)	Hyde	Rogers (MI)
Brown-Waite, Ginny	Isakson	Rohrabacher
Burgess	Issa	Ros-Lehtinen
Burns	Istook	Royce
Burr	Janklow	Ryan (WI)
Burton (IN)	Jenkins	Ryun (KS)
Buyer	Johnson (CT)	Saxton
Calvert	Johnson (IL)	Schrock
Camp	Johnson, Sam	Sensenbrenner
Cannon	Jones (NC)	Sessions
Cantor	Keller	Shadegg
Capito	Kelly	Shaw
Carter	Kennedy (MN)	Shays
Castle	King (IA)	Sherwood
Chabot	King (NY)	Shimkus
Chocola	Kingston	Shuster
Coble	Kirk	Simmons
Cole	Kline	Simpson
Collins	Knollenberg	Smith (MI)
Cox	Kolbe	Smith (NJ)
Crane	LaHood	Smith (TX)
Crenshaw	Latham	Souder
Cubin	LaTourette	Stearns
Culberson	Leach	Sullivan
Cunningham	Lewis (CA)	Sweeney
Davis, Jo Ann	Lewis (KY)	Tancredo
Davis, Tom	Linder	Tauzin
Deal (GA)	LoBiondo	Taylor (NC)
DeLay	Lucas (OK)	Terry
Diaz-Balart, L.	Manzullo	Thomas
Diaz-Balart, M.	McCotter	Thornberry
Doolittle	McCrery	Tiahrt
Dreier	McHugh	Tiberi
Duncan	McInnis	Toomey
Dunn	McKeon	Turner (OH)
Ehlers	Mica	Upton
Emerson	Miller (FL)	Vitter
English	Miller (MI)	Walden (OR)
Everett	Miller, Gary	Walsh
Feeney	Moran (KS)	Wamp
Ferguson	Murphy	Weldon (FL)
Flake	Musgrave	Weldon (PA)
Foley	Myrick	Weller
Forbes	Nethercutt	Whitfield
Franks (AZ)	Neugebauer	Wicker
Frelinghuysen	Ney	Wilson (NM)
Gallegly	Northup	Wilson (SC)
Garrett (NJ)	Norwood	Wolf
Gerlach	Nunes	Young (AK)
Gibbons	Nussle	Young (FL)
Gilchrest	Osborne	
	Ose	

NAYS- 202

Abercrombie	Ballance	Blumenauer
Ackerman	Becerra	Boswell
Alexander	Bell	Boucher
Allen	Berkley	Boyd
Andrews	Berman	Brady (PA)
Baca	Berry	Brown (OH)
Baird	Bishop (GA)	Brown, Corrine
Baldwin	Bishop (NY)	Capps
Capuano	Jackson-Lee (TX)	Pastor
Cardin	Jefferson	Payne
Cardoza	John	Pelosi
Carson (IN)	Johnson, E. B.	Peterson (MN)
Carson (OK)	Jones (OH)	Pomeroy
Case	Kanjorski	Price (NC)
Clay	Kaptur	Rahall
Clyburn	Kennedy (RI)	Rangel
Conyers	Kildee	Reyes
Cooper	Kilpatrick	Rodriguez
Costello	Kind	Ross
Cramer	Kleczka	Rothman
Crowley	Kucinich	Roybal-Allard
Cummings	Lampson	Rush
Davis (AL)	Langevin	Ryan (OH)
Davis (CA)	Lantos	Sabo
Davis (FL)	Larsen (WA)	Sanchez, Linda T.
Davis (IL)	Larson (CT)	Sanchez, Loretta
Davis (TN)	Lee	Sanders
DeFazio	Levin	Sandlin
DeGette	Lewis (GA)	Schakowsky
Delahunt	Lipinski	Schiff
DeLauro	Lofgren	Scott (GA)
Deutsch	Lowey	Scott (VA)
Dicks	Lucas (KY)	Serrano
Dingell	Lynch	Sherman
Doggett	Majette	Skelton
Dooley (CA)	Maloney	Slaughter
Doyle	Markey	Smith (WA)
Edwards	Matheson	Snyder
Emanuel	Matsui	Solis
Engel	McCarthy (MO)	Spratt
Eshoo	McCarthy (NY)	Stark
Etheridge	McCollum	Stenholm
Evans	McDermott	Strickland
Farr	McGovern	Stupak
Fattah	McIntyre	Tanner
Filner	McNulty	Tauscher
Ford	Meehan	Taylor (MS)
Frank (MA)	Meek (FL)	Thompson (CA)
Frost	Meeks (NY)	Thompson (MS)
Gonzalez	Menendez	Tierney
Gordon	Michaud	Towns
Green (TX)	Millender-McDonald	Turner (TX)
Grijalva	Miller (NC)	Udall (CO)
Gutierrez	Miller, George	Udall (NM)
Hall	Mollohan	Van Hollen
Harman	Moore	Velazquez
Hastings (FL)	Moran (VA)	Visclosky
Hill	Nadler	Waters
Hinchey	Napolitano	Watson
Hinojosa	Neal (MA)	Watt
Hoeffel	Oberstar	Waxman
Holden	Obey	Weiner
Holt	Olver	Wexler
Honda	Ortiz	Woolsey
Hooley (OR)	Owens	Wu
Hoyer	Pallone	Wynn
Inslee	Pascrell	
Israel		
Jackson (IL)		

NOT VOTING- 7

DeMint	Gephardt	Ruppersberger
Fletcher	Marshall	
Fossella	Murtha	

□ 1909

Mrs. MALONEY and Messrs. WYNN, MORAN of Virginia, SCOTT of Georgia, PALLONE, ALLEN, and COSTELLO changed their vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. THORNBERRY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were- yeas 228, nays 200, not voting 6, as follows:

EXTENSIONS OF REMARKS

IN RECOGNITION OF CHARLOTTE THOMPSON REID

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. HASTERT. Mr. Speaker, I rise to commend to the attention of our colleagues the recent celebration of one of our former colleague's 90th birthday this past September 27. Charlotte Thompson Reid, one of my predecessors who served in the House from January 1963–October 1971, has been known as the "Grand Lady of Aurora, Illinois," the largest city in my congressional district. Charlotte Reid has always been an inspiration to those of us who have known her. Her sparkling personality and just plain Midwest-friendliness is renown throughout all of Chicagoland. Her conscientious service in Congress overlapped with the beginning of my teaching career in Yorkville, Illinois and her outstanding record helped inspire me to seek public office in the late 1970's. In fact, her daughter, Patricia, is currently a State Representative in the Illinois General Assembly.

While in Congress, Charlotte served on the Appropriations, Interior and Insular Affairs, Public Works, and Ethics Committees. In 1971, she was appointed to be a Commissioner on the FCC where she served with distinction until retiring in 1976. She was a member of the President's Task Force on International Private Enterprise from 1983 to 1985, and has been a member of the Hoover Institution's Board of Overseers since 1984. She is a resident today of Aurora.

One last anecdote. Not only was Charlotte Reid herself elected to Congress five times with overwhelming margins, but her enthusiastic support and endorsement helped to elect two future Congressmen—another of my predecessors Tom Corcoran in 1976 and her work on my behalf helped elect me ten years later in 1986, during my first and toughest campaign for Congress.

Mr. Speaker, we are all indebted to Charlotte Reid for her energy, her gentle manner and her zest for life. On behalf of us all, I wish her a belated, but happy 90th birthday and many more to come.

RECOGNIZING DON WILSON FOR OUTSTANDING SERVICE TO THE COMMUNITY

HON. JEB HENSARLING

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. HENSARLING. Mr. Speaker, today, I would like to recognize Mr. Don Wilson for his outstanding service to the community and businesses in North East Dallas. After faithfully serving as President of Dallas North East Chamber of Commerce for the last three years, Don recently announced his retirement to serve as Vice President of the Dallas National Bank for the Breckenridge Corner Branch.

Since September 25, 2000, Don Wilson has provided energetic leadership in promoting the commercial, civic, cultural, educational, and industrial interests of the Northeast Dallas area. Don's dedication to the prosperity and health of area businesses, neighborhoods, and residents is well known and admired by his fellow Chamber members.

Under Don's leadership, membership in the Dallas North East Chamber of Commerce increased by 38 percent while membership retention rose to 62 percent, well above the national average.

As an active President, Don Wilson oversaw many new successful activities including the Power-In-An-Hour monthly networking meeting, a new high-tech interactive Web site, the Women's Network, the Focus on Health Committee and the Healthier Northeast Dallas Initiative, a program modeled after President Bush's Healthier U.S. Initiative.

Don Wilson's leadership and dedication will be greatly missed by the community and businesses he served. I thank him for his outstanding service and wish him the very best in his future endeavors.

IN RECOGNITION OF THE 25TH ANNIVERSARY OF THE ASSASSINATIONS OF MAYOR GEORGE MOSCONE AND SUPERVISOR HARVEY MILK

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Ms. PELOSI. Mr. Speaker, I rise to pay tribute to the memory of two of San Francisco's great and most beloved heroes.

A quarter century ago, on November 27, 1978, two of San Francisco's best and brightest were assassinated in a dark week for our city.

Still reeling from the Jonestown Massacre only days before—the worst mass murder-suicide in American history and the murder of Bay Area Congressman Leo Ryan—San Francisco was dealt a catastrophic blow.

Politically and personally it was a horrific tragedy. San Francisco lost two great progressive leaders, two champions of human rights.

George Moscone, our beloved Mayor, was a hero of the poor and the working class. A native San Franciscan, civil rights leader, State Assemblyman, State Senator, and Mayor, he devoted his life to serve his City of San Francisco, and his State of California. The devoted husband of Gina Moscone and father of four beautiful children, Jennifer, Rebecca, Jonathan and Christopher, he was taken from us in the prime of his life.

Harvey Milk, originally from New York, was a local merchant, the owner of a camera shop. As a member of the San Francisco Board of Supervisors, he was the first openly gay elected official in California, and only the second in the nation. He was a neighborhood leader and a passionate advocate for seniors and all minorities.

Both men were exuberant, expansive, compassionate, and enormously popular political leaders. They were visionaries.

George Moscone and Harvey Milk instigated a historic transformation of San Francisco political life, pioneering an open, participatory government, accessible to all, especially those who never before had been included. For the first time neighborhood and ethnic community activists, and openly gay men and lesbians were appointed to positions of power and authority. The number of women in leadership positions expanded dramatically. No longer were public policy decisions the exclusive province of the wealthy and powerful.

George and Harvey transformed the political and social culture of San Francisco for all time. They were beacons of hope to people who had felt alienated from and neglected by City Hall. They incubated a new generation of talented public servants, who have gone on to secure San Francisco's position today as a national model of enlightenment and progressive values.

The twenty-fifth anniversary of the tragic events of November 27, 1978 gives San Franciscans an opportunity to reflect on the unique contributions George Moscone and Harvey Milk made to bettering the lives of us all. These extraordinary men continue to inspire us as we strive for a society that provides unlimited and equal opportunities for all our diverse citizens.

We never will forget George Moscone and Harvey Milk. We are grateful for their lives, and we honor their immeasurable contributions to our city, our state and our nation.

IN HONOR OF WILLIAM ECKMAN, CHARLES COUNTY CITIZEN OF THE YEAR 2003

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. HOYER. Mr. Speaker, I rise today to share with you remarks made at the 6th Annual Charles County Economic Development Summit by William Burke on the occasion of presenting the "John Bloom Citizen of the Year Award" to Mayor William Eckman. Mayor Eckman is a true American patriot whose compassion, caring and concern for the residents of LaPlata shined forward during the difficult tornado disaster of April 2002. All of us in the Charles County community share Mr. Burke's enthusiasm in recognizing Mayor Eckman.

To follow are the remarks presented by William Burke, Board Member, Charles County Economic Development Commission, President, Southern Maryland Title on October 28, 2003.

Division 1 championship game record 252 rushing yards—spearheaded the offense, while Elder's swarming defense held opposing teams to just seven points in four of the five playoff games. And, as always, thousands of Elder faithful traveled across the state braving the cold to support the Panthers throughout the playoffs.

The hard work and sacrifice of the young men at Elder have brought pride and honor to Price Hill and our entire community. Football fans throughout the Cincinnati area congratulate the Panthers on their back-to-back championships and share in their celebration.

Mr. Speaker, to appropriately honor these young men and coaches, I'd like to submit for the RECORD the roster of the 2003 Elder Panthers and a copy of their schedule and game results.

ELDER HIGH SCHOOL, 2003 OHIO HIGH SCHOOL STATE FOOTBALL CHAMPIONS, FINAL RECORD: 14-1

REGULAR SEASON

Game 1: August 21, 2003, Elder 33- Winton Woods 14
Game 2: August 30, 2003, Indianapolis Warren Central 45- Elder 20
Game 3: September 5, 2003, Elder 50- Western Hills 8
Game 4: September 12, 2003, Elder 17- Indianapolis Bishop Chatard 16
Game 5: September 19, 2003, Elder 42- LaSalle 7
Game 6: September 26, 2003, Elder 49- Covington Catholic 21
Game 7: October 3, 2003, Elder 21- Moeller 20
Game 8: October 10, 2003, Elder 28- St. Xavier 7
Game 9: October 17, 2003, Elder 21- Indianapolis Cathedral 7
Game 10: October 24, 2003, Elder 24- Oak Hills 21

PLAYOFFS

Round 1: November 1, 2003, Elder 28- Anderson 7
Round 2: November 8, 2003, Elder 33- Clayton Northmont 7
Regional Championship: November 15, 2003, Elder 24- Colerain 23
State Semi-Final: November 22, 2003, Elder 31- Dublin Scioto 7
State Championship: November 29, 2003, Elder 31- Lakewood St. Edward 7

2003 ELDER PANTHERS VARSITY FOOTBALL ROSTER

HEAD COACH

Doug Ramsey.

ASSISTANT COACHES

Ken Lanzillotta; Ray Heidorn; Mike Kraemer; Craig James; Tim Schira; Matt Eisele; and Pat Good.

SENIORS

No. 34 Eric Andriacco; No. 54 Steve Baum; No. 58 Kenny Berling; No. 26 Ryan Brinck; No. 20 Michael Brown; No. 50 Dave Bullock; No. 68 Alec Burkhart; No. 23 Mark Byrne; No. 5 Charlie Coffaro; No. 71 Justin Crone; No. 29 Brett Currin; No. 12 Rob Florian; No. 84 Kurt Gindling; No. 11 Bradley Glatthaar; No. 99 Alex Harbin.

No. 97 Steve Haverkos; No. 70 Chris Heaton; No. 82 Nick Klaserner; No. 7 Dan Kraft; No. 48 Joe Lind; No. 47 Pat Lysaght; No. 53 Corey McKenna; No. 60 Mike Meese; No. 92 Tim Mercurio; No. 30 Drew Metz; No. 72 Mark Naltner; No. 28 Alex Niehaus; No. 21 Billy Phelan; No. 31 Seth Priestle.

No. 65 Nick Rellar; No. 2 Jake Richmond; No. 91 Tony Stegeman; No. 88 Ian Steidel; No. 9 Mike Stoecklin; No. 45 Tim Teague; No. 24 John Tiemeier; No. 90 Matt Umberg; No. 10 Jeff Vogel; No. 16 Eric Welch; No. 74 John Wellbrock; No. 87 Mike Windt; No. 75 Eric Wood; and No. 94 Mike Zielasko.

JUNIORS

No. 52 Steve Anevski; No. 6 Brian Bailey; No. 41 Guy Beck; No. 18 Matt Bengel; No. 57 Nick Berning; No. 38 Joe Broerman; No. 13 Craig Carey; No. 89 Kevin Crowley; No. 14 Andrew Curtis; No. 95 Andrew Dinkelacker; No. 76 Alex Duwel; No. 33 Tim Dwyer; No. 66 Phil Ernst; No. 37 Eric Harrison; No. 36 Alex Havlin; No. 78 Josh Hubert.

No. 39. D.J. Hueneman; No. 15 R.J. Jameson; No. 43 Reid Jordan; No. 96 Eric Kenkel; No. 44 Bradley Kenny; No. 51 Chris Koopman; No. 42 Nick Kuchey; No. 67 Mark Menninger; No. 69 John Meyer; No. 32 Robert Nusekabel; No. 22 Billy O'Conner; No. 8 Mike Priore; No. 17 Andrew Putz; No. 46 Zack Qunell; No. 77 Brandon Rainier.

No. 3 Jeremy Richmond; No. 93 Jake Rieth; No. 73 Scott Roth; No. 19 Parker Smith; No. 98 Jared Sommerkamp; No. 86 Louis Sprague; No. 27 Rickey Stautberg; No. 79 Ben Studt; No. 62 Joe Super; No. 1 Pat Van Oflen; No. 61 Kurt Weil; No. 25 J.T. Westerfield; No. 40 Ben Widolff; No. 4 Nick Williams; and No. 81 Ben Wittwer.

SOPHOMORES

No. 35 Adam Baum and No. 49 Gerald Walker.

MANAGERS

T.J. Weil and Andy Brunsman.

TRIBUTE TO CORPORAL SEBASTIAN DEGAETANO

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to honor CPL Sebastian Degaetano, a veteran of the second world war and a resident of Port Richey, Florida in my Fifth Congressional District.

I will soon have the pleasure of recognizing CPL. Sebastian Degaetano for his heroism and bravery as a U.S. soldier who fought in the European Theater from January 19, 1943 through March 28, 1946.

During the pivotal Battle of the Bulge, which turned the tide against the Germans and was the largest land battle of World War II, CPL Degaetano was hit in his leg by shrapnel.

I will present CPL Sebastian Degaetano with the Purple Heart, the oldest military decoration in the world, nearly 50 years overdue.

Though he earned this honor, he never received it from the Defense Department and I am honored to have the opportunity to present to him the Purple Heart for his selfless devotion to duty and service to the United States.

CONFERENCE REPORT ON H.R. 2622, FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

SPEECH OF

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 21, 2003

Mr. OXLEY. Mr. Speaker, I rise today to express my appreciation for the work Congress has done to pass H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. H.R. 2622 includes numerous consumer protection measures designed to combat the growing crime of identity theft and to improve the accuracy of the credit reporting system. This landmark legislation will also ensure the continued vibrancy of our national credit markets.

Given the complexity of H.R. 2622, it is both appropriate and important to submit for the record a section-by-section summary of the legislation in order to help provide an understanding of the legislation and its impact on the Fair Credit Reporting Act.

The legislation provides significant measures to help consumers, financial institutions and consumer reporting agencies prevent and mitigate identity theft. For example, the legislation establishes requirements for the placement of fraud alerts on consumer credit files, investigation of changes of address, truncation of credit card and debit card account numbers on receipts, and the manner in which information identified as having resulted from identity theft is blocked.

In addition, the legislation establishes requirements for verifying the accuracy of consumer information and preventing the reporting of consumer information that results from identity theft. Financial institutions must also take certain steps before establishing new loans and credit accounts for consumers who have fraud alerts on their credit files.

Lastly, the legislation includes provisions entitling consumers to obtain free credit reports and access to their credit scores. This provision will likely do more for financial literacy and consumer education than any legislation in decades.

I am submitting this section-by-section analysis on behalf of myself and the gentleman from Alabama (Mr. BACHUS), the Chairman of the Financial Institutions and Consumer Credit Subcommittee, who introduced H.R. 2622 and presided over a series of hearings over the past year that laid the groundwork for this landmark legislation.

SECTION BY SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section establishes the short title of the bill, the "Fair and Accurate Credit Transactions Act of 2003" (the FACT Act).

Section 2. Definitions

This section adds a number of definitions for use in provisions of the Act that are not amendments to the Fair Credit Reporting Act.

Section 3. Effective dates

This section specifies effective dates for the legislation. Several sections are given specific effective dates. For sections adding new provisions or standards where no effective date is provided, this section provides a general rule providing for the Federal Reserve Board (the Board) and the Federal Trade Commission (FTC) within 2 months to jointly determine the appropriate effective dates for the remaining provisions, not to exceed 10 months from making their determination.

TITLE I- IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

Subtitle A- Identity Theft Prevention

Section 111. Amendment to definitions

This section includes a number of definitions, including definitions for fraud alerts, identity theft reports, financial institutions, and nationwide specialty consumer reporting agency.

Section 112. Fraud alerts and active duty alerts

The section sets forth a uniform national consumer protection standard for the processing of credit and verification procedures where there is an elevated risk of identity theft. The section allows certain identity theft victims and active duty military consumers to direct nationwide consumer reporting agencies to include a fraud alert or active duty alert in each consumer report furnished on them that can be viewed by creditors and other users of the report in a clear and conspicuous manner. Upon receiving proof of the consumer's identity and the consumer's request for an alert, the agency must place the alert in the consumer's file for a certain time period (or such other time agreed to upon the request or subsequently) in a manner facilitating its clear and conspicuous viewing, inform the consumer of the right to request free credit reports within 12 months, provide the consumer with the disclosures required under section 609 within 3 business days of requesting the disclosures, and refer the necessary information related to the alert to the other nationwide credit reporting agencies. The request must be made directly by the consumer or by an individual acting on their behalf or as their representative. This limitation on the request is intended to allow a consumer's family or guardian to request an alert for the consumer where appropriate, while preventing credit repair clinics and similar businesses from making such requests. Resellers of credit reports must reconvey any alert they receive from a consumer reporting agency. Agencies other than those described in section 603(p) must communicate to the consumer how to contact the Commission and the appropriate agencies.

The national standard creates 3 types of alerts. A consumer with a good faith suspicion that he or she has been or is about to be a victim of identity theft or other fraud may request an initial alert. The initial alert must be placed in the consumer's file for 90 days and the consumer may request one free credit report within 12 months. If the consumer has an appropriate identity theft report (typically a police report) alleging that a transaction was the result of fraud by another person using the consumer's identity, then the consumer may alternatively request an extended alert. The agency must place the extended alert in the consumer's file for 7 years, inform the consumer of the right to 2 free credit reports within 12 months, exclude the consumer's name from lists used to make prescreened offers of credit or insurance for 5 years, and include in the file the consumer's telephone number (or another reasonable contact method designated by the consumer). An active duty member of the military may alternatively request an active duty alert, which does not imply the immediate threat of identity theft, but as a preventative measure, a nationwide consumer reporting agency must respond to such a request by placing an active duty alert in the member's file for one year and exclude the member from lists used to make prescreened offers of credit or insurance for 2 years.

Users of consumer reports that contain an alert cannot establish a new credit plan or provide certain other types of credit in the name of a consumer, issue additional cards at the request of a consumer on an existing credit account, or grant an increase in a credit limit requested by the consumer on an existing credit account, without utilizing reasonable policies and procedures to form a reasonable belief of the requester's identity. In the case of an initial or active duty alert, if the requester has specified a telephone number to be used for identity verification, then the user may contact the consumer using that number or must take other reasonable steps to verify the requester's identity and confirm that the request is not the result of identity theft. In the case of an extended alert, the user may not grant the request unless the consumer is contacted either in person (such as in a bank branch or retail store location), by telephone, or through any another reasonable method provided by the consumer, to confirm that the request is not the result of identity theft.

Section 113. Truncation of credit card and debit card account numbers

This section creates a uniform national standard requiring businesses that accept credit or debit cards to truncate the card account numbers (printing no more than the last 5 digits) and exclude card expiration dates on any electronically printed receipts. This requirement becomes effective 3 years after enactment for any cash registers in use on or before January 1, 2005 and 1 year after enactment for any register put into use after January 1, 2005. The requirement does not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.

Section 114. Establishment of procedures for the identification of possible instances of identity theft

This section directs the Federal banking agencies, the National Credit Union Administration (NCUA), and FTC to jointly formulate various red flag guidelines to help financial institutions and creditors identify patterns, practices and specific forms of activity that indicate the possible existence of identity theft. These agencies also must prescribe regulations creating uniform national standards for the entities they supervise requiring the entities to establish and adhere to reasonable policies and procedures for implementing the guidelines. The policies and procedures established under this section are not to be inconsistent with the policies and procedures required by section 326 of the USA PATRIOT Act, particularly with respect to the identification of new and prospective customers. In issuing regulations and guidelines under this Act, the Federal agencies are expected to take into account the limited personnel and resources available to smaller institutions and craft such regulations and guidelines in a manner that does not unduly burden these smaller institutions.

The red flag regulations shall include requiring issuers of credit cards and debit cards who receive a consumer request for an additional or replacement card for an existing account within a short period of time after receiving notification of a change of address for the same account to follow reasonable policies and procedures to ensure that the additional or replacement card is not issued to an identity thief. Specifically, before issuing a new or replacement card the issuer must either notify the cardholder of the request at the cardholder's former address and provide a means of promptly reporting an incorrect address change; notify the cardholder of the request in a manner that the card issuer and the cardholder previously agreed to; or otherwise assess the validity of the cardholder's change of address in accordance with reasonable policies and procedures established by the card issuer pursuant to the "red flag" guidelines applicable to the card issuer.

The Federal banking agencies, the NCUA and the FTC also are directed to consider whether to include in the red flag guidelines instructions for institutions to follow when a transaction occurs on a credit or deposit account that has been inactive for more than 2 years in order to reduce the likelihood of identity theft.

Section 115. Authority to truncate social security numbers

This section allows consumers, upon providing appropriate proof of identity, to demand that a consumer reporting agency truncate the first 5 digits of the consumer's social security or other identification number on a consumer report that the consumer is requesting to receive pursuant to section 609(a) of the FCRA.

Subtitle B- Protection and Restoration of Identity Theft Victim Credit History

Section 151. Summary of rights of identity theft victims

This section requires the FTC, in consultation with the banking agencies and the NCUA, to prepare a model summary of the rights of consumers to help them remedy the effects of fraud or identity theft. Consumer reporting agencies must provide any consumer contacting them expressing the belief of identity theft victimization with a summary of rights containing the information in the FTC's model summary and the FTC's contact information for more details. The section also requires the FTC to develop and implement a media campaign to provide more information to the public on ways to prevent identity theft. It is important for the agencies to let consumers know that identity thieves target home computers because they contain a goldmine of personal financial information about individuals. In educating the public about how to avoid becoming a victim of identity theft, the FTC and the federal banking regulators should inform consumers about the risks associated with having an 'always on' Internet connection not secured by a firewall, not protecting against viruses or other malicious codes, using peer-to-peer file trading software that might expose diverse contents of their hard drives without their knowledge, or failing to use safe computing practices in general.

The section further includes a provision creating an obligation to make certain records of identity theft victims more available to those victims and law enforcement. This section requires businesses that enter into a commercial transaction for consideration with a person who allegedly has made unauthorized use of a victim's identification to provide a copy of the application and business transaction records evidencing the transaction under the businesses' control within 30 days of the victim's request. The records are to be provided directly to the victim or to a law enforcement agency authorized by the victim to receive the records. The business can require proof of the identity of the victim and proof of the claim of identity theft, including a police report and an affidavit of identity theft developed by the FTC or otherwise acceptable to the business. A business may decline to provide the records if in good faith it determines that this section does not require it to; it does not have a high degree of confidence it knows the true identity of the requester; the request is based on a relevant misrepresentation of fact; or the information is navigational data or similar information about a person's visit to a website or online service. The business is not required under this section to retain any records (the obligation only applies to applications and transaction records that the business already is retaining under its otherwise applicable record retention policy), nor is it required to provide records that do not exist or are not reasonably available (such as those that are not easily retrieved, in contrast to records such as periodic statements listing transactions made on a credit or deposit account that are easily

retrieved). Businesses are also not required to produce records not within their direct control.

Section 152. Blocking of information relating to identity theft

This section provides that a consumer reporting agency must block information identified as resulting from identity theft within 4 business days of receiving from the consumer appropriate proof of identity, a copy of an identity theft report, an identification of the fraudulent information, and confirmation that the transaction was not the consumer's. The agency must then promptly notify the furnishers of the information identified that the information may have resulted from identity theft, that an identity theft report has been filed, that a block on reporting the information has been requested, and the effective date of the block.

Section 153. Coordination of identity theft complaint investigations

This section directs nationwide consumer reporting agencies to develop and maintain procedures for referring consumer complaints of identity theft and requests for blocks or fraud alerts to the other nationwide agencies, and to provide the FTC with an annual summary of this information. That summary may be a brief description of the estimated number of calls received pertaining to identity theft, the number of fraud alerts requested, and other issues which may be relevant. The FTC, in consultation with the Federal banking agencies and the NCUA, is directed to develop model forms and model standards for identity theft victims to report fraud to creditors and consumer reporting agencies.

Section 154. Prevention of repollution of consumer reports

This section creates a national standard governing the duties of furnishers to block refurnishing information that is allegedly the result of identity theft. Specifically, companies that furnish information to a consumer reporting agency are required to establish reasonable procedures to block the refurnishing of the information if they have received a notification from the agency that the information furnished has been blocked because it resulted from identity theft. Similarly, if a consumer submits an identity theft report to a company furnishing information to a consumer reporting agency and states that the information resulted from identity theft, the furnisher may not furnish the information to any consumer reporting agency, unless the furnisher subsequently knows or is informed by the consumer that the information is correct.

The section also restricts the sale or transfer of debt caused by identity theft. This provision applies to any entity collecting a debt after the date it is appropriately notified that the debt has resulted from an identity theft. The entity is then prohibited from selling, transferring, or placing for collection the debt that is identity theft-related. The prohibition does not apply to the repurchase of a debt where the assignee of the debt requires such repurchase because the debt results from identity theft; the securitization of debt (public or private) or the pledge of a portfolio of debt as collateral in connection with a borrowing; or the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction or transfer of substantially all of the assets of an entity.

Section 155. Notice by debt collectors with respect to fraudulent information

This section requires third-party debt collectors who are notified that the debts they are attempting to collect may be the result of identity theft or other fraud to notify the third party on whose behalf they are collecting the debt that the information may be the result of identity theft or fraud. The debt collector must also then, upon the request of the consumer to whom the debt purportedly relates, provide the consumer with all the information that the consumer would be entitled to receive if the information were not the result of identity theft and the consumer were disputing the debt under applicable law.

Section 156. Statute of limitations

This section extends the statute of limitations for violations of the Fair Credit Reporting Act. The section requires claims to be brought within 2 years of the discovery of the violation (instead of the original standard of 2 years after the date on which the violation occurred), but with an outside restriction that all claims must be brought within 5 years of when the violation occurred.

Section 157. Study on the use of technology to combat identity theft

This section directs the Secretary of the Treasury, in consultation with the Federal banking agencies, the FTC, and other specified public and private sector entities, to conduct a study of the use of biometrics and other similar technologies to reduce the incidence of identity theft.

TITLE II- IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

Section 211. Free consumer reports

This section provides consumers with new rights to obtain an annual free consumer report from each of the nationwide credit bureaus (including the nationwide specialty consumer reporting agencies). With respect to agencies defined in 603(p), the free report only has to be provided if the consumer makes the request through the centralized source system established for such purpose. The centralized source shall be established in accordance with regulations prescribed by the FTC in a manner to ensure that the consumer may make a single request for the free reports using a standardized form for mail or Internet. With respect to the nationwide specialty consumer reporting agencies (as defined in 603(w)), the FTC may prescribe a streamlined process for consumers to request their free reports directly from that agency, which shall include, at minimum, the establishment of a toll-free telephone number by each agency, and shall take into account the costs and benefits to each agency of how requests may be fulfilled and the efficacy of staggering the availability of requests to reduce surges in demand.

The nationwide consumer reporting agencies must provide the report to the consumer within 15 days. Any disputes raised by a consumer who receives a free report under this section must be reinvestigated within 45 days after the consumer raises the dispute, which is a 15-day increase over the 30-day reinvestigation time frame that would otherwise apply. The new right to free reports shall not apply to any agency that has not been furnishing consumer reports to third parties on a continuing basis for the 12 months previous to a request. This exclusion is intended to allow credit bureaus that have just begun to fully operate on a nationwide basis (as defined in section 603(p) and (w)) a window of time to ramp up for at least 12 straight months before being subjected to the costs of complying with free requests under this section. The FTC is directed to prescribe regulations preventing consumer reporting agencies from avoiding being treated as an agency defined in section 603(p) by manipulating their corporate structure or consumer records in a manner that allows them to operate with essentially identical activities but for a technical difference.

In addition, the FTC is directed to prepare a model summary of the rights of consumers under the FCRA, including: the right to obtain a free consumer report annually and the method of doing so, the right to dispute information in the consumer's credit file, and the right to obtain a credit score and the method of doing so. The FTC is further directed to actively publicize the availability of the summary of rights, and make the summary available to consumers promptly upon request.

Section 212. Disclosure of credit scores

This section establishes a Federal standard governing the provision of credit scores to consumers. Consumer reporting agencies are required to make available to consumers upon request (for a reasonable fee that the FTC shall prescribe) the consumer's current or most recently calculated credit score, as well as the range of scores possible, the top 4 factors that negatively affected the score, the date the score was created, and the name of the company providing the underlying file or score. The disclosure of the top factors is intended to be consistent with the provisions of the Equal Credit Opportunity Act (ECOA) requiring a creditor making an adverse action to disclose the principal reasons in a credit score that most contributed to the adverse action. Credit scores are to be derived from models that are widely distributed in connection with mortgage loans or more general models that assist consumers in understanding credit scoring, and must include a disclosure to the consumer stating that the information and credit scoring model may be different than that used by a particular lender.

Credit scores do not include mortgage scores or automated underwriting systems that consider factors other than credit information, such as loan to value ratio. Consumer reporting agencies that do not distribute credit scores in connection with residential mortgage lending or develop scores in connection with assisting credit providers in understanding a consumer's general credit behavior and predicting the future credit behavior of the consumer are not required to develop or disclose any scores under this section. Consumer reporting agencies that distribute scores developed by others are not required to provide further explanation of them or to process related disputes, other than by providing the consumer with contact information regarding the person who developed the score or its methodology, unless the agency has further developed or modified the score itself. Consumer reporting agencies are not required to maintain credit scores in their files.

If a consumer applies for a mortgage loan, and the mortgage lender uses a credit score in connection with an application by the consumer for a closed end loan or establishment of an open end consumer loan secured by 1 to 4 units of residential real property, then the mortgage lender is required to provide the consumer with a free copy of the consumer's credit score. In addition, the lender must provide a copy of the information on the range of scores possible, the top 4 negative key factors used, the date the score was created, and the name of the company providing the underlying file or score, to the extent that the information is obtained from a consumer reporting agency or developed and used by the lender. A lender is not required to provide a proprietary credit score, but instead may provide a widely distributed credit score for the consumer together with the relevant explanatory information regarding the consumer's credit score. Beyond the information provided to the lender by a third party score provider, the lender is only required to provide a notice to the home loan applicant. This notice

includes the contact information of each agency providing the credit score used, and provides specific language to be disclosed to educate consumers about the use and meaning of their credit scores and how to ensure their accuracy.

A mortgage lender that uses an automated underwriting system to underwrite a loan or otherwise obtains a credit score from someone other than a consumer reporting agency may satisfy their obligation to provide the consumer with a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency. However, if the lender uses a numerical credit score generated by an automated underwriting system used by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or their affiliates, and the score is disclosed to the lender, then that score must be disclosed by the lender to the consumer.

Mortgage lenders are not required by this section to explain the credit score and the related copy of information provided to the consumer, to disclose any information other than the credit score or negative key factor, disclose any credit score or related information obtained by the lender after a loan has closed, provide more than 1 disclosure per loan transaction, or provide an additional score disclosure when another person has already made the disclosure to the consumer for that loan transaction.

The only obligation for a mortgage lender providing a credit score under this section is to provide a copy of the information used and received from the consumer reporting agency. A mortgage lender is not liable for the content of that information or the omission of any information in the report provided by the agency. This section and the requirement for mortgage lenders to provide credit scores do not apply to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or their affiliates.

Any provision in a contract prohibiting the disclosure of credit scores by a person who makes or arranges loans or a consumer reporting agency is void, and a lender will not have liability under any contractual provision for disclosure of a credit score pursuant to this section.

This section also amends section 605 of the FCRA to provide that if a consumer reporting agency furnishes a consumer report that contains any credit score or other risk score or other predictor, the report must include a clear and conspicuous statement that the number of enquiries was a key factor (as defined in section 609(e)(2)(B)) that adversely affected a credit score or other risk score or predictor if that predictor was in fact one of the key factors that most adversely affected a credit score. This statement will be made in those instances in which the number of enquiries had an influence on the consumer's credit score, and it will thus alert a user of the consumer report when the number of enquiries has had an adverse effect on the consumer's credit score.

This section's technical and conforming amendments clarify the application of certain Federal standards. State laws are preempted with respect to any disclosures required to be made as a result of various provisions of the FACT Act, including the summary of rights to obtain and dispute information in consumer reports and to obtain credit scores, the summary of rights of identity theft victims, providing information to victims of identity theft, and providing credit score and mortgage score disclosures under this section, except for certain State laws governing credit score disclosures that are grandfathered. State laws that regulate the disclosure of credit-based insurance scores in an insurance activity are similarly not preempted by the requirements of those specific provisions. State laws governing the frequency of credit report disclosures are also preempted, except for certain specific grandfathered laws.

Section 213. Enhanced disclosure of the means available to opt out of prescreened lists

This section relates to the disclosure that has to be provided in connection with a prescreened offer of credit or insurance using a consumer's credit report. This section provides that the disclosure must include the address and toll-free number for the consumer to request exclusion from certain prescreened lists and must be presented in a format, type size, and manner that is simple and easy for reasonable consumers to understand. The FTC, in consultation with the Federal banking agencies and the NCUA, shall establish regulatory guidance concerning the format of the disclosure within one year of enactment. The length of time a consumer can request to be excluded from lists for prescreened solicitations is increased by this section from 2 years to 5 years. The FTC is directed to publicize on its website how consumers can opt-out of prescreened offers (including through the telephone number now required) and undertake additional measures to increase public awareness of this right. The Federal Reserve Board is directed to study and report to Congress on the ability of consumers to opt out of receiving unsolicited written offers of credit or insurance and the impact further restrictions on these offers would have on consumers.

Section 214. Affiliate sharing

This section adds a new Section 624 to the FCRA creating a uniform national standard for regulating the use and exchange of information by affiliated entities. While affiliates are allowed to share information without limitation, they may not use certain shared information to make certain marketing solicitations without the consumer receiving a notice and an option to opt-out of receiving those solicitations. Specifically, an entity that receives certain consumer report or experience information from an affiliate that would be a "consumer report" except for the FCRA's affiliate sharing exceptions may not use that information to make a marketing solicitation to the consumer about the products or services of that entity, unless it is clearly and conspicuously disclosed to the consumer that information shared among affiliates may be used for marketing purposes and the consumer is given an opportunity and simple method to opt out of those marketing solicitations. The notice must allow the consumer to prohibit those types of marketing solicitations based on that affiliate's information, but also may allow the consumer to choose from different options when opting out.

The opt-out notice may be provided to the consumer together with disclosures required by any other provision of law, such as the Gramm-Leach-Bliley Act or other information sharing notices required under FCRA. This provision (as well as a parallel coordination and consolidation provision in the rulemaking directions to the regulators) is intended to allow an entity to time its notice to a consumer (after the effective date of the regulations) in the next regularly scheduled mailing to that consumer of other legally required notices. This coordination and consolidation is intended to reduce consumer confusion and avoid duplicative notices and disclosures.

The consumer's election to opt out is effective for at least five years, beginning on the date the person receives the consumer's election, unless the consumer revokes the opt out or requests a different mutually agreeable period. After the expiration of the five-year period, the consumer must receive another notice and similar opt-out opportunity before the affiliate can send another covered marketing solicitation to the consumer.

There are a number of exceptions to the limitations on the use of affiliate information for marketing solicitations, where notice and opt out are not required. For example, the notice and opt-out do not apply to an entity using affiliate information to make a marketing solicitation to a consumer if the entity already has a pre-existing business relationship with that consumer. An entity that has a pre-existing business relationship with the consumer can send a marketing solicitation to that consumer on its own behalf or on behalf of another affiliate. For the purposes of determining a pre-existing business relationship, an entity and the entity's licensed agent (such as an insurance or securities agent or broker) are treated as a single entity, with the pre-existing business relationships of one imputed to the other.

A pre-existing business relationship exists between an entity and a consumer when, within the previous 18 months, the consumer has purchased, rented, or leased goods or services from the entity, or where some other continuing relationship exists between the consumer and the entity- for example where a financial transaction has been made with respect to the consumer, where the consumer has an active account (such as an unexpired credit card), or where the consumer has an in-force policy or contract. The term "active account" is intended to include any account where continuing legal obligations are in-force (such as a multi-year certificate of deposit) or for which a consumer regularly or periodically receives statements (even if there have been no recent transactions) such as a securities brokerage, bank, or variable annuity account. A pre-existing business relationship also exists when the consumer makes an inquiry or application regarding the entity's products or services during the three-month period immediately preceding the date on which the consumer is sent a solicitation. The financial functional regulators and the FTC are allowed to create further categories of pre-existing business relationships, which is in part intended to build upon the extensive recognition of customer relationships in existing regulations and guidance issued by the regulators under the Gramm-Leach-Bliley Act.

In addition to the pre-existing relationship exception, the notice and opt-out requirements do not apply to a person using information to facilitate communications with an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship of the individual participant or beneficiary of an employee benefit plan. The requirements also do not apply to the use of affiliate information to perform services on behalf of an affiliate, unless the affiliate could not send the solicitation itself because of a consumer opt out. Thus, an affiliate cannot act as a servicer for another affiliate and send out solicitations for its own products or services to a consumer who has opted out of receiving such solicitations. However, an entity can send a marketing solicitation on behalf of an affiliate that has a pre-existing business relationship with the consumer regarding the products or services of that affiliate or another affiliate. Furthermore, the notice and opt-out do not apply to a person using information in response to a communication initiated by the consumer, to a consumer request about a product or service, or to solicitations authorized or requested by the consumer. Additionally, the

notice and opt-out are not required where they would conflict with any provision of State insurance law related to unfair discrimination. This last exception is in part intended to enable insurers and agents to continue full compliance nationwide with State laws prohibiting insurers from discriminating against similar risks or placing similar risks in different rating programs, laws that provide for "mutual exclusivity", and "best rate" laws that may require insurers to provide customers with the best qualified rates from among their affiliated entities.

These provisions governing the exchange and use of information among affiliates do not apply to information used to make marketing solicitations if that information was shared into a common database or received by any individual affiliate before the effective date of the regulations implementing this section. Furthermore, the section makes clear that any State law that relates to the exchange and use of information to make a solicitation for marketing purposes is preempted.

The Federal banking agencies, the NCUA, the Securities and Exchange Commission (SEC), and the FTC are directed to prescribe regulations to implement this new section. To the extent that the section is applicable to insurers, it is intended that any enforcement of FCRA would continue to be performed by the State insurance departments. The Federal agencies also must jointly conduct regular studies of the information sharing practices of affiliates of financial institutions and other persons who are creditors or users of consumer reports to examine how that information is used to make credit underwriting decisions regarding consumers.

Finally, the section includes a technical and conforming amendment to Section 603(d)(2)(A) of the FCRA. This amendment is simply intended to integrate the new Section 624 into the FCRA and does not affect the definition of a "consumer report."

Section 215. Study of the effects of credit scores and credit-based insurance scores on availability and affordability of financial products.

Section 215 requires the FTC and the Board to study the use of credit scores and credit-based insurance scores on the availability and affordability of financial products.

Section 216. Disposal of consumer credit information

Section 216 directs the Federal banking agencies, the NCUA, the SEC and the FTC to issue regulations requiring the appropriate classes of persons that maintain or possess consumer information "derived" from credit reports to properly dispose of such records. The provision clarifies that it does not apply to other types of information (other than consumer report information) and does not impose an obligation to maintain or destroy any information that is not imposed under other laws. The provision does not alter or affect any such requirement, either.

TITLE III- ENHANCING THE ACCURACY OF CONSUMER REPORT INFORMATION

Section 311. Risk-based pricing notice

This section establishes a new notice requirement for creditors that use consumer report information in connection with a risk-based credit underwriting process for new credit customers. If a creditor grants credit to a new credit customer "on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of [the creditor's other new] consumers" based on information from a consumer report, the creditor must give the consumer a notice stating that the terms offered to the consumer are based on information from a consumer report. Nothing in the section, however, precludes a creditor from providing such a notice to all of its new credit customers, such as in a loan approval letter or other communication that the credit has been granted. Such a notice is not required, however, if the consumer applied for specific material terms and was granted those terms and those terms are not changed after the consumer responds to the credit offer. Also, such a notice is not required if the person has provided or will provide an adverse action notice pursuant to section 615(a) of the FCRA in connection with an application that is declined. In addition, the creditor is provided with flexibility in the timing of providing such notice, which can be given to the consumer at the time of application for credit or, at communication of loan approval, except where the regulations issued under this section specifically require otherwise.

The notice is intended to be a concise notice that includes: a statement that the terms offered are based on information from a consumer report; the name of a consumer reporting agency used by the creditor; a statement that the consumer may receive a free consumer report from that consumer reporting agency; and the consumer reporting agency's contact information for obtaining a free credit report. The creditor is not required to tell the consumer that it has taken or may take any unfavorable action, only that it used or will use credit reporting information in the underwriting process.

The FTC and FRB are directed to jointly prescribe rules to carry out this section. The rules are to address the form, content, time and manner of delivery of the notice; the meaning of the terms used in the section; exceptions to the notice requirement; and a model notice. The section provides creditors with a safe harbor if they maintain reasonable policies and procedures for compliance, and the section is only subject to administrative enforcement by the appropriate Federal agencies.

This section also adds a national uniformity provision prohibiting any State from imposing a requirement or prohibition relating to the duties of users of consumer reports to provide notice with respect to certain credit transactions.

Section 312. Procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies

This section directs the Federal banking agencies, the NCUA and the FTC, with respect to entities subject to their respective enforcement authority and in consultation and coordination with one another, to establish and maintain guidelines for use by furnishers to enhance the accuracy and integrity of the information they furnish to consumer reporting agencies. "Accuracy and integrity" was selected as the relevant standard, rather than "accuracy and completeness" as used in sections 313 and 319, to focus on the quality of the information furnished rather than the completeness of the information furnished. The agencies also are directed to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the new guidelines. In developing the guidelines, the agencies are instructed to: identify patterns, practices and specific forms of activity that can compromise the accuracy and integrity of the information furnished; review the methods used to furnish information; determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and examine the policies and processes that furnishers employ to conduct investigations and correct inaccurate information.

In addition, this section modifies the standard in the FCRA regarding the duty of furnishers to provide accurate information. The FCRA prohibits furnishers from reporting information with knowledge that it is not accurate. The standard in section 623(a)(1) of the FCRA, "knows or consciously avoids knowing that the information is inaccurate," is amended to "knows or has reasonable cause to believe that the information is inaccurate." This section defines the new standard, "knows or has reasonable cause to believe that the information is inaccurate," to mean "having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."

This section also enables a consumer to dispute the accuracy of the information furnished to a nationwide consumer reporting agency directly with a furnisher under certain circumstances. Specifically, the Federal banking agencies, the NCUA and the FTC are required to jointly prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report, based on the consumer's request submitted directly to the furnisher, rather than through the consumer reporting agency. While the section authorizes a consumer to submit a dispute directly to a furnisher, it is not to be used by credit repair clinics to submit disputes on behalf of one or more consumers.

In developing the regulations required by this section, the regulators are directed to weigh the benefits to consumers against the costs on furnishers and the credit reporting system; the impact on the overall accuracy and integrity of consumer reports of requiring furnishers to reinvestigate disputes brought directly by consumers; whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and the potential impact on the credit reporting system if credit repair organizations are able to circumvent the prohibition on their submission of disputes on behalf of one or more consumers,

A consumer who seeks to dispute the accuracy of information directly with a furnisher must: provide a dispute notice directly to such person at the mailing address specified by the person; identify the specific information disputed; explain the basis for the dispute; and include all supporting documentation required by the furnisher to substantiate the basis of the dispute. Upon receipt of a consumer's notice of dispute, the furnisher has specified responsibilities. The furnisher must: conduct an investigation of the disputed information; review all relevant information provided by the consumer with the notice; and complete the investigation and report the results to the consumer before the expiration of the period under section 611(a)(1) "within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section." Accordingly, for example, where the agency would have 30 days to complete the investigation of disputes regarding a consumer report obtained by the consumer following receipt of an adverse action notice, the furnisher would have 30 days as well. Similarly, where the consumer reporting agency has 45 days to complete a reinvestigation of a consumer dispute because the consumer has requested a consumer report through the centralized system under section 612, a furnisher also would have the 45 days to complete an investigation if the consumer has requested a consumer report through the centralized system and then disputed information on that consumer report directly with the furnisher. In

addition, if the investigation finds that the information reported was inaccurate, the furnisher must promptly notify each consumer reporting agency to which information was furnished and provide the agency with any correction necessary to make the information accurate.

The furnisher requirements do not apply if the person receiving a notice of a dispute directly from a consumer reasonably determines that the dispute is frivolous or irrelevant. Upon making such a determination, the person must notify the consumer of this determination within five business days after making the determination, by mail, or if authorized by the consumer for that purpose, by any other means available to the person. The notice provided to the consumer must include the reasons for the determination, and identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of the information.

This section also amends section 623(a)(5) of the FCRA to provide that a person that furnishes information to a consumer reporting agency regarding a delinquent account may rely upon the date provided by the entity to whom the account was owed at the time that the delinquency occurred, so long as a consumer has not disputed such information.

Section 623 of the FCRA also is amended to clarify liability and enforcement under the FCRA. Specifically, the new requirements imposed upon furnishers of information are subject to administrative enforcement, not private rights of action. Section 623 is amended by providing that "Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of" the furnisher responsibilities under section 623(a), the accuracy guidelines and regulations under section 623(e) and the red flag guidelines and regulations and the requirements dealing with the prohibition of the sale or transfer of a debt caused by identity theft under sections 615(e) or (f) respectively. As a result, the various sections cited in section 312(e) will be subject to the administrative enforcement mechanisms provided under the FCRA, and such mechanisms represent the exclusive remedy for violations of such sections. A similar rule applies to any other section of the legislation that limits enforcement remedies to those administrative remedies set forth under the FCRA, including section 151, which adds a new section 609(e) relating to assistance to identity theft victims.

Section 313. FTC and consumer reporting agency action concerning complaints

This section directs the FTC to compile a record of complaints against nationwide consumer reporting agencies. If a complaint is received by the FTC about the accuracy or completeness of information maintained by a consumer reporting agency, the FTC must transmit the complaint to the consumer reporting agency for response. Each nationwide consumer reporting agency under section 603(p) that receives a complaint from the FTC must: review the complaint to determine if the agency has met all legal obligations imposed under the FCRA; report to the FTC the determinations and actions taken by the agency with respect to the complaint; and maintain, for a reasonable time, records regarding the disposition of such complaint in a manner sufficient to demonstrate compliance with the FCRA.

In addition, the FTC and the Board are directed to study and report jointly on the performance of consumer reporting agencies and furnishers of credit reporting information in complying with the FCRA's procedures and time frames for the prompt investigation and correction of disputed information in a consumer's credit file.

Section 314. Improved disclosure of the results of reinvestigation

This section amends sections 611 and 623 of the FCRA to require consumer reporting agencies to promptly delete information from a consumer's file, or modify that item of information as appropriate, if the information is found to be inaccurate, and to promptly notify the furnisher of that information that the information has been modified or deleted from the consumer's file. In addition, this section requires that furnishers, upon completion of a reinvestigation, if the information is found to be inaccurate or incomplete or cannot be verified, must, for purposes of subsequently reporting to a consumer reporting agency, modify the item of information, delete the information, or block the reporting of the information.

Section 315. Reconciling addresses

This section amends section 605 of the FCRA to require a nationwide consumer reporting agency under section 603(p), when it provides a consumer report, to inform the user requesting that report if the request received from the user includes an address for the consumer that substantially differs from the addresses in the file of the consumer. The Federal banking agencies, the NCUA and the FTC are directed to prescribe regulations regarding reasonable policies and procedures that users of consumer reports within the agencies' respective enforcement jurisdiction should employ when they receive notice of an address discrepancy. These regulations are to describe reasonable policies and procedures that a user may employ to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains and, if the user establishes a continuing relationship with the consumer, to furnish the consumer reporting agency with the appropriate address, as part of information that the user regularly furnishes for the period in which the relationship is established.

Section 316. Notice of dispute through reseller

This section amends section 611 of the FCRA to require consumer reporting agencies to reinvestigate consumer disputes forwarded to them by resellers of consumer reports. Furthermore, if a reseller receives notice from a consumer of a dispute concerning the accuracy or completeness of any item of information contained in a consumer report, the reseller must, within five business days and free of charge, determine the accuracy or completeness of the information in question and either correct or delete it, if it is the reseller's error, within 20 days after receiving the notice, or convey the notice of dispute with any relevant information to each consumer reporting agency that provided the information that is the subject of the dispute, if the error is not the reseller's. In the latter circumstance, the consumer reporting agency must report the results of its reinvestigation to the reseller that conveyed the notice, and the reseller must then reconvey the notice to the consumer immediately.

Section 317. Reasonable reinvestigation required

This section amends section 611 of the FCRA to provide that when a consumer disputes the accuracy of information contained in a consumer report, the consumer reporting agency that prepared the report must conduct a reasonable investigation free of charge to determine whether the disputed information is inaccurate.

Section 318. FTC study of issues relating to the Fair Credit Reporting Act

This section requires the FTC to study and report to Congress within one of the date of enactment of the FACT Act on ways to improve the operation of the FCRA. The FTC is directed to study and report on: the efficacy of increasing the number of points of identifying information that a credit reporting agency must match before releasing a consumer report; the extent to which requiring additional points of identifying information to match would enhance the accuracy of credit reports and combat the provision of incorrect consumer reports to users; the extent to which requiring an exact match of first and last name, social security number and address and ZIP Code of the consumer would enhance the likelihood of increasing the accuracy of credit reports; and the effects of allowing consumer reporting agencies to use partial matches of social security numbers and name recognition software. The FTC also must report on the impact of providing independent notification to consumers when negative information is included in their credit reports, and to consider the effects of requiring that consumers who experience adverse actions receive a copy of the same credit report used by the creditor in taking the adverse action. Finally, the FTC is to study and report on common financial transactions not generally reported to consumer reporting agencies that may bear on creditworthiness, and possible actions to encourage the reporting of such transactions within a voluntary system.

Section 319. FTC study of the accuracy of consumer reports

This section directs the FTC to conduct an ongoing study of the accuracy and completeness of information contained in consumer reports, and to submit interim reports and a final report to Congress on its findings and conclusions, together with recommendations for legislative and administrative action.

TITLE IV- LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

Section 411. Protection of medical information in the financial system

Section 411 amends section 604 of the FCRA to generally prohibit a consumer reporting agency from providing credit reports that contain medical information for employment purposes or in connection with a credit or insurance transaction (including annuities). Medical information may be included in a report as part of an insurance transaction only with the consumer's affirmative consent. Medical information may be included in a report for employment or credit purposes only where the information is relevant for purposes of processing or approving employment or credit requested by the consumer and the consumer has provided specific written consent, or if the information meets certain specific requirements and is restricted or reported using codes that do not identify or infer the specific provider or nature of the services, products, or devices to anyone other than the consumer.

In general, creditors are prohibited from obtaining or using medical information in connection with any determination of a consumer's eligibility for credit. Certain exceptions are provided where authorized by Federal law, for insurance activities (including annuities), and where determined to be necessary and appropriate by a regulation or order of the FTC or a financial regulator (including the State insurance authorities). Any person who receives medical information through any of the exceptions of this section is prohibited from further disclosure

of the information to any other person, except as necessary to carry out the purpose for which it was originally disclosed or as otherwise permitted by law. The Federal banking agencies and the NCUA are directed to prescribe regulations that are necessary and appropriate to protect legitimate business needs with respect to the use of medical information in the credit granting process, including allowing appropriate sharing for verifying certain transactions as well as for debt cancellation contracts, debt suspension agreements, and credit insurance that are generally not intended to be restricted by this provision.

This section further amends section 603(d) of the FCRA to restrict the disclosure among affiliates of consumer reports that are medical information except as provided in the exceptions above. Specifically, the exclusions from the term "consumer report" in section 603(d)(2) (e.g., sharing among affiliates of transaction and experience information) do not apply if the information is medical information, an individualized list or description based specifically on the payment transactions of the consumer for medical products and services, or an aggregate list of consumers identified based on their payment transactions for medical products or services. The section also creates a new definition for the term "medical information", defining it as information derived through a health care provider with respect to an individual consumer relating to the individual's past, present, or future physical, mental, or behavioral health, the provision of health care to the individual, or the payment for the provision of health care to the individual. The definition specifically excludes information that is age, gender, demographic information (including addresses), or other information unrelated to the individual consumer's physical, mental, or behavioral health.

Section 412. Confidentiality of medical contact information in consumer reports

Section 412 requires furnishers whose primary business is providing medical services, products, or devices to notify the consumer reporting agencies of their status as a medical information furnisher for purposes of compliance with the medical information coding requirements. Once an entity notifies a consumer reporting agency of its status as a medical information furnisher, the agency may not include in a consumer report the furnisher's name, address, or telephone number unless that contact information is encoded in a manner that does not identify or infer to anyone other than the consumer the specific company or the nature of the medical services, products, or devices provided. An exception is provided for consumer reports provided to insurance companies for insurance activities (including annuities) other than property and casualty insurance. The encoding requirement for medical information furnisher contact information applies regardless of the dollar amounts involved.

TITLE V- FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

Section 511. Short title

This section establishes the short title of "Financial Literacy and Education Improvement Act."

Section 512. Definitions

This section defines the terms "Chairperson" and "Commission" for purposes of this title.

Section 513. Establishment of Financial Literacy and Education Commission

This section establishes the Financial Literacy and Education Commission with the Secretary of the Treasury as the Chairperson. The section sets forth the membership of the Commission to include federal agencies with significant financial literacy programs, and authorizes the President to designate up to five additional members. The Commission is required to meet at least once every four months and all such meetings shall be open to the public. The initial meeting shall take place not later than 60 days after the date of enactment of the FACT Act.

Section 514. Duties of the Commission

This section sets forth the duties of the Commission to, among other things, review financial literacy and education efforts throughout the federal government; to identify and eliminate duplicative federal financial literacy efforts; to coordinate the promotion of federal financial literacy efforts including outreach between federal, state and local governments, non-profit organizations and private enterprises; to increase awareness and improve development and distribution of multilingual financial literacy and education materials; to improve financial literacy and education through all other related skills, including personal finance and related economic education; to develop and implement within 18 months a national strategy to promote financial literacy and education among all Americans; and to issue a report, the Strategy for Assuring Financial Empowerment ("SAFE Strategy"), to Congress within the first 18 months of the Commission's first meeting and annually thereafter, on the progress of the Commission in carrying out this title. The Commission also shall establish a website and a toll-free number as a one-stop-shop for all federal financial literacy programs. The Commission's Chairperson is required to provide annual testimony to the relevant congressional committees.

Section 515. Powers of the Commission

This section authorizes the Commission to hold hearings and receive testimony as necessary to carry out the title; to receive information directly from any Federal department or agency; to undertake periodic studies regarding the state of financial literacy; and to take any action to develop and promote financial literacy and education materials in languages other than English, as the Commission deems appropriate.

Section 516. Commission personnel matters

This section provides that members of the Commission shall serve without compensation in addition to that received for their primary duties, however, the Commission may pay for travel expenses of members for official duties of the Commission. In addition, the Director of the Office of Financial Education of the Treasury Department shall provide assistance to the Commission. The section also permits federal employees to be detailed to the Commission.

Section 517. Studies by the Comptroller General

This section mandates that the General Accounting Office (GAO) submit a report to Congress not later than 3 years after the date of enactment of the FACT Act on the effectiveness of the Commission, and conduct a separate study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy. The GAO is required to report the findings and conclusions of this study to Congress within a year of the date of enactment.

Section 518. The national public service multimedia campaign to enhance the state of financial literacy

This section directs the Secretary of the Treasury, after review of the recommendations of the Financial Literacy and Education Commission, to develop, in consultation with nonprofit, public, or private organizations, a pilot national public service multimedia campaign to enhance the state of financial literacy and education in the U.S. The campaign is required to be consistent with the national strategy developed pursuant to section 514, and to promote the toll-free telephone and the website required by that section.

The Secretary shall develop measures to evaluate the performance of the public service campaign for each fiscal year for which there are appropriations, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives, describing the status and implementation of the provisions of this section and the state of financial literacy and education in the United States. Appropriations of $3 million are authorized for fiscal years 2004, 2005, and 2006, for the development, production, and distribution of the pilot national public service multimedia campaign.

Section 519. Authorization of appropriations

This section authorizes appropriations to the Commission of such sums as may be necessary to carry out this title, including administrative expenses.

TITLE VI- PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

Section 611. Certain employee investigation communications excluded from definition of consumer report

This title amends section 603 of the FCRA to provide that communications to an employer by an outside third party retained to investigate suspected workplace misconduct or compliance with legal requirements or with the employer's preexisting written policies do not constitute a "consumer report" for purposes of the FCRA. This provision is intended to address the ill effects of certain regulatory guidance issued by the FTC staff in 1999 that had the unintended consequence of deterring employers from using outside firms to investigate alleged employee misconduct, including racial discrimination and sexual harassment claims. Employers that take an adverse action based on the communication by the outside investigative agency, however, continue to be required to disclose to the employee a summary of the nature and substance of the communication, although certain sources of information are protected from disclosure. In particular, the disclosure duty is not intended to require violation of any confidentiality obligations, such as confidentiality requirements regarding an individual's medical or other private information (social security number, home residence, etc.), or privileges, such as doctor-patient, attorney-client, or state secrets.

TITLE VII- RELATION TO STATE LAWS

Section 711. Relation to state laws

Section 711 eliminates the January 1, 2004 sunset of the uniform national consumer protection standards contained in current law and makes those preemptions permanent. It also clarifies that all of the new consumer protections added by the FACT Act are intended to be uniform national standards, by enumerating as additional preemptions the 11 new provisions of the FACT Act that do not contain specific preemptions in those sections. Specifically, the section establishes national uniform standards and preempts State law with respect to the truncation of credit card and debit card numbers (113), establishing fraud alerts (112), blocking information resulting from identity theft

(152), truncating social security numbers on consumer reports given to consumers (115), providing free annual disclosures (211) (in addition to the preemption for disclosures provided under section 212), any consumer protections addressed under the red flag guidelines (114), prohibiting the transfer of debt caused by identity theft (154), notice by debt collectors with respect to fraudulent information (155), coordination of identity theft complaints by consumer reporting agencies (153), duties of furnishers to prevent refurnishing of blocked information (154), and the disposal of consumer report information (216). Under this new preemption provision, no state or local jurisdiction may add to, alter, or affect the rules established by the statute or regulations thereunder in any of these areas. All of the statutory and regulatory provisions establishing rules and requirements governing the conduct of any person in these specified areas are governed solely by federal law and any State action that attempts to impose requirements or prohibitions in these areas would be preempted. This section also clarifies that with respect to any State laws for the prevention or mitigation of identity theft that address conduct other than those for which a national uniform standard is created under FCRA, those laws are not preempted to the extent they are not inconsistent with FCRA.

TITLE VIII- MISCELLANEOUS

Section 811. Clerical amendments

Section 811 makes a number of technical and clerical amendments.

HONORING THE MEMORY OF THE HON. DEVON WIGGINS

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. BONNER. Mr. Speaker, Escambia County, AL, and indeed the entire First Congressional District, recently lost a dear friend, and I rise today to honor him and pay tribute to his memory.

Judge Devon Wiggins was a devoted family man and dedicated public servant throughout his entire life. Following a lengthy tenure on the Escambia County Commission, twelve years of which he spent as the commission chairman, Judge Wiggins was elected to the position of Judge of Probate, a position he held until his retirement three years ago. Throughout his professional career, he was dedicated to bringing better opportunities to all the residents of Escambia County and was a tireless advocate for local business and industry. He also was dedicated to making himself and other county offices as accessible as possible to the general public and, through his efforts, garnered the respect and admiration of many individuals in both the public and private sectors.

As a small business owner in Brewton, Alabama, Judge Wiggins was extremely familiar with the challenges and goals of running a successful business and providing employment opportunities for hardworking men and women. It was this background and his tremendous work ethic which became hallmarks of his career in public office and which marked his efforts on behalf of all residents of Escambia County.

Judge Wiggins was also actively involved in his community, participating in church-related organizations and taking a leadership role in the activities of the Brewton Lions Club. His devotion to his fellow man was unmatched, and I do not think there will ever be a full accounting of the many people he helped over the course of his lifetime.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated public servant and long-time advocate for Escambia County, Alabama. Judge Wiggins will be deeply missed by his family—his wife, Nell Wiggins, his daughters, Dawn Wiggins Hare, Donna Wiggins Schlager, and Daphne Wiggins Martin, his son, Maxwell Devon Wiggins, and his six grandchildren—as well as the countless friends he leaves behind. Our thoughts and prayers are with them all at this difficult time.

TRIBUTE TO ROSS FISCHER

HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. BUYER. Mr. Speaker, one of the most rewarding aspects of representing Indiana's Fourth District is to have the opportunity to honor outstanding Hoosiers for his or her contributions to the community, State, and Nation.

For over fifty years, Ross Fischer has been the owner and President of McCord Auto Supply in Monticello, Indiana. McCord is the largest distributor of flotation tires in the world—a device of which Ross was instrumental in its design and development.

Ross Fischer was born in 1931 and grew up on a farm in Cissna Park, Illinois. He attended Possum Trot, a one-room schoolhouse.

He served in the United States Army, from 1952–1955 as the Squad Leader in the Alaskan Recoiless Rifle Regiment.

Throughout his over 40 years in Monticello, he has never forgotten his beginnings and it shows everyday in his treatment and compassion of others. Ross has made enormous contributions to the city, including providing free tire repairs to the community after a 1974 tornado. He is a member and supporter of the American Legion, the John Purdue Club, and the Monticello Jaycees and also sits on the Board of the White County Airport.

He and his wife Beverly are the parents of three daughters—Jo Anna, De Anna, Anna Lyn, as well as grandparents to seven grandchildren.

On the eve of his retirement from McCord, as well as his 49th wedding anniversary, I salute Ross Fischer for his dedication to family, community and the State of Indiana.

HONORING RANDY STRUCKOFF OF GRINNELL, KANSAS

HON. JERRY MORAN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. MORAN of Kansas. Mr. Speaker, I rise today to honor a devoted member of the Grinnell, Kansas community, Randy Struckoff.

Coach Randy, as he is affectionately called, has become one of the most well known sports fans in Northwest Kansas. At every game in the Grinnell high school gymnasium, Coach Randy always sits at the end of the score table, right next to the home team's bench. On December 19th, USD 291, the Grinnell Public School District, will honor Coach Randy by dedicating the high school's brand new score table to him.

A life-long resident of Grinnell, Coach Randy has touched the lives of all who have had the opportunity to know him. Although born with a mental handicap, he has never let that challenge get him down. Randy has a smile on his face year-round, and his bright spirit helps to carry Grinnell sports teams through hard times and add to their joy during the good times.

Coach Randy's love for his community, its schools, and its youth is visible to everyone around him. Whether he is helping to coach, officiate, lead cheers, or do all three at once, Coach Randy gives his heart and soul in supporting the coaches, students, and entire community. During the playing of the national anthem at any sporting event in Grinnell, Coach Randy stands at rapt attention, singing along with every word. He is present during every sports season, through summer league baseball and softball, football and volleyball in the fall, basketball in winter, and track in the spring.

I join Grinnell, Kansas in thanking Coach Randy for all of his encouragement and his dedication to the community.

HONORING THE LIFE OF BARBER B. CONABLE, JR.

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. REYNOLDS. Mr. Speaker, I rise before the House of Representatives today in remembrance of a great man who once served in Congress—former Representative Barber B. Conable, Jr. During his twenty years in Congress he represented both his constituents and this institution with grace and integrity. Regardless of where his service led him, Barber always remained true to his Western New York roots.

While he distinguished himself as a Member of Congress and earned the respect of colleagues on both sides of the aisle, Barber was also notable for his esteemed academic career, his professional knowledge on a wide variety of issues from taxes to Social Security, and his willingness to tackle any problem head on. Always lending a helping hand was a signature trait of Barber's; he never let partisanship get in the way of progress.

Barber Conable was the best example of what a public servant ought to be. He loved his country, his community and his family, never straying from the strong values he was raised on. His genuine sophistication as a legislator came so effortlessly, revealing the compassion and unselfishness that was a hallmark of his public service.

In devoting his life to serving others, Barber exemplified loyalty to his country as a veteran of both World War II and the Korean War. With a thirst for knowledge, Barber shared his experiences when he taught at the University of Rochester and later went on to become President of the World Bank. Though no matter what national or global stage he was on,

108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–263

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

SEPTEMBER 4, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 2622]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

19–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act are as follows:

SEC. 2. DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following new subsections:

"(r) RESELLER.—The term 'reseller' means a consumer reporting agency that—

"(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

"(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

"(s) OTHER DEFINITIONS.—

"(1) BOARD; CREDIT; CREDITOR, CREDIT CARD.—The terms 'Board', 'credit', 'creditor', and 'credit card' have the same meanings as in section 103 of the Truth in Lending Act.

"(2) COMMISSION.—The term 'Commission' means the Federal Trade Commission.

"(3) DEBIT CARD.—The term 'debit card' means any card issued by a financial institution to a consumer for use in initiating electronic fund transfers (as defined in section 903(6) of the Electronic Fund Transfer Act) from the account (as defined in such Act) of the consumer at such financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

"(4) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' has the same meaning as in section 903 of the Electronic Fund Transfer Act.

"(5) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(6) IDENTITY THEFT.—The term 'identity theft' means a fraud committed using another person's identifying information, subject to such further definition as the Commission and the Board may prescribe, jointly, by regulation.

"(7) POLICE REPORT.—The term 'police report' means a copy of any official valid report filed by a consumer with any appropriate Federal, State, or local government law enforcement agency, or any comparable official government document that the Board and the Commission shall jointly prescribe in regulations, that is subject to a criminal penalty for false statements.".

SEC. 3. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c)—

(1) before the end of the 2-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act (except as otherwise specified); and

(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall the effective date be later than 10 months after the date of issuance of such regulations in final form.

(b) IMMEDIATE EFFECTIVE DATE.—The following provisions shall take effect on the date of the enactment of this Act:

(1) Title I.

(2) Section 201.

(3) Section 609(d)(1) of the Fair Credit Reporting Act (as added by the amendment in section 204(a)).

(4) Section 305.

(5) Section 505.

(6) Section 506.

(7) Title VI.

(c) EFFECTIVE DATE FOR PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM.—Section 701 shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as added by section 701) shall take effect on the later of—

(1) the end of the 90-day period beginning on the date the regulations required under paragraph (5)(B) of such section 604(g) (as added by section 701) are prescribed in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

TITLE I—UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS

SEC. 101. UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS MADE PERMANENT.

Section 624(d) of the Fair Credit Reporting Act (15 U.S.C. 1681t(d)) is amended—

(1) by striking "Subsections (b) and (c)" and all that follows through "do not affect any settlement," and inserting "Subsections (b) and (c) do not affect any settlement,"; and

(2) by striking "Consumer Credit Reporting Reform Act of 1996" and all that follows through the period at the end of paragraph (2) and inserting "Consumer Credit Reporting Reform Act of 1996.".

TITLE II—IDENTITY THEFT PREVENTION

SEC. 201. INVESTIGATING CHANGES OF ADDRESS AND INACTIVE ACCOUNTS.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (f), the following new subsection:

"(g) 'RED FLAG' PATTERNS OF POSSIBLE IDENTITY THEFT.—

"(1) INVESTIGATION OF CHANGES OF ADDRESS.—The Federal banking agencies and the National Credit Union Administration, in carrying out the responsibilities of such agencies and Administration under subsection (k), shall jointly prescribe regulations for credit card and debit card issuers to ensure that, if any such issuer receives a request for an additional or replacement card for an existing account within a short period of time after the issuer has received notification of a change of address for the same account, the issuer will follow reasonable policies and procedures that require, as appropriate, that the issuer not issue the additional or replacement card unless the issuer—

"(A) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

"(B) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

"(C) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subsection (k).

"(2) INACTIVE ACCOUNTS.—The Federal banking agencies and the National Credit Union Administration, in carrying out the responsibilities of such agencies and Administration under subsection (k), shall consider including, as a possible 'red flag' pattern, reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or depository institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.".

(b) CLERICAL AMENDMENTS.—

(1) The heading for section 605 of the Fair Credit Reporting Act is amended to read as follows:

"§ 605. Requirements relating to information contained in consumer reports and to identity theft prevention".

(2) The table of sections for title VI of the Consumer Credit Protection Act is amended by striking the item relating to section 605 and inserting the following new item:

"605. Requirements relating to information contained in consumer reports and to identity theft prevention".

(3) Section 624(b)(1)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1)(E)) is amended by inserting "and to identity theft prevention" after "consumer reports".

SEC. 202. FRAUD ALERTS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following new subsection:

"(i) ONE-CALL FRAUD ALERTS.—

"(1) INITIAL ALERTS.—Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts, in good faith, a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 603(p) shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer—

"(A) include a fraud alert in the file of that consumer for a period of not less than 90 days beginning on the date of such request, unless the consumer specifically requests that such fraud alert be removed before the end of such period;

"(B) disclose to the consumer that the consumer may request a free copy of the file of the consumer and provide the consumer, upon request, a free disclosure of the consumer's file (as described in section 609(a)) within 3 business days after such request;

"(C) for 2 years after the date of such request, exclude the consumer from any list of consumers prepared by the agency and provided to any third

party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer subsequently requests that such exclusion be rescinded before the end of such period; and

"(D) refer the information regarding the fraud alert to each of the other consumer reporting agencies described in section 603(p), as required under section 621(f)(1).

"(2) EXTENDED ALERTS.—Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who contacts a consumer reporting agency described in section 603(p) to report details of an identity theft and submits evidence that provides the agency with reasonable cause to believe that such identity theft has occurred, the agency shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer—

"(A) include a fraud alert in the file of that consumer and provide an opportunity for the consumer to extend the alert for a period of up to 7 years from the date of such request, unless the consumer subsequently requests that such fraud alert be removed before the end of such period;

"(B) provide the consumer with the option of including more complete information in the consumer's file, including a telephone number or some other reasonable means of communication that any person who requests the consumer's report may utilize for authorization before establishing a new credit plan in the name of the consumer; and

"(C) provide the consumer with at least 2 free disclosures of the information described in section 609(a) during the 12-month period beginning on the date of such request.

"(3) ACTIVE DUTY ALERTS.—Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, who contacts a consumer reporting agency described in section 603(p), the agency shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer—

"(A) include an active duty alert in the file of that consumer during a period of not less than 12 months beginning on the date of the request, unless the consumer requests that such active duty alert be removed before the end of such period;

"(B) for 2 years after the date of such request, exclude the consumer from any list of consumers prepared by the agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer subsequently requests that such exclusion be rescinded before the end of such period; and

"(C) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), as required under section 621(f)(1).

"(4) PROCEDURES.—Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with the obligations of paragraphs (1), (2), and (3), including procedures that allow consumers to request initial, extended, or active duty alerts in a simple and easy manner, including by telephone.

"(5) NOTICE TO USERS.—No person who obtains any information that includes a fraud alert under this section from a file of any consumer from a consumer reporting agency may establish a new credit plan in the name of the consumer for a person other than the consumer without utilizing reasonable policies and procedures described in paragraph (9).

"(6) REFERRALS OF FRAUD ALERTS.—Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert from another such agency pursuant to paragraph (1)(D) or (3)(C) shall follow the procedures required under subparagraphs (A), (B), and (C) of paragraph (1), in the case of a referral under paragraph (1)(D), and subparagraphs (A) and (B), in the case of a referral under paragraph (3)(C), as if the agency received the request from the consumer directly.

"(7) DUTY OF RESELLER TO RECONVEY ALERT.—A reseller that is notified of the existence of a fraud alert in a consumer's consumer report shall communicate to each person procuring a consumer report with respect to such consumer the existence of a fraud alert in effect for such consumer.

"(8) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.—If a consumer contacts any consumer reporting agency that is not a consumer reporting agency described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or

related crime, including identity theft, the agency shall provide the consumer with information on how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this subsection.

"(9) FRAUD ALERT.—

"(A) DEFINITION.—For purposes of this subsection, the term 'fraud alert' means, at a minimum, a statement—

"(i) in the file of a consumer that the consumer may be a victim of fraud, including identity theft, or is a consumer described in paragraph (3); and

"(ii) that is transmitted in a manner that facilitates a clear and conspicuous view of the statement by any person requesting such file.

"(B) OTHER INFORMATION.—A fraud alert shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize establishing any new credit plan in the name of the consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person for whom such new plan is established, which may include obtaining authorization or preauthorization of the consumer at a telephone number designated by the consumer or by such other reasonable means agreed to.

"(10) OTHER DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) ACTIVE DUTY MILITARY CONSUMER.—The term 'active duty military consumer' means a consumer in military service who—

"(i) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

"(ii) is assigned to service away from the consumer's usual duty station.

"(B) NEW CREDIT PLAN.—The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of this Act) or a new credit transaction not under an open end credit plan.".

SEC. 203. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (k) (as added by section 206 of this title) the following new subsection:

"(l) TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print the expiration date or more than the last 5 digits of the card number upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply after the end of—

(1) the 3-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(2) the 1-year period beginning on the date of the enactment of this Act, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

SEC. 204. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

"(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

"(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

"(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—If any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution, the consumer reporting agency shall, in addition to any other action the agency may take, provide the consumer with the model summary of rights prepared by the Commission under paragraph (1) and information on how to contact the Commission to obtain more detailed information.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 624(b)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(3)) is amended by striking "section 609(c)" and inserting "subsection (c) or (d) of section 609".

SEC. 205. BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (i) (as added by section 202 of this title) the following new subsection:

"(j) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

"(1) BLOCK.—Except as provided in paragraph (3), a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft and confirms is not information relating to any transaction by the consumer not later than 5 business days after the date of receipt by such agency of—

"(A) appropriate proof of the identity of a consumer;

"(B) a police report evidencing the claim of the consumer of identity theft;

"(C) the identification of the information by the consumer; and

"(D) confirmation by the consumer that the information is not information relating to any transaction by the consumer.

"(2) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)—

"(A) that the information may be a result of identity theft;

"(B) that a police report has been filed;

"(C) that a block has been requested under this subsection; and

"(D) of the effective date of the block.

"(3) AUTHORITY TO DECLINE OR RESCIND.—

"(A) IN GENERAL.—A consumer reporting agency may decline to block, or may rescind any block, of consumer information under this subsection if the consumer reporting agency reasonably determines that—

"(i) the information was blocked in error or a block was requested by the consumer in error;

"(ii) the information was blocked, or a block was requested by the consumer, on the basis of a misrepresentation of fact by the consumer relevant to the request to block; or

"(iii) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions.

"(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 611(a)(5)(B).

"(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

"(4) EXCEPTIONS.—

"(A) VERIFICATION COMPANIES.—This subsection shall not apply to—

"(i) a check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or

"(ii) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

"(B) RESELLERS.—

"(i) NO RESELLER FILE.—This subsection shall not apply to a consumer reporting agency if the consumer reporting agency—

"(I) is a reseller;

"(II) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

"(III) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

"(ii) RESELLER WITH FILE.—The sole obligation of the consumer reporting agency under this subsection, with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if—

"(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

"(II) the consumer reporting agency is a reseller of the identified information.

"(iii) NOTICE.—In carrying out its obligation under clause (ii), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

"(5) ACCESS TO BLOCKED INFORMATION BY LAW ENFORCEMENT AGENCIES.—No provision of this subsection shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.".

SEC. 206. ESTABLISHMENT OF PROCEDURES FOR DEPOSITORY INSTITUTIONS TO IDENTIFY POSSIBLE INSTANCES OF IDENTITY THEFT.

(a) IN GENERAL.—Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (j) (as added by section 205 of this title) the following new subsection:

"(k) 'RED FLAG' GUIDELINES REQUIRED.—

"(1) IN GENERAL.—The Federal banking agencies and the National Credit Union Administration, in consultation with the Commission, shall jointly establish and maintain guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft with respect to accounts, and update such guidelines as often as necessary.

"(2) REGULATIONS.—The Federal banking agencies and the National Credit Union Administration, in consultation with the Commission, shall jointly prescribe regulations requiring insured depository institutions to establish and adhere to reasonable policies and procedures for implementing the guidelines established pursuant to paragraph (1) to identify possible risks to customer accounts or to the safety and soundness of the institutions.

"(3) CONSISTENCY WITH VERIFICATION REQUIREMENTS.—Policies and procedures established pursuant to paragraph (2) shall not be inconsistent with, or duplicative of, the policies and procedures required under section 5318(l) of title 31, United States Code.

"(4) INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this subsection, the term 'insured depository institution'—

"(A) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

"(B) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the end of the 1-year period beginning the date of the enactment of this Act.

SEC. 207. STUDY ON THE USE OF TECHNOLOGY TO COMBAT IDENTITY THEFT.

(a) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of the use of biometrics and other similar technologies to reduce the incidence and costs of identity theft by providing convincing evidence of who actually performed a given financial transaction.

(b) CONSULTATION.—The Secretary of the Treasury shall consult with Federal banking agencies, the Federal Trade Commission, and representatives of financial institutions, credit reporting agencies, Federal, State, and local government agencies

that issue official forms or means of identification, State prosecutors, law enforcement agencies, and the biometric industry and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 2004 such sums as may be necessary to carry out the provisions of this section.

(d) REPORT REQUIRED.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary shall submit a report to Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative actions as may be appropriate.

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

SEC. 301. COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following new subsection:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

"(1) IN GENERAL.—The consumer reporting agencies described in section 603(p) shall develop and maintain procedures for the referral, to each such agency, of any consumer complaint received by any such agency alleging any identity theft or requesting a block or a fraud alert.

"(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

"(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.".

SEC. 302. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.—Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended—

(1) in subparagraph (A) of paragraph (1)—

(A) by striking "If the completeness" and inserting "Subject to subsection (e), if the completeness";

(B) by inserting ", or indirectly through a reseller," after "notifies the agency directly"; and

(C) by inserting "or reseller" before the period at the end of such subparagraph;

(2) in subparagraph (A) of paragraph (2)—

(A) by inserting "or a reseller" after "dispute from any consumer"; and

(B) by inserting "or reseller" before the period at the end of such subparagraph; and

(3) in subparagraph (B) of paragraph (2), by inserting "or the reseller" after "from the consumer".

(b) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following new subsection:

"(e) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—

"(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.—Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

"(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.—If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice and free of charge—

"(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

"(B) if—

"(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, correct the information in the consumer report or delete it; or

"(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute.

"(3) RESELLER REINVESTIGATIONS.—No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The heading for paragraph (2)(B) of section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(2)(B)) is amended by striking "FROM CONSUMER".

SEC. 303. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking "shall reinvestigate free of charge" and inserting "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate".

SEC. 304. DUTIES OF FURNISHERS OF INFORMATION.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended—

(1) in paragraph (1)(A), by striking "knows or consciously avoids knowing that the information is inaccurate" and inserting "knows or has reasonable cause to believe that the information is inaccurate";

(2) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(B) by inserting after subparagraph (A), the following new subparagraph:

"(B) REASONABLE PROCEDURES TO ENSURE ACCURACY.—A person that regularly furnishes information relating to consumers to a consumer reporting agency described in section 603(p) shall maintain reasonable procedures designed to ensure that the information furnished is accurate."; and

(C) by adding at the end the following new subparagraph:

"(F) DEFINITION.—For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means, based on the procedures described in subparagraph (B), has knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."; and

(3) by adding at the end the following new paragraph:

"(6) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

"(A) IN GENERAL.—A consumer may dispute directly with a person the accuracy of information that—

"(i) is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p); and

"(ii) was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B).

"(B) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information with a person under subparagraph (A) shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

"(i) identifies the specific information that is being disputed; and

"(ii) explains the basis for the dispute.

"(C) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (B), the person that provided the information in dispute to a consumer reporting agency referred to in subparagraph (A) shall—

"(i) conduct an investigation with respect to the disputed information;

"(ii) review all relevant information provided by the consumer with the notice;

"(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

"(iv) if the investigation finds that the information reported was inaccurate, promptly thereafter report correct information to each consumer reporting agency described in section 603(p) to which the person furnished the inaccurate information.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 621(c)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)(A)) is amended by striking "section 623(a)(1)" and inserting "paragraph (1) or (6) of section 623(a)".

(2) The heading for section 621(c)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)(5)) is amended by striking "VIOLATION OF SECTION 623(a)(1)" and inserting "CERTAIN VIOLATIONS OF SECTION 623(a)".

SEC. 305. PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(b) REPORT REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission shall jointly submit a progress report to the Congress on the results of the study required under subsection (a).

(c) RECOMMENDATIONS.—The report under subsection (b) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or administrative action to ensure that—

(1) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

(2) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act; and

(3) consumer reporting agencies establish and maintain appropriate internal controls and management review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(d) DEFINITIONS.—For purposes of this section, the terms "consumer", "consumer report", and "consumer reporting agency" have the same meaning as in the Fair Credit Reporting Act.

TITLE IV—IMPROVING ACCURACY OF CONSUMER RECORDS

SEC. 401. RECONCILING ADDRESSES.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by inserting after subsection (g) (as added by section 201 of this Act) the following new subsection.

"(h) NOTICE OF DISCREPANCY.—

"(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

"(2) REGULATIONS.—

"(A) REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall jointly prescribe regulations providing guidance regarding reasonable policies and procedures a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

"(B) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

"(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

"(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.".

SEC. 402. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(1)) is amended by inserting after subparagraph (D) (as so redesignated by section 304(2)(A)) the following new subparagraph:

"(E) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits a police report to a person who furnishes information to a consumer reporting agency that states that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.".

SEC. 403. NOTICE BY USERS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

"(e) NOTICE OF FRAUDULENT INFORMATION RELATING TO IDENTITY THEFT.—If an agent acting as a debt collector (as defined in title VIII) of a person who furnishes information to any consumer reporting agency uses information contained in a consumer report on any consumer and learns that any such information so used is the result of identity theft or otherwise is fraudulent, the agent shall—

"(1) if such information—

"(A) originated from the person for whom the debt collector is acting as agent, notify the person of the fraudulent information; or

"(B) originated from a person other than the person for whom the debt collector is acting as agent, notify the consumer reporting agency (that provided the consumer report) of the fraudulent information, either directly or through the person for whom the debt collector is acting as agent; and

"(2) upon the request of the consumer, provide the consumer with all information which the consumer would be entitled to receive if the information related to the consumer other than by reason of identity theft.".

SEC. 404. DISCLOSURE TO CONSUMERS OF CONTACT INFORMATION FOR USERS AND FURNISHERS OF INFORMATION IN CONSUMER REPORTS.

Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended—

(1) in paragraph (2), by inserting ", including addresses of the sources, and (if provided by the sources of information) the telephone numbers identified for customer service for the sources of information" after "sources of information" the 1st place such term appears in such paragraph; and

(2) in paragraph (3)(B) by striking clause (ii) and inserting the following new clause:

"(ii) the address and (if provided) the telephone numbers identified for customer service of the person.".

SEC. 405. FTC STUDY OF THE ACCURACY OF CONSUMER REPORTS.

(a) STUDY REQUIRED.—Until the final report is submitted under subsection (b)(2), the Federal Trade Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

(b) BIENNIAL REPORTS REQUIRED.—

(1) INTERIM REPORTS.—The Federal Trade Commission shall submit an interim report to the Congress on the study conducted under subsection (a) at the end of the 6-month period beginning on the date of the enactment of this Act and biennially thereafter for 8 years.

(2) FINAL REPORT.—The Federal Trade Commission shall submit a final report to the Congress on the study conducted under subsection (a) at the end of the 2-year period beginning on the date the final interim report is submitted to the Congress under paragraph (1).

(3) CONTENTS.—Each report submitted under this subsection shall contain a detailed summary of the findings and conclusions of the Commission with respect to the study required under subsection (a) and such recommendations for legislative and administrative action as the Commission may determine to be appropriate.

TITLE V—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

SEC. 501. FREE REPORTS ANNUALLY.

(a) FREE REPORTS ANNUALLY FROM NATIONWIDE CONSUMER REPORTING AGENCIES.—Section 612 of the Fair Credit Reporting Act (15 U.S.C. 1681j) is amended by adding at the end the following new subsection:

"(e) FREE ANNUAL DISCLOSURE.—Upon the direct request of the consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 once during any 12-month period without charge to the consumer.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 612(c) of the Fair Credit Reporting Act (15 U.S.C. 1681j(c)) is amended by inserting "that is not a consumer reporting agency described in section 603(p)" after "consumer reporting agency".

SEC. 502. DISCLOSURE OF CREDIT SCORES.

(a) STATEMENT ON AVAILABILITY OF CREDIT SCORES.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding at the end the following new paragraph:

"(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.".

(b) DISCLOSURE OF CREDIT SCORES.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by inserting after subsection (d) (as added by section 204 of this Act) the following new subsection:

"(e) DISCLOSURE OF CREDIT SCORES.—

"(1) IN GENERAL.—Upon the consumer's request for a credit score, a consumer reporting agency shall supply to a consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include the following information:

"(A) The consumer's current credit score or the consumer's most recent credit score that was previously calculated by the credit reporting agency for a purpose related to the extension of credit.

"(B) The range of possible credit scores under the model used.

"(C) All the key factors that adversely affected the consumer's credit score in the model used, the total number of which shall not exceed four, subject to paragraph (9).

"(D) The date the credit score was created.

"(E) The name of the person or entity that provided the credit score or credit file upon which the credit score was created.

"(2) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) CREDIT SCORE.—The term 'credit score'—

"(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from this analysis may also be referred to as a 'risk predictor' or 'risk score'); and

"(ii) does not include—

"(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or a consumer's financial assets; or

"(II) any other elements of the underwriting process or underwriting decision.

"(B) KEY FACTORS.—The term 'key factors' means all relevant elements or reasons adversely affecting the credit score for the particular individual listed in the order of their importance based on their effect on the credit score.

"(3) TIMEFRAME AND MANNER OF DISCLOSURE.—The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).

"(4) APPLICABILITY TO CERTAIN USES.—This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—

"(A) distribute scores that are used in connection with residential real property loans; or

"(B) develop scores that assist credit providers in understanding a consumer's general credit behavior and predicting the future credit behavior of the consumer.

"(5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.—

"(A) IN GENERAL.—This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

"(B) EXCEPTION.—This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

"(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.—This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

"(7) COMPLIANCE IN CERTAIN CASES.—In complying with this subsection, a consumer reporting agency shall—

"(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

"(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

"(8) REASONABLE FEE.—A consumer reporting agency may charge a reasonable fee for providing the information required under this subsection.

"(9) USE OF ENQUIRIES AS A KEY FACTOR.—If a key factor that adversely affects a consumer's credit score consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.".

(c) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by inserting after subsection (e) (as added by subsection (b) of this section) the following new subsection:

"(f) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—

"(1) IN GENERAL.—Any person who makes or arranges loans and who uses a consumer credit score as defined in subsection (e) in connection with an application initiated or sought by a consumer for a closed end loan or establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the 'lender') shall provide the following to the consumer as soon as reasonably practicable:

"(A) INFORMATION REQUIRED UNDER SUBSECTION(e).—

"(i) IN GENERAL.—A copy of the information identified in subsection (e) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

"(ii) NOTICE UNDER SUBPARAGRAPH (D).—In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

"(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.—

"(i) IN GENERAL.—If a person who is subject to this section uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

"(ii) NUMERICAL CREDIT SCORE.—However, if a numerical credit score is generated by an automated underwriting system used by an enter-

prise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

"(iii) ENTERPRISE DEFINED.—For purposes of this subparagraph, the term 'enterprise' shall have the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

"(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.—A person subject to the provisions of this subsection who uses a credit score other than a credit score provided by a consumer reporting agency may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

"(D) NOTICE TO HOME LOAN APPLICANTS.—A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

'NOTICE TO THE HOME LOAN APPLICANT

'In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

'The credit score is a computer generated summary calculated at the time of the request and based on information a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

'Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

'If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

'If you have questions concerning the terms of the loan, contact the lender.'.

"(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.—This subsection shall not require any person to do any of the following:

"(i) Explain the information provided pursuant to subsection (e).

"(ii) Disclose any information other than a credit score or key factor, as defined in subsection (e).

"(iii) Disclose any credit score or related information obtained by the user after a loan has closed.

"(iv) Provide more than 1 disclosure per loan transaction.

"(v) Provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

"(F) NO OBLIGATION FOR CONTENT.—

"(i) IN GENERAL.—Any person's obligation pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

"(ii) LIMIT ON LIABILITY.—No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

"(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.—As used in this subsection, the term 'person' does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

"(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.—

"(A) IN GENERAL.—Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

"(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.".

(d) INCLUSION OF KEY FACTOR IN CREDIT SCORE INFORMATION IN CONSUMER REPORT.—Section 605(d) of the Fair Credit Reporting Act (15 U.S.C. 1681c(d)) is amended—

(1) by striking "DISCLOSED.—Any consumer reporting agency" and inserting "DISCLOSED.—

"(1) TITLE 11 INFORMATION.—Any consumer reporting agency"; and

(2) by adding at the end the following new paragraph:

"(2) KEY FACTOR IN CREDIT SCORE INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(e)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score.".

SEC. 503. SIMPLER AND EASIER METHOD FOR CONSUMERS TO USE NOTIFICATION SYSTEM.

(a) IN GENERAL.—Section 604(e)(5)(A)(i) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)(5)(A)(i)) is amended by inserting "in a simple and easy manner and" after "notify the agency,".

(b) SIMPLIFIED NOTICE AND RESPONSE FORMAT FOR USERS.—Section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)) is amended—

(1) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4) and (5); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) SIMPLE AND EASY NOTIFICATION.—Any statement given the consumer under paragraph (1)(E) shall be in a simple and easy to understand format and shall describe the simple and easy method established under section 604(e)(5)(A)(i) for the consumer to respond.".

SEC. 504. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended by inserting after paragraph (6) (as added by section 304(3)) the following new paragraph:

"(7) NEGATIVE INFORMATION.—

"(A) NOTICE TO CONSUMER REQUIRED.—

"(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

"(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

"(B) TIME OF NOTICE.—

"(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

"(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

"(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

"(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

"(ii) must be clear and conspicuous.

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF BOARD TO PREPARE.—The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.

"(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

"(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph.

"(G) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) NEGATIVE INFORMATION.—The term 'negative information' means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

"(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms 'customer' and 'financial institution' have the same meaning as in section 509 of the Gramm-Leach-Bliley Act.".

(b) MODEL DISCLOSURE FORM.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall adopt the model disclosure required under the amendment made by subsection (a) after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 505. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.

(a) STUDY REQUIRED.—The Federal Trade Commission, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of—

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

(2) the degree of causality between the factors considered by credit score systems and the quantifiable risks and actual losses experienced by businesses, including the extent to which, if any, each of the factors considered or otherwise taken into account by such systems are accurate predictors of risk or loss, and where the means square error of a scoring model's predictions are considered in the evaluation of accuracy;

(3) the extent to which, if any, the use of credit scoring models, credit scores and credit-based insurance scores result in disparate impact by geography, income, ethnicity, race, color, religion, national origin, age, sex or marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in disparate effects and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less disparate impact; and

(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

(b) PUBLIC PARTICIPATION.—The Commission shall seek public input about the prescribed methodology and research design of the study required in subsection (a).

(c) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Trade Commission shall submit a detailed report on the study conducted pursuant to subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CONTENTS OF REPORT.—The report submitted under paragraph (1) shall include the findings and conclusions of the Commission, together with such recommendations for legislative or administrative action as the Commission may determine to be necessary to ensure that credit and credit-based insurances score are used appropriately and fairly to avoid disparate effects.

(d) CREDIT SCORE DEFINED.—For purposes of this section, the term "credit score" means a numerical value or a categorization derived from a statistical tool or modeling system used to predict the likelihood of certain credit or insurance behaviors, including default.

SEC. 506. GAO STUDY ON DISPARATE IMPACT OF CREDIT SYSTEM.

(a) STUDY REQUIRED.—The Comptroller General shall conduct a study of the credit system to determine the extent to which, if any, discrimination exists with regard to the availability and the terms of credit which has a disparate impact on the basis of race, color, income and education level, geographic location, age, sex, sexual orientation, national origin, or marital status and the nature of any such discriminatory effect.

(b) REPORT REQUIRED.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under subsection (a), together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

SEC. 507. ANALYSIS OF FURTHER RESTRICTIONS ON OFFERS OF CREDIT OR INSURANCE.

(a) IN GENERAL.—The Board of Governors of the Federal Reserve System shall conduct a study of—

(1) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

(2) the potential impact any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

(b) REPORT.—The Board of Governors of the Federal Reserve System shall submit a report summarizing the results of the study required under subsection (a) to the Congress no later than 12 months after the date of the enactment of this Act, together with such recommendatioons for legislative or administrative action as the Board may determine to be appropriate.

(c) CONTENT OF REPORT.—The report described in subsection (b) shall address the following issues:

(1) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

(2) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

(3) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

(4) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

(5) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect—

(A) the cost consumers pay to obtain credit or insurance;

(B) the availability of credit or insurance;

(C) consumers' knowledge about new or alternative products and services;

(D) the ability of lenders or insurers to compete with one another; and

(E) the ability to offer credit or insurance products to consumers who have been traditionally underserved.

SEC. 508. STUDY ON THE NEED AND THE MEANS FOR IMPROVING FINANCIAL LITERACY AMONG CONSUMERS.

(a) STUDY REQUIRED.—The Comptroller General shall conduct a study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy among consumers.

(b) FACTORS TO BE INCLUDED.—The study required under subsection (a) shall include the following issues:

(1) The number of consumers who view their credit reports.

(2) Under what conditions and for what purposes do consumers primarily obtain a copy of their consumer report (such as for the purpose of ensuring the completeness and accuracy of the contents, to protect against fraud, in response to an adverse action based on the report, or in response to suspected identity theft) and approximately what percentage of the total number of consumers who obtain a copy of their consumer report do so for each such primary purpose.

(3) The extent of consumers' knowledge of the data collection process.

(4) The extent to which consumers know how to get a copy of a consumer report.

(5) The extent to which consumers know and understand the factors that positively or negatively impact credit scores.

(c) REPORT REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under subsection (a), together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate, including recommendations on methods for improving financial literacy among consumers.

SEC. 509. DISCLOSURE OF INCREASE IN APR UNDER CERTAIN CIRCUMSTANCES.

Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by inserting after subsection (f) (as added by section 502(c) of this title) the following new subsection:

"(g) DISCLOSURE TO CONSUMER.—

"(1) IN GENERAL.—The ability of a credit card issuer to increase any annual percentage rate applicable to a credit card account, or to remove or increase any introductory annual percentage rate of interest applicable to such account, for reasons other than actions or omissions of the card holder that are directly related to such account shall be clearly and conspicuously disclosed to the consumer by the credit card issuer in any disclosure or statement required to be made to the consumer under this title in connection with a credit card solicitation that is not initiated by the consumer.

"(2) REGULATIONS AND MODEL STATEMENTS.—The Board, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop such guidelines in regulations as necessary to assure that the information to be disclosed to consumers pursuant to paragraph (1) is clearly and conspicuously provided in a prominent location in any credit card solicitation that is not initiated by the consumer, and shall include model disclosure statements to be used by credit card issuers in making the disclosures required to be provided to the consumer by paragraph (1).".

TITLE VI—PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

SEC. 601. CERTAIN EMPLOYEE INVESTIGATION COMMUNICATIONS EXCLUDED FROM DEFINITION OF CONSUMER REPORT.

(a) IN GENERAL.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by inserting after subsection (p) the following new subsection:

"(q) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

"(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

"(A) but for subsection (d)(2)(D), the communication would be a consumer report;

"(B) the communication is made to an employer in connection with an investigation of—

"(i) suspected misconduct relating to employment; or

"(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

"(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

"(D) the communication is not provided to any person except—

"(i) to the employer or an agent of the employer;

"(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

"(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

"(iv) as otherwise required by law; or

"(v) pursuant to section 608.

"(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

"(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term 'self-regulatory organization' includes any self-regulatory orga-

nization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under Title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 603(d)(2)(D) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(D)) is amended by inserting "or (q)" after "subsection (o)".

TITLE VII—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

SEC. 701. PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

(a) IN GENERAL.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended to read as follows:

"(g) PROTECTION OF MEDICAL INFORMATION.—

"(1) LIMITATION ON CONSUMER REPORTING AGENCIES.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless—

"(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

"(B) if furnished for employment purposes or in connection with a credit transaction—

"(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

"(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

"(C) such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer, unless the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

"(2) LIMITATION ON CREDITORS.—Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

"(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.—Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

"(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

"(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106–102; or

"(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

"(4) LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.—Any person that receives medical information pursuant to paragraphs (1) or (3) shall not disclose such information to any other person except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

"(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

"(A) REGULATIONS REQUIRED.—Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs, consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

"(B) FINAL REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall prescribe the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of the enactment of the Fair and Accurate Credit Transactions Act of 2003.

"(6) COORDINATION WITH OTHER LAWS.—No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.".

(b) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)) is amended—

(1) in paragraph (2), by striking "The term" and inserting "Except as provided in paragraph (3), the term"; and

(2) by adding at the end the following new paragraph:

"(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control if—

"(A) the information is medical information; or

"(B) the information is an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.".

SEC. 702. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CREDIT REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s-2(a)) is amended by inserting after paragraph (7) (as added by section 504(a)) the following new paragraph:

"(8) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for the purposes of this title and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding the following new paragraph:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by inserting after subsection (f) (as added by section 301 of this Act) the following new subsection:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (8) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) (as amended by section 701) is amended—

(1) in paragraph (1) by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2) by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003," provides consumers with the tools they need to fight identity theft and to ensure the accuracy of their credit reports while establishing permanent national credit reporting standards by removing the sunset from the expiring national consumer protection standards. H.R. 2622 empowers consumers to guard against identity theft by increasing the effectiveness of consumer initiated fraud alerts and enabling consumers to block fraudulent information in their personal credit records after filing a police report. The legislation increases consumer awareness of their rights if they believe they may be victims of fraud or identity theft by directing the Federal Trade Commission (FTC or Commission) to prepare, and consumer reporting agencies to disseminate, a summary of rights of identity theft victims. The legislation enlists financial institutions' support in fighting identity theft by requiring them to develop procedures to "red flag" identity theft, and to investigate certain changes in customer addresses. In addition, merchants will be required to truncate credit and debit card information.

H.R. 2622 also improves the accuracy of consumer records and the resolution of consumer disputes. The legislation expands consumer access to credit information to ensure accuracy by giving consumers the right to review their credit scores and request a free credit report annually. H.R. 2622 provides consumers with important new rights for correcting inaccurate information on their credit reports and discourages the reintroduction of fraudulent information into the credit reporting system. The legislation prohibits furnishers of information from forwarding information on a consumer to credit reporting agencies if the furnisher has reasonable cause to believe the information is inaccurate. In addition, the bill directs regulators to determine how best to ensure the prompt investigation and correction of disputed information in a consumer's credit file.

H.R. 2622 also provides significant new protections of consumers' medical information by limiting the disclosure of certain medical information in the preparation and dissemination of credit reports, prohibiting the use of medical information in connection with any determination of consumers' eligibility for credit, and requiring credit reporting agencies to code certain sensitive medical information to avoid unwanted disclosure. Other provisions of the bill simplify consumers' ability to limit unsolicited offers of credit, require credit card issuers to disclose risk based pricing practices when making unsolicited offers of credit to consumers, and require various studies to ensure the fairness of the credit granting process.

BACKGROUND AND NEED FOR LEGISLATION

One of the hallmarks of the modern U.S. economy is quick and convenient access to consumer credit. Although it would have seemed unimaginable a generation ago, consumers can now qualify for a mortgage over the telephone, walk into a showroom and finance the purchase of a car in less than an hour, and get department store credit within minutes. Over the last 30 years, the availability of non-mortgage credit to households in the lowest quintile of income has increased by nearly 70 percent—including a nearly three-fold increase in the number of low-income households owning credit cards just in the last decade. American families' ability to buy a home has also increased, with homeownership levels now approaching 70 percent, again with the largest gains achieved by lower income and minority groups. These improvements in the credit and mortgage systems have saved consumers nearly $100 billion annually, according to some estimates.

This unprecedented "democratization" in the availability of credit to low- and moderate-income consumers has been made possible in significant measure by the emergence of a national credit reporting system. The Federal statute governing the operation of the national credit reporting system is the Fair Credit Reporting Act (FCRA), landmark consumer protection legislation enacted in 1970 to bring the consumer credit reporting industry under Federal regulation for the first time. In establishing this statutory framework, Congress recognized that "an elaborate mechanism [had] been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers," and that "consumer reporting agencies [had] assumed a vital role in assembling and evaluating consumer credit and other information on consumers." (15 U.S.C. § 1681.) The stated congressional purpose for the FCRA was "to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." (Id.)

The FCRA applies to files maintained by consumer reporting agencies, also commonly referred to as credit bureaus, which are broadly defined to include anyone in the business of furnishing reports on the creditworthiness of consumers to third parties. Credit bureaus collect information voluntarily supplied by credit grantors, collection agencies, and other "furnishers," as well as information from public records. The information included in a consumer credit report typically consists of a consumer's name, Social Security number, address, telephone number, employment information, credit and payment history (including credit previously obtained, available, or outstanding), and other pertinent information (such as arrests, bankruptcies, and legal judgments).

The FCRA outlines certain "permissible purposes" for which a consumer credit report may be supplied to a requester. A consumer reporting agency may furnish a copy of a consumer's report to a person the agency has reason to believe intends to use the information for the purpose of extending credit or offering insurance to a consumer who has initiated the transaction, or for review or collec-

tion of the customer's account. Reports may also be provided in connection with unsolicited (or "prescreened") offers of credit or insurance, if the consumer has not requested otherwise and certain other notice and disclosure requirements are met; for determining eligibility for a government license or benefit; or for employment purposes (with the consumer's consent).

Any person with information related to consumers' financial activities or other relevant information may furnish data to a consumer reporting agency. Reporting is voluntary, but those who do furnish information have a duty to ensure its accuracy and to investigate disputes. The most common users and furnishers of information are credit card issuers, auto dealers, department and grocery stores, lenders, utilities, insurers, collection agencies, and government agencies.

In 1996, Congress amended the FCRA to impose new legal duties on credit bureaus, as well as on furnishers and users of credit reporting data, and to create a uniform national standard for consumer protections governing credit transactions. According to the Congressional Research Service, the legislative history of the 1996 amendments indicates a congressional intent to "establish a national standard for the consumer credit industry," and to create "operational efficiency for industry * * * and competitive prices for consumers in the credit reporting and credit granting [industries that are] in many aspects, national in scope." The 1996 amendments allowed for the continued evolution of a national credit system by establishing uniform national standards in a number of key areas, including the form of the notice that consumers are entitled to receive when adverse action (such as a denial of credit) is taken against them based upon credit reporting information; the procedures for consumers to dispute the accuracy of information on their credit reports and remove or correct any inaccurate or unverified information; the obsolescence periods for reporting of negative information, such as delinquencies and bankruptcies; and the circumstance under which credit-related information may be shared among affiliated entities.

Absent congressional action, the uniform national standards established by the 1996 amendments to the FCRA will sunset on January 1, 2004, permitting States that are so inclined to enact differing additional requirements. Numerous witnesses at hearings on the FCRA held by the Subcommittee on Financial Institutions and Consumer Credit testified in favor of extending the statute's uniform national standards. On June 4, 2003, Ms. Dolores Smith, Director of the Federal Reserve Board's Division of Consumer and Community Affairs, outlined the benefits of the credit reporting system to lenders and their customers as follows:

> The ready availability of accurate, up-to-date credit information from consumer reporting agencies benefits both creditors and consumers. Information from consumer credit reports gives creditors the ability to make credit decisions quickly and in a fair, safe and sound, and cost-effective manner. Consumers benefit from the access to credit from different sources, vigorous competition among creditors, quick decisions on credit applications, and reasonable costs for credit.

In testimony before the full Committee on July 9, 2003, Treasury Secretary John Snow strongly endorsed making the FCRA's uniform national standards permanent, characterizing them as "essential to the way [that] credit gets made available in this country," and going on to explain: "[W]e have the best credit markets and the most available credit and the lowest cost credit in the world, and that is, in large part, due to these [national] standards." Testifying on April 30, 2003, Federal Reserve Board Chairman Alan Greenspan stressed the importance of preserving the FCRA's uniform treatment of key aspects of the credit reporting system:

> There is just no question that unless we have some major sophisticated system of credit evaluation continuously updated, we will have great difficulty in maintaining the level of consumer credit currently available, because clearly without the information that comes from credit bureaus and other sources, lenders would have to impose an additional risk premium.

While American consumers have realized undeniable benefits from the free flow of credit reporting information to lenders and other financial services providers, they have also become increasingly concerned about the risk of their personal financial information falling into the wrong hands. The crime of identity theft—in which a perpetrator assumes the identity of a victim in order to obtain financial products and services or other benefits in the victim's name—has reached almost epidemic proportions in recent years. A hotline established by the Federal Trade Commission to field consumer complaints and questions about identity theft logged over 160,000 calls in 2002 alone.

Although it is the financial institution, and not the individual victim, that generally absorbs the financial losses from an identity theft, victims may have to expend considerable time and energy clearing up their credit histories and other financial records. Indeed, the Committee heard compelling testimony from victims of identity theft that they felt, in some sense, twice victimized—once by the criminal who fraudulently assumed their identity, and again by a system that conspired against prompt redress and repair of their damaged credit history.

The FCRA contains provisions intended to facilitate the prompt correction of inaccurate or fraudulent information on a consumer's credit report. For example, any individual who believes that he or she has been victimized by identity theft is entitled to obtain a free report from each credit bureau that maintains a file on the individual. When an individual discovers that he or she has been victimized and an account created by an identity thief is being included in the victim's credit history, the FCRA enables the victim to demand correction. Once the victim disputes the information with the credit bureau, the credit bureau must, within 5 business days, contact the entity that furnished the account information to the bureau. The entity then must investigate the matter and report back to the bureau with its findings within 30 days after the victim's initial complaint. If the entity responds with a correction, the bureau must promptly delete the information from the victim's credit history. The information may not be reinserted in the vic-

tim's file unless the entity furnishing the information certifies that it is correct and the victim is notified of the reinsertion.

Committee Oversight of the FCRA

The Committee's review of the FCRA's expiring uniform national standards included extensive consideration of proposals for assisting consumers in preventing identity theft and for mitigating its consequences once the crime has occurred. The starting point for the Committee's analysis was bipartisan legislation co-authored by Members of the Committee. H.R. 2035, the "Identity Theft and Financial Privacy Protection Act of 2003," included provisions imposing new requirements on credit card issuers and credit bureaus to identify potential identity theft; codifying the use of "fraud alerts" in credit reports; requiring the truncation of account numbers and expiration dates on credit and debit card receipts; and providing consumers with the right to obtain a free credit report annually from each consumer reporting agency.

The Committee began its series of hearings reviewing the FCRA and identity theft with a joint hearing of the Subcommittee on Oversight and Investigations and the Subcommittee on Financial Institutions and Consumer Credit entitled "Fighting Fraud: Improving Information Security". On April 3, 2003, the subcommittees heard testimony from witnesses on three specific case studies to review how credit issuers, third-party vendors that process transactions, credit bureaus, and law enforcement coordinate efforts to limit harm to consumers when data security is breached.

On May 8, 2003, the Subcommittee on Financial Institutions and Consumer Credit held a hearing on the importance of the national credit reporting system to consumers and the U.S. economy. The hearing focused on how a national uniform credit system in the United States benefits consumers. The Subcommittee reviewed the economic benefits of a uniform credit system and current consumer protections under the FCRA, as well as the importance of a uniform national credit system to the retail operations of commercial users and furnishers of credit reporting data.

The Subcommittee took a closer look at the FCRA itself on June 4, 2003, with a hearing entitled "Fair Credit Reporting Act: How it Functions for Consumers and the Economy". The hearing reviewed the mechanics of the national credit reporting system and focused on the role of the States in FCRA; how credit reports, credit scores, and prescreened information are used by the lending, mortgage, consumer finance, insurance, and non-financial industries; the accuracy of credit reports; and the role of national uniform standards in improving markets for consumers, including how such uniformity affects the availability, affordability, and timeliness of products and services.

The Committee continued its series of hearings on the FCRA on June 12, 2003, when the Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled "The Role of FCRA in the Credit Granting Process". The hearing examined the use of credit reports in the mortgage lending process as well as other forms of consumer lending, including credit cards and bank loans.

On June 17, 2003, the Subcommittee on Financial Institutions and Consumer Credit examined the role of FCRA in employee background checks and the collection of medical information. The

first panel focused on the application of FCRA to employee screening and other background checks, while the second panel examined how medical information is collected and used for various financial products, including a discussion of the prohibition on the use of health information in the credit granting process. Witnesses on the first panel focused on opinion letters issued in 1999 and 2000 by the staff of the FTC, which essentially state that if an employer hires outside organizations to investigate suspected workplace misconduct, such as sexual or racial harassment or workplace violence, the investigation is an "investigative consumer report" under the FCRA and the employer and the investigator must therefore comply with the FCRA's notice and disclosure requirements. even though the investigation does not pertain to credit or credit related matters. The panel established that the FTC position would deter employers from using outside investigators, which, because of their objectivity and expertise, are generally preferred, and in many cases, legally required. For example, the technical nature of the alleged misconduct may require investigators with particular expertise. Similarly, allegations of misconduct by high-level officials may require investigators with outside objectivity. The FTC has acknowledged the issue created by the letters, but contends that a legislative fix is necessary.

In the 106th, 107th and 108th congresses, bipartisan legislation was introduced that would remedy the problems created by the FTC letters. H.R. 1543, the "Civil Rights and Employee Investigation Clarification Act," was included as title VI of H.R. 2622. Title VI addresses the issue created by the FTC's opinion letters by excluding employment investigations that are not for the purpose of investigating the employee's credit worthiness from the FCRA definition of a consumer report.

The Subcommittee on Financial Institutions and Consumer Credit held its sixth and final background hearing on the FCRA on June 24, 2003, when it focused specifically on the issue of identity theft with a hearing entitled "Fighting Identity Theft—The Role of FCRA". The hearing consisted of three panels, the first focusing on current enforcement efforts to apprehend and prosecute identity thieves, the second describing the experiences of consumers victimized by identity theft, and the third addressing private sector efforts to prevent identity theft and assist victims.

Conclusion

As noted above, much of the Nation's economic growth over the last 20 years has been driven by the wide availability of credit, and the relative ease with which it can be obtained. This is due in large part to the existence of the national credit reporting system which gives the United States firms a concrete advantage over their competitors in Europe and elsewhere.

H.R. 2622 ensures that the national credit reporting system will continue to provide benefits to consumers and the economy, while adding important consumer protections to ensure that criminals cannot turn the system's greatest strengths into weaknesses.

HEARINGS

The House Committee on Financial Services held a hearing on Wednesday, July 9, 2003, on H.R. 2622, the "Fair and Accurate

Credit Transactions Act of 2003". The Committee received testimony from: the Honorable John W. Snow, Secretary of the Treasury; the Honorable Timothy J. Muris, Chairman, Federal Trade Commission; Mr. Mallory Duncan, Senior Vice President, General Counsel, National Retail Federation; Mr. Michael F. McEneney, Partner, Sidley Austin Brown & Wood LLP, on behalf of the U.S. Chamber of Commerce; Dr. William E. Spriggs, Executive Director, National Urban League Institute for Opportunity and Equality; Mr. Stephen Brobeck, Executive Director, Consumer Federation of America; Mr. John C. Dugan, Partner, Covington & Burling, on behalf of the Financial Services Coordinating Council; Mr. Stuart K. Pratt, President, Consumer Data Industry Association; Mr. Joe Belew, President, Consumer Bankers Association; Ms. Kayce Bell, Chief Operating Officer, Alabama Credit Union, on behalf of the Credit Union National Association; Mr. Hilary O. Shelton, Director, NAACP, Washington Bureau; Mr. D. Russell Taylor, Chairman, America's Community Bankers; Mr. Chris Jay Hoofnagle, Deputy Counsel, Electronic Privacy Information Center; and Mr. L. Richard Fischer, on behalf of Visa U.S.A.

COMMITTEE CONSIDERATION

On July 16, 2003, the Subcommittee on Financial Institutions and Consumer Credit met in open session and approved H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, for full Committee consideration, as amended, by a record vote of 41 yeas and no nays.

On July 24, 2003, the Committee on Financial Services met in open session and ordered H.R. 2622 reported to the House with a favorable recommendation, with an amendment, by a record vote of 61 yeas and 3 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation, with an amendment, was agreed to by a record vote of 61 yeas and 3 nays (Record vote no. FC-14). The names of Members voting for and against follow:

Record vote no. FC-14

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley	X			Mr. Frank (MA)	X		
Mr. Leach				Mr. Kanjorski	X		
Mr. Bereuter	X			Ms. Waters		X	
Mr. Baker	X			Mr. Sanders*		X	
Mr. Bachus	X			Mrs. Maloney	X		
Mr. Castle	X			Mr. Gutierrez	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce	X			Mr. Watt	X		
Mr. Lucas (OK)	X			Mr. Ackerman	X		
Mr. Ney	X			Ms. Hooley (OR)	X		
Mrs. Kelly	X			Ms. Carson (IN)	X		
Mr. Paul				Mr. Sherman	X		
Mr. Gillmor	X			Mr. Meeks (NY)	X		
Mr. Ryun (KS)	X			Ms. Lee		X	

Record vote no. FC-14—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. LaTourette	X			Mr. Inslee	X		
Mr. Manzullo	X			Mr. Moore	X		
Mr. Jones (NC)	X			Mr. Gonzalez	X		
Mr. Ose	X			Mr. Capuano	X		
Mrs. Biggert	X			Mr. Ford	X		
Mr. Green (WI)				Mr. Hinojosa			
Mr. Toomey	X			Mr. Lucas (KY)	X		
Mr. Shays				Mr. Crowley	X		
Mr. Shadegg	X			Mr. Clay	X		
Mr. Fossella	X			Mr. Israel	X		
Mr. Gary G. Miller (CA)	X			Mr. Ross	X		
Ms. Hart	X			Mrs. McCarthy (NY)	X		
Mrs. Capito	X			Mr. Baca	X		
Mr. Tiberi	X			Mr. Matheson	X		
Mr. Kennedy (MN)	X			Mr. Lynch	X		
Mr. Feeney	X			Mr. Miller (NC)	X		
Mr. Hensarling	X			Mr. Emanuel	X		
Mr. Garrett (NJ)	X			Mr. Scott (GA)	X		
Mr. Murphy	X			Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)	X						
Mr. Barrett (SC)	X						
Ms. Harris	X						
Mr. Renzi	X						

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The following amendments were considered by record votes. The names of Members voting for and against follow:

An amendment to the amendment in the nature of a substitute offered by Ms. Waters, no. 1a, striking uniform national consumer protection standards, was not agreed to by a record vote of 6 yeas and 56 nays (Record vote no. FC-11).

Record vote no. FC-11

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)		X	
Mr. Leach				Mr. Kanjorski		X	
Mr. Bereuter		X		Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney		X	
Mr. Castle				Mr. Gutierrez		X	
Mr. King		X		Ms. Velázquez		X	
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman		X	
Mr. Ney		X		Ms. Hooley (OR)		X	
Mrs. Kelly		X		Ms. Carson (IN)		X	
Mr. Paul	X			Mr. Sherman		X	
Mr. Gillmor		X		Mr. Meeks (NY)		X	
Mr. Ryun (KS)		X		Ms. Lee	X		
Mr. LaTourette		X		Mr. Inslee			
Mr. Manzullo				Mr. Moore		X	
Mr. Jones (NC)		X		Mr. Gonzalez		X	
Mr. Ose		X		Mr. Capuano		X	
Mrs. Biggert		X		Mr. Ford			
Mr. Green (WI)		X		Mr. Hinojosa			
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays		X		Mr. Crowley		X	
Mr. Shadegg		X		Mr. Clay	X		
Mr. Fossella				Mr. Israel		X	
Mr. Gary G. Miller (CA)		X		Mr. Ross		X	
Ms. Hart		X		Mrs. McCarthy (NY)		X	

Record vote no. FC-11—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Capito		X		Mr. Baca		X	
Mr. Tiberi		X		Mr. Matheson		X	
Mr. Kennedy (MN)		X		Mr. Lynch			
Mr. Feeney		X		Mr. Miller (NC)		X	
Mr. Hensarling		X		Mr. Emanuel		X	
Mr. Garrett (NJ)		X		Mr. Scott (GA)		X	
Mr. Murphy		X		Mr. Davis (AL)		X	
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris		X					
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

An amendment to the amendment in the nature of a substitute offered by Mr. Sanders, no. 1c, prohibiting "bait and switch" practices, was not agreed to by a record vote of 22 yeas and 44 nays (Record vote no. FC-12).

Record vote no. FC-12

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)		X	
Mr. Leach		X		Mr. Kanjorski		X	
Mr. Bereuter	X			Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus	X			Mrs. Maloney	X		
Mr. Castle		X		Mr. Gutierrez	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman	X		
Mr. Ney		X		Ms. Hooley (OR)		X	
Mrs. Kelly		X		Ms. Carson (IN)	X		
Mr. Paul		X		Mr. Sherman		X	
Mr. Gillmor		X		Mr. Meeks (NY)	X		
Mr. Ryun (KS)		X		Ms. Lee	X		
Mr. LaTourette	X			Mr. Inslee	X		
Mr. Manzullo		X		Mr. Moore		X	
Mr. Jones (NC)	X			Mr. Gonzalez	X		
Mr. Ose		X		Mr. Capuano	X		
Mrs. Biggert		X		Mr. Ford			
Mr. Green (WI)		X		Mr. Hinojosa			
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays	X			Mr. Crowley		X	
Mr. Shadegg	X			Mr. Clay	X		
Mr. Fossella				Mr. Israel		X	
Mr. Gary G. Miller (CA)		X		Mr. Ross		X	
Ms. Hart		X		Mrs. McCarthy (NY)		X	
Mrs. Capito		X		Mr. Baca		X	
Mr. Tiberi		X		Mr. Matheson		X	
Mr. Kennedy (MN)		X		Mr. Lynch			
Mr. Feeney		X		Mr. Miller (NC)		X	
Mr. Hensarling		X		Mr. Emanuel		X	
Mr. Garrett (NJ)		X		Mr. Scott (GA)	X		
Mr. Murphy		X		Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris		X					
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

An amendment to the amendment in the nature of a substitute offered by Ms. Lee, no. 1s, prohibiting credit re-

porting agencies from treating the number of enquiries as a negative when calculating the credit score, was not agreed to by a record vote of 14 yeas and 48 nays (Record vote no. FC-13).

Record vote no. FC-13

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach				Mr. Kanjorski		X	
Mr. Bereuter	X			Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney			
Mr. Castle				Mr. Gutierrez	X		
Mr. King		X		Ms. Velázquez		X	
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman		X	
Mr. Ney		X		Ms. Hooley (OR)		X	
Mrs. Kelly		X		Ms. Carson (IN)	X		
Mr. Paul				Mr. Sherman			
Mr. Gillmor		X		Mr. Meeks (NY)		X	
Mr. Ryun (KS)		X		Ms. Lee	X		
Mr. LaTourette		X		Mr. Inslee	X		
Mr. Manzullo		X		Mr. Moore		X	
Mr. Jones (NC)		X		Mr. Gonzalez	X		
Mr. Ose		X		Mr. Capuano		X	
Mrs. Biggert		X		Mr. Ford	X		
Mr. Green (WI)				Mr. Hinojosa			
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays				Mr. Crowley		X	
Mr. Shadegg		X		Mr. Clay	X		
Mr. Fossella		X		Mr. Israel		X	
Mr. Gary G. Miller (CA)		X		Mr. Ross		X	
Ms. Hart		X		Mrs. McCarthy (NY)		X	
Mrs. Capito		X		Mr. Baca	X		
Mr. Tiberi		X		Mr. Matheson		X	
Mr. Kennedy (MN)		X		Mr. Lynch		X	
Mr. Feeney		X		Mr. Miller (NC)	X		
Mr. Hensarling		X		Mr. Emanuel	X		
Mr. Garrett (NJ)		X		Mr. Scott (GA)		X	
Mr. Murphy		X		Mr. Davis (AL)		X	
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris		X					
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The following other amendments were also considered by the Committee:

An amendment in the nature of a substitute offered by Mr. Oxley, no.1, limiting the disclosure of certain medical information, establishing a three-tier system for victims of identity theft to ensure credit is not extended to identity thieves, prohibiting a business from sharing negative information about a consumer if they have received a copy of a police report indicating an illegal transaction, and requiring GAO to report on the role of race and gender in the credit granting process, was agreed to by a voice vote, as amended.

An amendment to the amendment in the nature of a substitute offered by Mrs. Biggert, no. 1b, requiring credit reporting agencies to notify users of

consumer report address discrepancies and directing the Federal banking regulators to establish guidance regarding reasonable policies for lenders' use of a consumer reports when an address discrepancy exists, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mrs. Kelly, no. 1d, requiring credit reporting agencies to code sensitive medical information, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Frank, 1e, requiring the credit reporting agencies conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and prohibiting furnishers from forwarding information to the credit reporting agencies if the furnisher has substantial doubts as to its accuracy, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Gillmor, no. 1f, requiring notification of a consumer in the event that the number of enquires made with respect to the consumer's report was a key factor that adversely affected a consumer's credit score, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Baker, no. 1g, clarifying consumers' ability to obtain one free credit report annually from each of the nationwide consumer credit reporting agencies, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Toomey, no. 1h, requiring the Treasury Department to conduct a study on the role of technology in fighting identity theft, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Frank of Massachusetts, no. 1i, requiring implementation of the legislation within 4 months instead of 10 months after the date of issuance of final regulations, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Mr. Frank of Massachusetts, no. 1j, permitting employees against whom an adverse action has been taken based upon an investigation of workplace misconduct conducted by an outside third party to demand a reinvestigation of any information disputed by the employee, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Meeks of New York, no. 1k, requiring that the Federal Reserve conduct a study of further restrictions on offers of credit or

insurance not initiated by consumers, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Meeks of New York, no. 1l, requiring that a telephone number be included with any solicitation for a credit transaction not initiated by the consumer, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Ms. Lee, no. 1m, requiring the Comptroller General conduct a study on methods for improving consumers' financial literacy, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Ms. Carson of Indiana, no. 1n, protecting consumers' rights to obtain a reinvestigation of a consumer dispute directly through resellers of consumer reporting information, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mr. Shadegg, no. 1o, restricting the display and dissemination of a social security numbers, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Mr. Kanjorski, no. 1p, extending the uniform national consumer protection standards by 9 years, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mrs. Maloney, no. 1q, requiring disclosure of an increase in annual percentage rate under certain circumstances, was agreed to by a voice vote.

An amendment to the Maloney amendment to the amendment in the nature of a substitute offered by Mr. Bachus, no. 1q(1), requiring the disclosure to include a good faith enumeration, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Mr. Davis of Alabama, no. 1r, requiring furnishers to conduct reinvestigations within a reasonable time in case of alleged identity theft, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute offered by Mrs. Kelly, no. 1t, extending the phase-in period for credit agencies to provide a free report, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Mr. Inslee, no. 1u, amending sections 625 and 626 of the Fair Credit Reporting Act, was ruled nongermane by the Chair.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The appropriate Federal regulators will use the authority granted in this bill to combat the growing problem of identity theft by assisting consumers in preventing identify theft and in mitigating its consequences once the crime has occurred. Federal regulators will also make every effort to ensure the smooth operation of the national uniform credit reporting system established by the Fair Credit Reporting Act that has lowered costs and increased choice and convenience for American consumers and has created operational efficiencies for industry.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 3, 2003.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

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

Summary: CBO estimates that implementing this legislation would cost about $7 million over the next five years, assuming appropriation of the necessary amounts. The bill could affect direct spending and revenues, but CBO estimates that any such impact would not be significant.

H.R. 2622 would provide new consumer protections against identity theft (that is, fraud committed using another person's identifying information) and would permanently extend the provisions in the Fair Credit Reporting Act (FCRA) that prevent states from imposing new restrictions on how financial institutions share consumer information. In 1996, FCRA was amended to create a uniform national standard for consumer protections governing credit transactions, and it is scheduled to expire on January 1, 2004. H.R. 2622 also would give consumers access to certain financial records, ensure the accuracy of credit reports, and provide protections of consumers' medical information.

H.R. 2622 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the costs would not exceed the threshold established in UMRA ($59 million in 2003, adjusted annually for inflation).

CBO's assessment of the bill's impact on the private sector will be provided later in a separate report.

Estimated cost to the Federal Government: CBO estimates that implementing this legislation would cost about $7 million over the next five years, assuming appropriation of the necessary amounts. The bill could affect direct spending and revenues, but CBO estimates that any such impact would not be significant. This legislation would require the Federal Trade Commission (FTC) to prepare a model summary of rights for consumers who believe that they may be the victims of fraud or identity theft. The FTC also would be responsible for developing procedures and forms to be used by consumers to report identity theft to creditors and credit reporting agencies and for conducting various studies on such topics as the accuracy of information contained in credit reports and the impact of credit scores and credit-based insurance scores on the availability and affordability of financial products.

H.R. 2622 would require the federal banking agencies (which includes the Office of the Comptroller of the Currency (OGC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS)) and the National Credit Union Administration (NCUA) to issue various guidelines and regulations concerning identity theft, credit reporting, and use of consumers' medical information by financial institutions. Finally, this legislation would require the Federal Reserve to create a disclosure form for financial companies to use when notifying a consumer that negative information has been furnished to a credit reporting agency and to study the ability of consumers to avoid unsolicited offers of credit and insurance.

Spending subject to appropriation

Based on information from the FTC, CBO estimates that the studies and additional enforcement effort required under H.R. 2622

would cost that agency $2 million in 2004 and $6 million over the 2004–2008 period, assuming appropriation of the necessary amounts. In addition, this legislation would require the General Accounting Office (GAO) to study the role of discrimination in obtaining credit and to study methods for improving financial literacy among consumers. CBO estimates that the two GAO studies required under the bill would cost about $1 million in 2004.

Direct spending and revenues

The NCUA, the OTS, and the OGC charge fees to cover all their administrative costs; therefore, any additional spending by those agencies to implement the bill would have no net budgetary effect. That is not the case with FDIC, however, which uses deposit insurance premiums paid by banks to cover the expenses it incurs to supervise state-chartered institutions. (Under current law, CBO estimates that the vast majority of thrift institutions insured by the FDIC would not pay any premiums for most of the 2004–2013 period.)

The bill would cause a small increase in FDIC spending but would not affect its premium income. Based on information from the FDIC, implementing the bill would have a minor impact on the agency's workload. Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). CBO estimates that enacting H.R. 2622 would reduce such revenues by less than $500,000 a year.

Impact on state, local, and tribal governments: Title I of H.R. 2622 would permanently prohibit state and local governments from enacting laws that are different from FCRA in certain specified cases. Such a preemption of state law is an intergovernmental mandate as defined in UMRA, but CBO estimates that it would not impose significant costs on state and local governments. Therefore, the cost of the preemption would not exceed the threshold established in UMRA ($59 million in 2003 adjusted for inflation).

Impact on the private sector: CBO's assessment of the bill's impact on the private sector will be provided later in a separate report.

Estimate prepared by: Federal Costs: Susanne Mehlman. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 424 of the Congressional Budget Act.

PRIVATE SECTOR MANDATES ESTIMATE

The estimate of private sector mandates provided by the Congressional Budget Office pursuant to section 424(b) of the Congressional Budget Act was not timely filed with the Committee. Pursuant to section 423(f)(2) of the Congressional Budget Act, the Chairman of the Committee shall cause the statement to be published

in the Congressional Record in advance of floor consideration of the bill.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the defense and general welfare of the United States), and clause 3 (relating to the power to regulate foreign and interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section establishes the short title of the bill, the "Fair and Accurate Credit Transactions Act of 2003" (the FACT Act), and provides a table of contents.

Section 2. Definitions

This section adds several new defined terms to section 603 of the Fair Credit Reporting Act, including "reseller," "Board," "credit," "creditor," "credit card," "Commission," "debit card," "electronic fund transfer," "Federal banking agency," "identity theft," and "police report."

With respect to the term "identity theft," the section includes a general definition (i.e., "a fraud committed using another person's identifying information") and gives joint rulemaking authority to the Federal Reserve Board and the Federal Trade Commission to further define the term. The Committee has granted this authority in order to allow for the Board and the Commission to ensure that the term remains relevant in light of the continuing evolution of identity theft as a crime and the wide variety of techniques employed by identity thieves. The Committee does not intend for the Board or the Commission to define the term for other purposes.

Further, the Committee does not intend for the term "consumer report" to be interpreted to include a report to be used in the consideration of an individual's purchase of insurance primarily for business, commercial or agricultural purposes.

Section 3. Effective dates

This section specifies effective dates for the provisions of the legislation. Within two months of the date of enactment, the Federal Reserve and the Federal Trade Commission are required to jointly prescribe final regulations for each provision of the bill, except as

otherwise specified. In exercising their authority under this section, the regulators are directed to establish effective dates that are as early as possible while also allowing a reasonable time for implementation of the bill's provisions. No provision of the bill may take effect later than 10 months after the date that the regulations required by this section are issued in final form. The section provides for a separate effective date for section 701 of the bill, relating to the protection of medical information in the financial system.

TITLE I—UNIFORM NATIONAL CONSUMER PROTECTION STANDARDS

Section 101. Uniform national consumer protection standards made permanent

This section amends section 624 of the Fair Credit Reporting Act to remove the January 1, 2004 sunset of the uniform national consumer protection standards and make them permanent.

TITLE II—IDENTITY THEFT PREVENTION

Section 201. Investigating changes of address and inactive accounts

This section amends section 605 of the Fair Credit Reporting Act to direct the Federal banking agencies and the National Credit Union Administration (NCUA), as part of their guidance to depository institutions on identity theft "red flags" (section 206, infra), to jointly prescribe regulations requiring credit and debit card issuers that receive a request for additional or replacement cards on an existing account shortly after receiving a change of address request to notify the cardholder at the former address or as otherwise agreed to, or to use other means of validating the address change. The section outlines three alternative procedures the card issuer may follow in order to provide the cardholder with the additional or replacement card if the request for such a card comes shortly after a change of address. First, the issuer can notify the cardholder of the request for an additional or replacement card at the former address and provide the cardholder a means of promptly reporting incorrect address changes. Second, the card issuer can notify the cardholder of the request for additional or replacement cards by other means of communication to which the cardholder and the card issuer previously agreed. Third, a card issuer can assess the validity of the change of address request in accordance with reasonable policies and procedures established by the card issuer pursuant to regulations prescribed by the Federal banking agencies and the NCUA pursuant to section 605(k) of the FCRA (as added by section 206).

Because the nature of identity theft and credit card fraud continues to evolve, the Committee believes that responses to identity theft must be flexible so that they can be modified as the criminals alter their schemes. Accordingly, the Committee has declined to specify a period of time between the request for a new card and a change of address request that would trigger an issuer's duty to take the steps outlined in this section. The Committee believes that 30 days would be appropriate under current circumstances, although the Federal banking agencies may find evidence suggesting a somewhat shorter or longer time period is more appropriate in the future. The Committee does not believe that the card issuer

should be required to take the additional precautions outlined in this section if, despite receiving a request for an address change, the issuer did not actually change the cardholder's address for any reason (e.g. the card issuer had previously determined that the request for an address change was invalid) or the issuer did not actually issue a replacement card.

Section 201 also instructs the Federal banking agencies and the NCUA to consider, as part of their duties under section 605(k) of the FCRA (as added by section 206, infra), whether transactions on a credit or deposit account that has been inactive for more than two years present a potential "red flag" for identity theft. Should that activity be deemed to be a "red flag," the creditor or depository institution will be required to follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.

Finally, the section amends section 624(b)(1)(E) of the Fair Credit Reporting Act to clarify that the identity theft prevention protections added to section 605 of the FCRA by this bill are preemptive of State law.

Section 202. Fraud alerts

This section amends section 605 of the Fair Credit Reporting Act to require consumer reporting agencies that operate on a nationwide basis (as defined in section 603(p) of the FCRA) to place fraud alerts on consumers' files in the three circumstances described below. A fraud alert is a statement in the consumer's file that notifies all users that the consumer does not want credit extended without special permission through a preauthorized procedure. Fraud alerts may be placed on consumer reports in the following three situations:

(1) Upon the direct request of a consumer who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or a related crime, such as identity theft, a nationwide consumer reporting agency that maintains a file on the consumer and has a reasonable belief that it knows the identity of the consumer must: (i) include a fraud alert in the consumer's file for at least 90 days (unless the consumer requests that it be removed sooner); (ii) disclose to the consumer that the consumer may request a free copy of his or her consumer report within three business days of requesting the fraud alert; (iii) exclude the consumer from prescreened offers of credit or insurance for two years (unless the consumer requests that such exclusion be rescinded sooner); and (iv) refer the information regarding the fraud alert to each of the other nationwide consumer reporting agencies, which must then fulfill the obligations described in (i), (ii), and (iii) above.

(2) Upon the direct request of a consumer who contacts a nationwide consumer reporting agency to report details of an identity theft and submits evidence that provides the agency with reasonable cause to believe that such identity theft has occurred, the agency must, if it maintains a file on the consumer and has a reasonable belief that it knows the identity of the consumer: (i) include a fraud alert in the file of the consumer and provide an opportunity for the consumer to extend the alert for a period of up to seven years (unless the consumer requests that it be removed sooner); (ii)

provide the consumer with the option of including more complete information in the consumer's file, including a telephone number or other reasonable means of communication that any person who requests the consumer's report may utilize for authorization before establishing a new credit plan in the name of the consumer; and (iii) provide the consumer with at least two free disclosures of his or her consumer report during the 12-month period beginning on the date of the consumer's request. Or,

(3) Upon the direct request of an active duty military consumer who contacts a nationwide consumer reporting agency that maintains a file on the consumer and has a reasonable belief that it knows the identity of the consumer, the agency must: (i) include an active duty alert in the consumer's file for a period of at least 12 months (unless the consumer requests that it be removed sooner); (ii) exclude the consumer from prescreened offers of credit or insurance for two years (unless the consumer requests that such exclusion be rescinded sooner); and (iii) refer the information regarding the active duty alert to each of the other nationwide consumer reporting agencies (which must then fulfill the obligations described in (i) and (ii) above). An "active duty military consumer" is defined as a consumer in military service who is on active duty or is a reservist performing duty under a call or order to active duty, and is assigned to service away from the consumer's usual duty station.

A request for a fraud alert must be made directly by the consumer, or directly by an individual acting on behalf of or as a personal representative of the consumer. The Committee used the word "individual" instead of "person" to ensure that the provision would only apply to specific individuals such as a consumer's authorized family members or guardians (or attorneys acting as personal representatives), authorized representatives from bona fide military service organizations, and not to companies and entities such as credit repair clinics.

Each nationwide consumer reporting agency must establish policies and procedures to comply with the obligations imposed by this section, including procedures that allow consumers to request fraud alerts in a simple and easy manner, including by telephone. The nationwide consumer reporting agencies already provide many of these services to consumers on a voluntary basis, and the Committee does not believe that significant changes, if any, to the current policies and procedures will be necessary for purposes of complying with this requirement.

Any person who obtains a consumer's consumer report that includes a fraud alert inserted in the consumer's file pursuant to section 605(i) of the FCRA (as added by section 202 of this legislation) may not establish a new credit plan in the name of the consumer for a person other than the consumer without utilizing reasonable policies and procedures to form a reasonable belief that the user of the report knows the identity of the person for whom such new plan is established, which may include obtaining authorization or preauthorization of the consumer at a telephone number designated by the consumer or by such other reasonable means agreed to. The Committee does not intend for the presence of a fraud alert to interfere with transactions on an existing credit account, such as an authorization request in connection with the consumer's use of an existing credit card. The Committee notes that it has specifi-

cally declined to specify what a user's reasonable policies and procedures should be with respect to verifying the consumer's identity. The Committee expects that, in developing their policies and procedures, users will examine a variety of mechanisms, including those required by other existing laws, such as the relevant portions of the regulations issued under section 326 of the USA PATRIOT Act, relating to customer identification programs.

A reseller that is notified of the existence of a fraud alert in a consumer report must communicate to each person procuring a consumer report with respect to such consumer the existence of the fraud alert.

The Committee notes that the obligations described above apply only to those consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. However, if a consumer contacts a consumer reporting agency that does not maintain files on a nationwide basis to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, that agency must provide the consumer with information on how to contact the Federal Trade Commission and the nationwide consumer reporting agencies to obtain more detailed information and request a fraud alert.

Consumer reporting agencies are required to transmit the fraud alert information to users of consumer reports in a manner that facilitates clear and conspicuous viewing of the alert by the user.

Section 203. Truncation of credit card and debit card account numbers

This section amends section 605 of the Fair Credit Reporting Act to prohibit companies that accept credit or debit cards from printing expiration dates or more than the last 5 digits of a card number on any electronically printed receipt provided to the cardholder at the point of sale or transaction, with certain exceptions. This limitation does not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card. This section becomes effective three years from the date of enactment with respect to any device for processing credit and debit card transactions that is in use before January 1, 2005, and one year from date of enactment for devices that are first put into use on or after January 1, 2005. These effective dates are designed to allow merchants to make an orderly transition to meet the requirements imposed by this section.

Section 204. Summary of rights of identity theft victims

This section amends section 609 of the Fair Credit Reporting Act to direct the FTC, in consultation with the Federal banking agencies and the NCUA, to prepare a model summary of rights under the FCRA for consumers who believe they may be victims of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution, detailing the procedures for remedying the effects of the fraud. When a consumer contacts a consumer reporting agency to report a suspicion of applicable fraud or identity theft, the consumer reporting agency is required to provide the consumer with the FTC's model summary

of rights, and information on how to contact the FTC for more information.

Section 205. Blocking of information resulting from identity theft

This section amends section 605 of the Fair Credit Reporting Act to require consumer reporting agencies to block certain information on a consumer credit report resulting from an alleged identity theft. To obtain a block, a consumer must provide the consumer reporting agency with appropriate proof of identity; a police report (as defined in section 2 of the bill) evidencing the consumer's identity theft claim; an identification of the information on the consumer credit report that arises out of the alleged identity theft; and confirmation that the information is not information relating to any transaction by the consumer. Within 5 business days of receiving this information, the consumer reporting agency must block the information. The consumer reporting agency is also required to notify promptly the entity that furnished the blocked information that the information may be the result of identity theft, that a police report has been filed, that a block has been requested, and the effective date of the block.

If a consumer reporting agency that has placed a block on a consumer's file reasonably determines that (1) the information was blocked in error or a block was requested by the consumer in error; (2) the information was blocked (or requested to be blocked) on the basis of a misrepresentation of fact by the consumer; or (3) the consumer knowingly obtained goods, services or money as a result of the block, then the consumer reporting agency may decline to block, or may rescind a block of the information. If a block is declined or rescinded, the consumer reporting agency must notify the affected consumer promptly.

The blocking provisions of this section do not apply to check services companies, deposit account information service companies, and resellers of consumer credit reports under certain conditions.

Nothing in this section requires a consumer reporting agency to prevent a Federal, State or local law enforcement agency from accessing blocked information in a consumer credit file to which the law enforcement agency could otherwise obtain access under the FCRA.

Section 206. Establishment of procedures for depository institutions to identify possible instances of identity theft

This section amends section 605 of the Fair Credit Reporting Act to direct the Federal banking agencies and the NCUA, in consultation with the FTC, to jointly establish, and update as necessary, guidelines for insured depository institutions to identify and "red flag" patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The section also directs the same regulators to jointly prescribe regulations requiring insured depository institutions to adopt reasonable policies and procedures for implementing the "red flag" guidelines to identify possible risks to customer accounts or to the institutions' safety and soundness. Those policies and procedures may not be inconsistent with, or duplicative of, the customer identification procedures required under section 326 of the USA PATRIOT Act (31 U.S.C. § 5318(l)).

The Committee intends the guidelines required by this section to provide flexibility given the ever changing nature of identity theft and related crimes. The Committee believes that the Federal banking agencies and the NCUA are equipped to establish broad parameters for such guidelines, but that individual insured depository institutions are most appropriately situated to determine how best to develop and implement the required policies and procedures. The Committee believes that, in the case of account opening procedures, insured depository institution's policies and procedures pursuant to section 326 of the USA PATRIOT Act should be sufficient for purposes of this section.

Section 207. Study on the use of technology to combat identity theft

This section directs the Secretary of the Treasury, in consultation with the Federal banking agencies, the FTC, and other specified public and private sector entities, to conduct a study of the use of biometrics and other similar technologies to reduce the incidence of identity theft. The section includes a one-year authorization of appropriations needed to carry out the study, and directs the Treasury Department to submit a report to Congress within 6 months of the date of enactment of the legislation containing the findings of the study and any recommendations for legislative or administrative action.

TITLE III—IMPROVING RESOLUTION OF CONSUMER DISPUTES

Section 301. Coordination of consumer complaint investigations

This section amends section 621 of the Fair Credit Reporting Act to direct those consumer reporting agencies that conduct business on a nationwide basis to develop and maintain procedures for referring consumer complaints of identity theft and requests for blocks or fraud alerts to the other nationwide agencies, and to provide the FTC with an annual summary of this information. That summary may be a brief description of the estimated number of calls received pertaining to identity theft, the number of fraud alerts requested, and other issues which may be relevant. The FTC, in consultation with the Federal banking agencies and the NCUA, is directed to develop model forms and model standards for identity theft victims to report fraud to creditors and consumer reporting agencies. The Committee believes that consultations with the Federal banking agencies and the NCUA in developing the form and procedures is important in light of the fact that depository institutions will likely receive the forms from consumers. The Committee notes that the model form will not be a substitute for a police report if a police report is required in order for the consumer to exercise his or her rights under the provisions of this legislation.

Section 302. Notice of dispute through reseller

This section amends section 611 of the Fair Credit Reporting Act to require that consumer reporting agencies reinvestigate consumer disputes forwarded to them by resellers of credit reports (such as intermediaries who consolidate reports for mortgage lenders). The Committee notes that a consumer reporting agency has no obligation to reinvestigate information if the reseller submitting the re-

quest did not obtain the information in question from the consumer reporting agency.

Section 302 also imposes a reinvestigation obligation on resellers. If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on the consumer produced by the reseller, the reseller must, within 5 business days and free of charge, determine the completeness or accuracy of the information in question and either correct it (if the error is the reseller's), or convey the notice of dispute with any relevant information to the consumer reporting agency that provided the information (if the error is not the reseller's).

Section 303. Reasonable reinvestigation required

This section amends section 611 of the Fair Credit Reporting Act to provide that when a consumer disputes the accuracy of information contained in a consumer credit report, the consumer reporting agency that prepared the report must conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate.

Section 304. Duties of furnishers of information

This section makes several changes to section 623(a) of the Fair Credit Reporting Act, which governs the legal duties of persons that furnish information to consumer reporting agencies.

First, the section modifies the standard of care applicable to furnishers of information, to provide that they may not report information to a consumer reporting agency if they know or have reasonable cause to believe that the information is inaccurate. The term "reasonable cause to believe that the information is inaccurate" means, based on the furnisher's procedures designed to report accurate information, that the furnisher has actual knowledge, other than solely allegations by the consumer, which would cause a reasonable person to have substantial doubts about the accuracy of the information. This "reasonable cause to believe" standard is based on actual knowledge of the furnisher of factual information that would cause a reasonable person to believe that the information is not accurate. It is the Committee's view that if a furnisher has followed reasonable practices to ensure the accuracy of information, it need take no further action unless the consumer provides factual information to the furnisher that, upon review by the furnisher, raise substantial doubt regarding the information's accuracy.

Second, this section requires a person that regularly furnishes information to nationwide consumer reporting agencies to maintain reasonable procedures designed to ensure that the information furnished is accurate. While this section is intended to promote the accuracy of information reported to consumer reporting agencies, it does not require furnishers to guarantee the accuracy of each piece of information provided to a nationwide consumer reporting agency. Rather, it requires that the furnisher have a reasonable belief that the information is accurate, based on the furnisher's regular business practices and procedures. This is a similar standard to that adopted by the Treasury and the Federal banking agencies for customer identification under section 326 of the USA PATRIOT Act.

Third, this section provides consumers with the ability to request a reinvestigation of information contained in a consumer report directly with the furnisher of information. A consumer who seeks to dispute the accuracy of information contained in a report provided by a nationwide consumer reporting agency directly with a furnisher must provide a dispute notice to the address specified by the furnisher for those notices. The furnisher may specify such address in any materials provided to the consumer in connection with the consumer's relationship with the furnisher, or upon the request of the consumer. The notice of dispute must clearly identify the specific information being disputed and explain the basis for the dispute. The furnisher must then conduct an investigation with respect to the disputed information, review all relevant information provided by the consumer with the notice of dispute, and complete the investigation and report the results to the consumer, before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its investigation if the dispute were initiated through such agency. The furnisher may report the results to the consumer in writing, orally, or electronically (if the consumer has provided an electronic address to the furnisher). If the investigation discloses that the information reported was inaccurate, the furnisher must promptly thereafter report the accurate information found as a result of the investigation to each nationwide consumer reporting agency to which the furnisher provided the inaccurate information.

The purpose of the provision addressing the ability of a consumer to dispute information with the furnisher is to permit a consumer to raise disputes directly with the furnisher with which the consumer has a relationship, rather than raising those disputes initially with a consumer reporting agency with which the consumer does not have an ongoing relationship. A consumer seeking to dispute the accuracy of information with a furnisher must "directly provide a dispute notice to the address specified by the person for such notices." The notice must be provided by the consumer and not by a third party, such as a credit repair clinic, and the dispute must be submitted to the address specified by the furnisher for this purpose. Nothing in this provision is intended to preclude a consumer's authorized family member or guardian (or attorneys acting as personal representatives), or authorized representatives from bona fide military service organizations, from submitting a dispute notice on behalf of the consumer, nor is it intended to preclude a furnisher from using a service organization to process disputes on the furnisher's behalf.

This section is intended to emphasize the importance of furnishing accurate information to consumer reporting agencies without imposing unreasonable burdens on those that furnish that information. The Committee intends that the new duties imposed by this section will be interpreted and enforced in a manner that enhances the accuracy of credit reports but does not discourage or impede the furnishing of information to consumer reporting agencies.

Section 305. Prompt investigation of disputed consumer information

This section requires the FTC and the Federal Reserve to jointly study the performance of consumer reporting agencies and furnishers of credit reporting information in complying with the Fair

Credit Reporting Act's procedures and timelines for the prompt investigation and correction of disputed information in a consumer's credit file, as well as the completeness of information furnished, and report to Congress within 6 months of the date of enactment of this legislation with any appropriate recommendations to ensure promptness and full compliance.

TITLE IV—IMPROVING ACCURACY OF CONSUMER RECORDS

Section 401. Reconciling addresses

This section amends section 605 of the Fair Credit Reporting Act to require a nationwide consumer reporting agency that receives and processes a request for a consumer credit report that includes an address for the consumer that substantially differs from the addresses in the consumer's file to notify the requester of the discrepancy. The notification need not include any additional information other than that a discrepancy exists. Nothing in this section is to be construed as requiring a requester of a consumer report to provide a consumer's address to a consumer reporting agency.

The Federal banking agencies and the NCUA are directed to jointly prescribe regulations providing guidance to users of consumer credit reports on reasonable policies and procedures they should follow after receiving a notice of address discrepancy from a consumer reporting agency. The regulations must also describe reasonable policies and procedures for use by a user of a consumer report who receives a notice of discrepancy if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such agency as part of information regularly furnished by the user for the period in which the relationship was established. This section is intended to require consumer reporting agencies to notify a user of a discrepancy, with a further obligation for that user to utilize reasonable policies and procedures to resolve those discrepancies. The Committee does not intend to place an obligation on consumer reporting agencies to affirmatively resolve discrepancies directly with the consumers.

Section 402. Prevention of repollution of consumer reports

This section amends section 623 of the Fair Credit Reporting Act to provide that if a consumer submits a police report to a person who furnishes information to a consumer reporting agency, and the consumer states that information maintained by the furnisher resulted from identity theft, the furnisher may not furnish the information to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

Section 403. Notice by users with respect to fraudulent information

This section amends section 615 of the Fair Credit Reporting Act to require debt collection agents who learn that information in a consumer credit report is the result of identity theft or is otherwise fraudulent to either notify its principal (if the principal is the

source of the relevant information) or, if the information originated from a source other than the debt collector's principal, the consumer reporting agency that prepared the report. Upon the request of the consumer, the debt collector must provide the consumer with all the information which the consumer would be entitled to receive if the information related to the consumer other than by reason of identity theft.

Section 404. Disclosure to consumers of contact information for users and furnishers of information in consumer reports

This section amends section 609 of the Fair Credit Reporting Act to require that a credit report provided to a consumer at the consumer's request include the addresses of entities that have either furnished information appearing on the report or have recently requested copies of the consumer's report, as well as customer service phone numbers if provided by the entity to the consumer reporting agency.

Section 405. FTC study of the accuracy of consumer reports

This section directs the FTC to conduct an ongoing study of the accuracy and completeness of information contained in consumer reports, and to submit biennial reports to Congress on its findings and conclusions—together with such recommendations for legislative and administrative action as the FTC deems appropriate—over an eight-year period, beginning six months from the date of enactment of this bill. Within two years of the submission of the final periodic report, the FTC is required to submit a final report to Congress on the study.

TITLE V—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

Section 501. Free reports annually

This section amends section 612 of the Fair Credit Reporting Act to allow consumers to request annually a free copy of their credit report. All consumers may directly request a free copy of their credit report annually from each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Consumers who are unemployed, on welfare, or believe their files contain inaccurate information due to fraud may request a free credit report once every year from each regional and local consumer reporting agency in addition to a credit report from each national consumer reporting agency.

Section 502. Disclosure of credit scores

This section amends section 609 of the Fair Credit Reporting Act to require consumer reporting agencies to make available to consumers (for a reasonable fee) upon request the consumer's current or most recently calculated credit score, as well as the range of scores possible, the top 4 negative key factors used, the date the score was created, and the name of the company providing the underlying file or score. If a consumer requests a credit file, then the agency must notify the consumer that the consumer may request and obtain a credit score. The disclosure of the key factors is intended to be consistent with the provisions of the Equal Credit Op-

portunity Act (ECOA) requiring a creditor making an adverse action to disclose the principal reasons in a credit score that most contributed to the adverse action.

Consumer reporting agencies that do not distribute credit scores in connection with residential real property loans or develop scores to assist credit providers in understanding a consumer's general credit behavior and predicting the future credit behavior of the consumer are not required to develop or disclose any scores under this section. Consumer reporting agencies that distribute scores developed by others are not required to provide further explanation of them or to process related disputes, other than by providing the consumer with contact information regarding the person who developed the score or its methodology, unless the agency has further developed or modified the score itself. Consumer reporting agencies are not required to maintain credit scores in their files.

The credit score provided to the consumer by the consumer reporting agency must be derived from a credit scoring model that is widely distributed by the agency in connection with mortgage loans or credit risk analysis and the agency must include a disclosure to the consumer stating that the information and credit scoring model may be different than that used by a particular lender.

While the consumer reporting agency may charge a reasonable fee for the score, the Committee intends that this reasonable fee not be used to cover profits and costs for developing and providing the free credit report required to be made available under section 501. In disclosing the top negative key factors affecting a consumer's credit score, if a negative key factor is the number of enquiries made (the number of times the agency provided the consumer's report to various users), then that factor must be included in the disclosure even if it is not among the top 4 negative key factors.

If a consumer applies for a mortgage loan, and the mortgage lender uses a credit score in connection with an application by the consumer for a closed end loan or establishment of an open end consumer loan secured by 1 to 4 units of residential real property, then the mortgage lender is required to provide the consumer with a free copy of the consumer's credit score. In addition, the lender must provide a copy of the information on the range of scores possible, the top 4 negative key factors used, the date the score was created, and the name of the company providing the underlying file or score, to the extent that the information is obtained from a consumer reporting agency or developed and used by the lender. Beyond this information provided to the lender by a third party score provider, the lender is only required to provide a notice to the home loan applicant. This notice includes the contact information of each agency providing the credit score used, and provides specific language to be disclosed to educate consumers about the use and meaning of their credit scores and how to ensure their accuracy.

A mortgage lender that uses an automated underwriting system to underwrite a loan or otherwise obtains a credit score from someone other than a consumer reporting agency may satisfy their obligation to provide the consumer with a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency. However, if the lender uses a numerical credit score generated by an automated underwriting system used by the

Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or their affiliates, and the score is disclosed to the lender, then that score must be disclosed by the lender to the consumer.

Mortgage lenders are not required by this section to explain the credit score and the related copy of information provided to the consumer, to disclose any information other than the credit score or negative key factor, disclose any credit score or related information obtained by the lender after a loan has closed, provide more than 1 disclosure per loan transaction, or provide an additional score disclosure when another person has already made the disclosure to the consumer for that loan transaction.

The only obligation for a mortgage lender providing a credit score under this section is to provide a copy of the information used and received from the consumer reporting agency. A mortgage lender is not liable for the content of that information or the omission of any information in the report provided by the agency. This section and the requirement for mortgage lenders to provide credit scores do not apply to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or their affiliates.

Any provision in a contract prohibiting the disclosure of credit scores by a person who makes or arranges loans or a consumer reporting agency is void, and a lender will not have liability under any contractual provision for disclosure of a credit score pursuant to this section.

This section also amends section 605 of the Fair Credit Reporting Act to provide that if a consumer reporting agency furnishes a consumer report that contains any credit score or other risk score or other predictor, the report must include a clear and conspicuous statement that the number of enquiries was a key factor (as defined in section 609(e)(2)(B)) that adversely affected a credit score or other risk score or predictor if that predictor was in fact one of the key factors that most adversely affected a credit score. This statement will be made in those instances in which the number of enquiries had an influence on the consumers credit score, and it will thus alert a user of the consumer report when the number of enquiries has had an adverse effect on the consumer's credit score.

Section 503. Simpler and easier method for consumers to use notification system

This section amends the requirements contained in sections 604 and 615 of the Fair Credit Reporting Act that consumer reporting agencies establish and maintain a notification system for consumers to exclude themselves from lists used for unsolicited prescreened offers or credit or insurance to require additionally that the notification system be simple and easy to use. Anyone using a consumer report in connection with an unsolicited insurance or credit transaction must include, in the required disclosure statement to the consumer, a description in a simple and easy to understand format of how the consumer can prohibit his file from being used for unsolicited insurance and credit offers including the simple and easy-to-use method for notifying the consumer reporting agencies. The Committee believes that most current notification systems (such as toll-free phone numbers with straightforward choices) and disclosures permit consumers to notify consumer re-

porting agencies of their desire to limit pre-screened offers in a simple and easy manner. This section is intended to ensure that as technology evolves and different notification and disclosure methods are experimented with that consumers will be protected by a standard requiring that any new system continue to be simple and easy to understand and use.

Section 504. Requirement to disclose communications to a consumer reporting agency

This section amends section 623(a) of the Fair Credit Reporting Act to provide that if any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency (as described in section 603(p) of the FCRA) furnishes negative information to a consumer reporting agency regarding credit extended to the consumer, then the financial institution must provide a written notice to the consumer that they have done so. The notice must be provided to the customer prior to, or no later than 30 days after, furnishing negative information to the nationwide consumer reporting agency. The required notice must be clear and conspicuous and may be included on or with any materials provided to the customer, including a billing statement or notice of default. If the notice is provided to the customer prior to the furnishing of the negative information, the notice may not be included in the initial disclosures required under section 127(a) of the Truth in Lending Act, but may be included in other communications with the customer. Once the financial institution provides a notice to the customer, the financial institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing an additional notice to the customer.

The Federal Reserve Board must prescribe a brief model disclosure, not to exceed 30 words, for financial institutions to use in their efforts to comply with this requirement. If a financial institution uses the model developed by the Board it shall be deemed to be in compliance with the requirement of this section. However, a financial institution is not required to use the model disclosure. This section does not require a financial institution that has provided a customer with a disclosure to furnish negative information to a consumer reporting agency.

A financial institution is not liable for failure to perform the duties required by this section if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with the requirement. For example, a financial institution would not be liable for a failure to provide the disclosure if the financial institution maintained reasonable policies and procedures to comply, but was prohibited by law from contacting the consumer.

Section 505. Study of effects of credit scores and credit-based insurance scores on availability and affordability of financial products

This section requires the FTC, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, to study the effects of the use of credit scores and insurance scores on the availability and affordability of

financial products and services, the accuracy of the causality of the score factors and historical losses, whether the use of those scores results in any disparate impact and whether financial underwriting systems could achieve comparable results through factors with less disparate impact, the factors used in credit scoring systems, and the effects of variables that are not considered. The FTC must seek public participation and report on its study with legislative recommendations within 18 months of the date of enactment of this bill. The Committee expects that the Commission and HUD will seek assistance from the Federal and State financial regulators that have jurisdiction over financial services providers and shall take into account currently existing studies and legal analysis.

Section 506. GAO study on disparate impact of credit system

This section requires the General Accounting Office to study the credit system to determine the extent to which, if any, discrimination exists with regard to the availability and the terms of credit which has a disparate impact on the basis of race, color, income and education level, geographic location, age, sex, sexual orientation, national origin, or marital status and the nature of any discriminatory effect. The Committee intends that the GAO will seek assistance from the Board and other Federal and State financial regulators that have jurisdiction over credit providers for the relevant portions of the study. The GAO must submit a report to Congress on the findings of the study before the end of the two-year period beginning on the date of enactment of this legislation.

Section 507. Analysis of further restrictions on offers of credit or insurance

This section directs the Federal Reserve Board to study the ability of consumers to opt out of receiving unsolicited written offers of credit or insurance and the impact further restrictions on those offers would have on consumers. The Board is required to report to Congress within 12 months of the date of enactment of this legislation on the current statutory or voluntary mechanisms for consumers to opt out of receiving unsolicited credit and insurance offers, the extent to which the mechanisms are being used, the benefits to consumers of receiving the offers, whether consumers incur significant costs as a result of the offers and whether further restrictions on the offers would affect consumers' costs, the availability of credit or insurance, consumers' knowledge about new products and services, competition among lenders and insurers, and the ability of lenders and insurers to offer products to traditionally underserved consumers.

Section 508. Study on the need and the means for improving financial literacy among consumers

This section directs the General Accounting Office to study consumer knowledge of credit reports, credit scores, the credit dispute resolution process, and methods for improving consumer financial literacy. The GAO is directed to report its findings to Congress within 9 months of the date of enactment of this legislation. The study will examine the number of consumers who view their credit reports, under what conditions consumers obtain their reports, the extent of consumer knowledge of the credit system data collection

process and how to obtain a credit report, and consumer understanding of factors that positively or negatively affect credit scores.

Section 509. Disclosure of increase in APR under certain circumstances

This section requires that credit card issuers, in any disclosure or statement required under the Fair Credit Reporting Act for unsolicited credit card offers (a prescreening disclosure to a consumer under section 615(d) of the FCRA), clearly and conspicuously disclose the ability of the issuer to increase any annual percentage rate applicable to a credit card account, or to remove or increase any introductory annual percentage rate applicable to the account, for reasons other than actions or omissions of the cardholder that are directly related to such account. The Federal Reserve Board, in consultation with the other Federal banking agencies and the NCUA, may develop any guidelines necessary to assure that the required clear and conspicuous disclosure is provided in a prominent location and that it includes appropriate model disclosure statements.

TITLE VI—PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

Section 601. Certain employee investigation communications excluded from definition of consumer report

This section amends section 603 of the Fair Credit Reporting Act to provide that communications to an employer by outside third parties hired to investigate employee misconduct or compliance with the employer's preexisting written policies will not be considered "consumer reports" (meaning that advance notice or permission would be required). If any adverse action is taken based on the communication, the employer is required to disclose to the employee a summary containing the nature and substance of the communication (although certain sources of information are protected).

TITLE VII—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

Section 701. Protection of medical information in the financial system

This section amends section 604 of the Fair Credit Reporting Act to generally prohibit a consumer reporting agency from providing credit reports that contain medical information for employment purposes or in connection with a credit or insurance transaction (including annuities). Medical information may be included in a report as part of an insurance transaction only with the consumer's affirmative consent. Medical information may be included in a report for employment or credit purposes only where the information is relevant for purposes of processing or approving employment or credit requested by the consumer and the consumer has provided specific written consent, or if the information meets certain specific requirements and is restricted or reported using codes that do not identify or infer the specific provider or nature of the services, products, or devices to anyone other than the consumer (except for certain insurance purposes).

The section establishes that creditors are not allowed to obtain or use medical information for credit granting purposes. Certain exceptions are provided where authorized by Federal law, for insurance activities (including annuities), and where determined to be necessary and appropriate by the financial regulators. The Committee recognizes that there are limited circumstances in which a creditor may require medical information in determining a consumer's eligibility or continued eligibility for credit, for example, to confirm the use of loan proceeds in connection with loans to finance a specific medical procedure or device, or to verify a consumer's death or disability in connection with credit-related debt cancellation agreements, and considers the limited use of medical information in these circumstances and any similar circumstances the financial regulators may identify, to be a necessary and appropriate use of medical information for purposes of this section.

Additional restrictions are imposed to limit the redisclosure of any medical information received in connection with certain insurance or credit transactions furnished by a consumer reporting agency or authorized under certain laws or regulations pursuant to the provisions of subsection (g) added by this section. Companies that receive medical information through any of the exceptions provided by subsection (g) are prohibited from further disclosure of the information to any other person except as necessary to carry out the original purpose for which the information was initially provided or as otherwise permitted by statute, regulation, or order.

This section further amends section 603(d) of the Fair Credit Reporting Act to restrict the disclosure of certain medical-related information among companies affiliated by common ownership or corporate control. Except as authorized under certain Federal law, regulation, or order, or under certain applicable State insurance authority, the exclusions permitted in section 603(d)(2) from the definition of a "consumer report" shall not apply with respect to information disclosed among affiliates or companies related by common ownership if the information is either medical information or information that is based on payments for medical products or services, or any aggregate list of identified consumers based on payment transactions for medical products or services.

Section 702. Confidentiality of medical contact information in credit reports

This section amends section 623 of the Fair Credit Reporting Act to establish that companies (including their agents or assignees) whose primary business is providing medical services, products, or devices to consumers and who furnish information to a consumer reporting agency are deemed to be a "medical information furnisher". Medical information furnishers must identify themselves as such before furnishing information on a consumer to a consumer reporting agency. If a medical information furnisher is furnishing information to a consumer reporting agency on a consumer but not notifying the agency as required of its status, then the FTC is directed to take action as necessary, within its jurisdiction, to ensure the company's compliance.

This section also amends section 605 of the Fair Credit Reporting Act to provide that where a medical information furnisher has notified the consumer reporting agency of its status with respect to a

consumer, the consumer reporting agency may not include in a consumer report on that consumer the name, address, or telephone number of the furnisher unless that contact information is encoded in a manner that does not identify or infer to anyone other than the consumer the specific company or the nature of the medical services, products, or devices provided. An exception is provided for consumer reports provided to insurance companies for insurance activities (including annuities) other than property and casualty insurance. The encoding requirement for medical information furnisher contact information applies regardless of the dollar amounts involved.

The Committee does not intend to prohibit the inclusion in a consumer report of information relating to the consumer's place of employment. Rather, this section is intended to ensure that consumers who have medical transactions in their credit files are protected by requiring that the contact information be encoded so that third parties can not infer any health implications relating to the consumer.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONSUMER CREDIT PROTECTION ACT

* * * * * * *

TITLE VI—CONSUMER CREDIT REPORTING

Sec.
601. Short title.
* * * * * * *
[605. Requirements relating to information contained in consumer reports.]
605. Requirements relating to information contained in consumer reports and to identity theft prevention
* * * * * * *

§ 601. Short title

This title may be cited as the Fair Credit Reporting Act.

* * * * * * *

§ 603. Definitions and rules of construction

(a) * * *

* * * * * * *

(d) CONSUMER REPORT.—
(1) * * *
(2) EXCLUSIONS.—[The term] *Except as provided in paragraph (3), the term* "consumer report" does not include—
(A) * * *

* * * * * * *

(D) a communication described in subsection (o) *or (q)*.

* * * * * * *

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control if—

(A) the information is medical information; or

(B) the information is an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.

* * * * * * *

(q) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

(i) suspected misconduct relating to employment; or

(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

(i) to the employer or an agent of the employer;

(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

(iv) as otherwise required by law; or

(v) pursuant to section 608.

(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term "self-regulatory organization" includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under Title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

(r) RESELLER.—The term "reseller" means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(s) OTHER DEFINITIONS.—

(1) BOARD; CREDIT; CREDITOR, CREDIT CARD.—The terms "Board", "credit", "creditor", and "credit card" have the same meanings as in section 103 of the Truth in Lending Act.

(2) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(3) DEBIT CARD.—The term "debit card" means any card issued by a financial institution to a consumer for use in initiating electronic fund transfers (as defined in section 903(6) of the Electronic Fund Transfer Act) from the account (as defined in such Act) of the consumer at such financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(4) ELECTRONIC FUND TRANSFER.—The term "electronic fund transfer" has the same meaning as in section 903 of the Electronic Fund Transfer Act.

(5) FEDERAL BANKING AGENCY.—The term "Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(6) IDENTITY THEFT.—The term "identity theft" means a fraud committed using another person's identifying information, subject to such further definition as the Commission and the Board may prescribe, jointly, by regulation.

(7) POLICE REPORT.—The term "police report" means a copy of any official valid report filed by a consumer with any appropriate Federal, State, or local government law enforcement agency, or any comparable official government document that the Board and the Commission shall jointly prescribe in regulations, that is subject to a criminal penalty for false statements.

§ 604. Permissible purposes of reports

(a) * * *

* * * * * * *

(e) ELECTION OF CONSUMER TO BE EXCLUDED FROM LISTS.—

(1) * * *

* * * * * * *

(5) NOTIFICATION SYSTEM.—

(A) IN GENERAL.—Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer shall—

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, *in a simple and*

easy manner and with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

* * * * * * *

[(g) FURNISHING REPORTS CONTAINING MEDICAL INFORMATION.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report.]

(g) PROTECTION OF MEDICAL INFORMATION.—

(1) LIMITATION ON CONSUMER REPORTING AGENCIES.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6)) about a consumer, unless—

(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(B) if furnished for employment purposes or in connection with a credit transaction—

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(C) such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer, unless the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(2) LIMITATION ON CREDITORS.—Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical information treated in the manner required under section 605(a)(6)) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.—Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106–102; or

(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

(4) LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.—Any person that receives medical information pursuant to paragraphs (1) or (3) shall not disclose such information to any other person except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

(A) REGULATIONS REQUIRED.—Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs, consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

(B) FINAL REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall prescribe the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of the enactment of the Fair and Accurate Credit Transactions Act of 2003.

(6) COORDINATION WITH OTHER LAWS.—No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

[§ 605. Requirements relating to information contained in consumer reports]

§ 605. Requirements relating to information contained in consumer reports and to identity theft prevention

(a) INFORMATION EXCLUDED FROM CONSUMER REPORTS.—Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) * * *

* * * * * * *

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(b) [The provisions of subsection (a)] *The provisions of paragraphs (1) through (5) of subsection (a)* are not applicable in the case of any consumer credit report to be used in connection with—

(1) * * *

* * * * * * *

(d) INFORMATION REQUIRED TO BE [DISCLOSED.—Any consumer reporting agency] *DISCLOSED.—*

(1) TITLE 11 INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11, United States Code, shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(2) KEY FACTOR IN CREDIT SCORE INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(e)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score.

* * * * * * *

(g) "RED FLAG" PATTERNS OF POSSIBLE IDENTITY THEFT.—

(1) INVESTIGATION OF CHANGES OF ADDRESS.—The Federal banking agencies and the National Credit Union Administration, in carrying out the responsibilities of such agencies and Administration under subsection (k), shall jointly prescribe regulations for credit card and debit card issuers to ensure that, if any such issuer receives a request for an additional or replacement card for an existing account within a short period of time after the issuer has received notification of a change of address for the same account, the issuer will follow reasonable policies and procedures that require, as appropriate, that the issuer not issue the additional or replacement card unless the issuer—

(A) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

(B) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

(C) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subsection (k).

(2) INACTIVE ACCOUNTS.—The Federal banking agencies and the National Credit Union Administration, in carrying out the responsibilities of such agencies and Administration under subsection (k), shall consider including, as a possible "red flag" pattern, reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or depository institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.

(h) NOTICE OF DISCREPANCY.—

(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) REGULATIONS.—

(A) REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall jointly prescribe regulations providing guidance regarding reasonable policies and procedures a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(B) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the consumer's address with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.

(i) ONE-CALL FRAUD ALERTS.—

(1) INITIAL ALERTS.—Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts, in good faith, a suspicion that the consumer has been or is about to become a victim of fraud

or related crime, including identity theft, a consumer reporting agency described in section 603(p) shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer—

(A) include a fraud alert in the file of that consumer for a period of not less than 90 days beginning on the date of such request, unless the consumer specifically requests that such fraud alert be removed before the end of such period;

(B) disclose to the consumer that the consumer may request a free copy of the file of the consumer and provide the consumer, upon request, a free disclosure of the consumer's file (as described in section 609(a)) within 3 business days after such request;

(C) for 2 years after the date of such request, exclude the consumer from any list of consumers prepared by the agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer subsequently requests that such exclusion be rescinded before the end of such period; and

(D) refer the information regarding the fraud alert to each of the other consumer reporting agencies described in section 603(p), as required under section 621(f)(1).

(2) EXTENDED ALERTS.—Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who contacts a consumer reporting agency described in section 603(p) to report details of an identity theft and submits evidence that provides the agency with reasonable cause to believe that such identity theft has occurred, the agency shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer—

(A) include a fraud alert in the file of that consumer and provide an opportunity for the consumer to extend the alert for a period of up to 7 years from the date of such request, unless the consumer subsequently requests that such fraud alert be removed before the end of such period;

(B) provide the consumer with the option of including more complete information in the consumer's file, including a telephone number or some other reasonable means of communication that any person who requests the consumer's report may utilize for authorization before establishing a new credit plan in the name of the consumer; and

(C) provide the consumer with at least 2 free disclosures of the information described in section 609(a) during the 12-month period beginning on the date of such request.

(3) ACTIVE DUTY ALERTS.—Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, who contacts a consumer reporting agency described in section 603(p), the agency shall, if the agency maintains a file on the consumer who is making the request and has a reasonable belief that the agency knows the identity of the consumer—

(A) include an active duty alert in the file of that consumer during a period of not less than 12 months beginning on the date of the request, unless the consumer requests that such active duty alert be removed before the end of such period;

(B) for 2 years after the date of such request, exclude the consumer from any list of consumers prepared by the agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer subsequently requests that such exclusion be rescinded before the end of such period; and

(C) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), as required under section 621(f)(1).

(4) PROCEDURES.—Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with the obligations of paragraphs (1), (2), and (3), including procedures that allow consumers to request initial, extended, or active duty alerts in a simple and easy manner, including by telephone.

(5) NOTICE TO USERS.—No person who obtains any information that includes a fraud alert under this section from a file of any consumer from a consumer reporting agency may establish a new credit plan in the name of the consumer for a person other than the consumer without utilizing reasonable policies and procedures described in paragraph (9).

(6) REFERRALS OF FRAUD ALERTS.—Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert from another such agency pursuant to paragraph (1)(D) or (3)(C) shall follow the procedures required under subparagraphs (A), (B), and (C) of paragraph (1), in the case of a referral under paragraph (1)(D), and subparagraphs (A) and (B), in the case of a referral under paragraph (3)(C), as if the agency received the request from the consumer directly.

(7) DUTY OF RESELLER TO RECONVEY ALERT.—A reseller that is notified of the existence of a fraud alert in a consumer's consumer report shall communicate to each person procuring a consumer report with respect to such consumer the existence of a fraud alert in effect for such consumer.

(8) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.—If a consumer contacts any consumer reporting agency that is not a consumer reporting agency described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide the consumer with information on how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this subsection.

(9) FRAUD ALERT.—

(A) DEFINITION.—For purposes of this subsection, the term "fraud alert" means, at a minimum, a statement—

(i) in the file of a consumer that the consumer may be a victim of fraud, including identity theft, or is a consumer described in paragraph (3); and

(ii) that is transmitted in a manner that facilitates a clear and conspicuous view of the statement by any person requesting such file.

(B) OTHER INFORMATION.—A fraud alert shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize establishing any new credit plan in the name of the consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person for whom such new plan is established, which may include obtaining authorization or preauthorization of the consumer at a telephone number designated by the consumer or by such other reasonable means agreed to.

(10) OTHER DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) ACTIVE DUTY MILITARY CONSUMER.—The term "active duty military consumer" means a consumer in military service who—

(i) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

(ii) is assigned to service away from the consumer's usual duty station.

(B) NEW CREDIT PLAN.—The term "new credit plan" means a new account under an open end credit plan (as defined in section 103(i) of this Act) or a new credit transaction not under an open end credit plan.

(j) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

(1) BLOCK.—Except as provided in paragraph (3), a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft and confirms is not information relating to any transaction by the consumer not later than 5 business days after the date of receipt by such agency of—

(A) appropriate proof of the identity of a consumer;

(B) a police report evidencing the claim of the consumer of identity theft;

(C) the identification of the information by the consumer; and

(D) confirmation by the consumer that the information is not information relating to any transaction by the consumer.

(2) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)—

(A) that the information may be a result of identity theft;

(B) that a police report has been filed;

(C) that a block has been requested under this subsection; and

(D) of the effective date of the block.

(3) AUTHORITY TO DECLINE OR RESCIND.—

(A) IN GENERAL.—A consumer reporting agency may decline to block, or may rescind any block, of consumer information under this subsection if the consumer reporting agency reasonably determines that—

(i) the information was blocked in error or a block was requested by the consumer in error;

(ii) the information was blocked, or a block was requested by the consumer, on the basis of a misrepresentation of fact by the consumer relevant to the request to block; or

(iii) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions.

(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 611(a)(5)(B).

(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

(4) EXCEPTIONS.—

(A) VERIFICATION COMPANIES.—This subsection shall not apply to—

(i) a check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or

(ii) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(B) RESELLERS.—

(i) NO RESELLER FILE.—This subsection shall not apply to a consumer reporting agency if the consumer reporting agency—

(I) is a reseller;

(II) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing

or reselling a consumer report concerning the information identified by the consumer; and

(III) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

(ii) RESELLER WITH FILE.—The sole obligation of the consumer reporting agency under this subsection, with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if—

(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

(II) the consumer reporting agency is a reseller of the identified information.

(iii) NOTICE.—In carrying out its obligation under clause (ii), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

(5) ACCESS TO BLOCKED INFORMATION BY LAW ENFORCEMENT AGENCIES.—No provision of this subsection shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.

(k) "RED FLAG" GUIDELINES REQUIRED.—

(1) IN GENERAL.—The Federal banking agencies and the National Credit Union Administration, in consultation with the Commission, shall jointly establish and maintain guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft with respect to accounts, and update such guidelines as often as necessary.

(2) REGULATIONS.—The Federal banking agencies and the National Credit Union Administration, in consultation with the Commission, shall jointly prescribe regulations requiring insured depository institutions to establish and adhere to reasonable policies and procedures for implementing the guidelines established pursuant to paragraph (1) to identify possible risks to customer accounts or to the safety and soundness of the institutions.

(3) CONSISTENCY WITH VERIFICATION REQUIREMENTS.—Policies and procedures established pursuant to paragraph (2) shall not be inconsistent with, or duplicative of, the policies and procedures required under section 5318(l) of title 31, United States Code.

(4) INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this subsection, the term "insured depository institution"—

(A) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(l) TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.—

(1) IN GENERAL.—Except as provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print the expiration date or more than the last 5 digits of the card number upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) LIMITATION.—This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording the person's credit card or debit card number is by handwriting or by an imprint or copy of the card.

* * * * * * *

§ 609. Disclosures to consumers

(a) Every consumer reporting agency shall, upon request, and subject to section 610(a)(1), clearly and accurately disclose to the consumer:

(1) * * *

(2) The sources of the information, *including addresses of the sources, and (if provided by the sources of information) the telephone numbers identified for customer service for the sources of information*; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided,* That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)(A) * * *

(B) An identification of a person under subparagraph (A) shall include—

(i) * * *

[(ii) upon request of the consumer, the address and telephone number of the person.**]**

(ii) the address and (if provided) the telephone numbers identified for customer service of the person.

* * * * * * *

(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

* * * * * * *

(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—If any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution, the consumer reporting agency shall, in addition to any other action the agency may take, provide the consumer with the model summary of rights prepared by the Commission under paragraph (1) and information on how to contact the Commission to obtain more detailed information.

(e) DISCLOSURE OF CREDIT SCORES.—

(1) IN GENERAL.—Upon the consumer's request for a credit score, a consumer reporting agency shall supply to a consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include the following information:

(A) The consumer's current credit score or the consumer's most recent credit score that was previously calculated by the credit reporting agency for a purpose related to the extension of credit.

(B) The range of possible credit scores under the model used.

(C) All the key factors that adversely affected the consumer's credit score in the model used, the total number of which shall not exceed four, subject to paragraph (9).

(D) The date the credit score was created.

(E) The name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(2) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(A) CREDIT SCORE.—The term "credit score"—

(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from this analysis may also be referred to as a "risk predictor" or "risk score"); and

(ii) does not include—

(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or a consumer's financial assets; or

(II) any other elements of the underwriting process or underwriting decision.

(B) KEY FACTORS.—The term "key factors" means all relevant elements or reasons adversely affecting the credit score for the particular individual listed in the order of their importance based on their effect on the credit score.

(3) TIMEFRAME AND MANNER OF DISCLOSURE.—The information required by this subsection shall be provided in the same

timeframe and manner as the information described in subsection (a).

(4) APPLICABILITY TO CERTAIN USES.—This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—

(A) distribute scores that are used in connection with residential real property loans; or

(B) develop scores that assist credit providers in understanding a consumer's general credit behavior and predicting the future credit behavior of the consumer.

(5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.—

(A) IN GENERAL.—This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

(B) EXCEPTION.—This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.—This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

(7) COMPLIANCE IN CERTAIN CASES.—In complying with this subsection, a consumer reporting agency shall—

(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

(8) REASONABLE FEE.—A consumer reporting agency may charge a reasonable fee for providing the information required under this subsection.

(9) USE OF ENQUIRIES AS A KEY FACTOR.—If a key factor that adversely affects a consumer's credit score consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.

(f) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—

(1) IN GENERAL.—Any person who makes or arranges loans and who uses a consumer credit score as defined in subsection (e) in connection with an application initiated or sought by a consumer for a closed end loan or establishment of an open end

loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the "lender") shall provide the following to the consumer as soon as reasonably practicable:

(A) INFORMATION REQUIRED UNDER SUBSECTION(e).—

(i) IN GENERAL.—A copy of the information identified in subsection (e) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

(ii) NOTICE UNDER SUBPARAGRAPH (D).—In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.—

(i) IN GENERAL.—If a person who is subject to this section uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(ii) NUMERICAL CREDIT SCORE.—However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

(iii) ENTERPRISE DEFINED.—For purposes of this subparagraph, the term "enterprise" shall have the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.—A person subject to the provisions of this subsection who uses a credit score other than a credit score provided by a consumer reporting agency may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(D) NOTICE TO HOME LOAN APPLICANTS.—A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

"NOTICE TO THE HOME LOAN APPLICANT

"In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

"The credit score is a computer generated summary calculated at the time of the request and based on information a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine

what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

"Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

"If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

"If you have questions concerning the terms of the loan, contact the lender.".

(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.—This subsection shall not require any person to do any of the following:

(i) Explain the information provided pursuant to subsection (e).

(ii) Disclose any information other than a credit score or key factor, as defined in subsection (e).

(iii) Disclose any credit score or related information obtained by the user after a loan has closed.

(iv) Provide more than 1 disclosure per loan transaction.

(v) Provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

(F) NO OBLIGATION FOR CONTENT.—

(i) IN GENERAL.—Any person's obligation pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

(ii) LIMIT ON LIABILITY.—No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.—As used in this subsection, the term "person" does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.—

(A) IN GENERAL.—Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

(g) DISCLOSURE TO CONSUMER.—

(1) IN GENERAL.—The ability of a credit card issuer to increase any annual percentage rate applicable to a credit card account, or to remove or increase any introductory annual percentage rate of interest applicable to such account, for reasons other than actions or omissions of the card holder that are directly related to such account shall be clearly and conspicuously disclosed to the consumer by the credit card issuer in any disclosure or statement required to be made to the consumer under this title in connection with a credit card solicitation that is not initiated by the consumer.

(2) REGULATIONS AND MODEL STATEMENTS.—The Board, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop such guidelines in regulations as necessary to assure that the information to be disclosed to consumers pursuant to paragraph (1) is clearly and conspicuously provided in a prominent location in any credit card solicitation that is not initiated by the consumer, and shall include model disclosure statements to be used by credit card issuers in making the disclosures required to be provided to the consumer by paragraph (1).

* * * * * * *

§ 611. Procedure in case of disputed accuracy

(a) REINVESTIGATIONS OF DISPUTED INFORMATION.—

(1) REINVESTIGATION REQUIRED.—

(A) IN GENERAL.—[If the completeness] *Subject to subsection (e), if the completeness* or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly*, or indirectly through a reseller,* of such dispute, the agency [shall reinvestigate free of charge] *shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate* and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer *or reseller*.

* * * * * * *

(2) PROMPT NOTICE OF DISPUTE TO FURNISHER OF INFORMATION.—

(A) IN GENERAL.—Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer *or a reseller* in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer *or reseller*.

(B) PROVISION OF OTHER INFORMATION [FROM CONSUMER].—The consumer reporting agency shall promptly

provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer *or the reseller* after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

* * * * * * *

(e) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—

(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.—Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.—If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice and free of charge—

(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

(B) if—

(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, correct the information in the consumer report or delete it; or

(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute.

(3) RESELLER REINVESTIGATIONS.—No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.

SEC. 612. CHARGES FOR CERTAIN DISCLOSURES.

(a) * * *

* * * * * * *

(c) FREE DISCLOSURE UNDER CERTAIN OTHER CIRCUMSTANCES.—Upon the request of the consumer, a consumer reporting agency *that is not a consumer reporting agency described in section 603(p)* shall make all disclosures pursuant to section 609 once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer—

(1) * * *

* * * * * * *

(e) FREE ANNUAL DISCLOSURE.—Upon the direct request of the consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 once during any 12-month period without charge to the consumer.

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§ 615. Requirements on users of consumer reports

(a) * * *

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(d) DUTIES OF USERS MAKING WRITTEN CREDIT OR INSURANCE SOLICITATIONS ON THE BASIS OF INFORMATION CONTAINED IN CONSUMER FILES.—

(1) * * *

(2) SIMPLE AND EASY NOTIFICATION.—Any statement given the consumer under paragraph (1)(E) shall be in a simple and easy to understand format and shall describe the simple and easy method established under section 604(e)(5)(A)(i) for the consumer to respond.

[(2)**]** *(3)* DISCLOSURE OF ADDRESS AND TELEPHONE NUMBER.—A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 604(e).

[(3)**]** *(4)* MAINTAINING CRITERIA ON FILE.—A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

[(4)**]** *(5)* AUTHORITY OF FEDERAL AGENCIES REGARDING UNFAIR OR DECEPTIVE ACTS OR PRACTICES NOT AFFECTED.—This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

(e) NOTICE OF FRAUDULENT INFORMATION RELATING TO IDENTITY THEFT.—If an agent acting as a debt collector (as defined in title VIII) of a person who furnishes information to any consumer reporting agency uses information contained in a consumer report on any consumer and learns that any such information so used is the result of identity theft or otherwise is fraudulent, the agent shall—

(1) if such information—

(A) originated from the person for whom the debt collector is acting as agent, notify the person of the fraudulent information; or

(B) originated from a person other than the person for whom the debt collector is acting as agent, notify the consumer reporting agency (that provided the consumer report) of the fraudulent information, either directly or through the person for whom the debt collector is acting as agent; and

(2) upon the request of the consumer, provide the consumer with all information which the consumer would be entitled to receive if the information related to the consumer other than by reason of identity theft.

* * * * * * *

§ 621. Administrative enforcement

(a) * * *

* * * * * * *

(c) STATE ACTION FOR VIOLATIONS.—

(1) * * *

* * * * * * *

(5) LIMITATIONS ON STATE ACTIONS FOR [VIOLATION OF SECTION 623(a)(1)] *CERTAIN VIOLATIONS OF SECTION 623(a).*—

(A) VIOLATION OF INJUNCTION REQUIRED.—A State may not bring an action against a person under paragraph (1)(B) for a violation of [section 623(a)(1)] *paragraph (1) or (6) of section 623(a)*, unless—

(i) * * *

* * * * * * *

(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

(1) IN GENERAL.—The consumer reporting agencies described in section 603(p) shall develop and maintain procedures for the referral, to each such agency, of any consumer complaint received by any such agency alleging any identity theft or requesting a block or a fraud alert.

(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.

(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (8) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.

* * * * * * *

SEC. 623. RESPONSIBILITIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES.

(a) DUTY OF FURNISHERS OF INFORMATION TO PROVIDE ACCURATE INFORMATION.—

(1) * * *

(A) REPORTING INFORMATION WITH ACTUAL KNOWLEDGE OF ERRORS.—A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person [knows or consciously avoids knowing that the information is inaccurate] *knows or has reasonable cause to believe that the information is inaccurate.*

(B) REASONABLE PROCEDURES TO ENSURE ACCURACY.—A person that regularly furnishes information relating to con-

sumers to a consumer reporting agency described in section 603(p) shall maintain reasonable procedures designed to ensure that the information furnished is accurate.

[(B)] *(C)* REPORTING INFORMATION AFTER NOTICE AND CONFIRMATION OF ERRORS.—A person shall not furnish information relating to a consumer to any consumer reporting agency if—

(i) * * *

* * * * * * *

[(C)] *(D)* NO ADDRESS REQUIREMENT.—A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(E) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits a police report to a person who furnishes information to a consumer reporting agency that states that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(F) DEFINITION.—For purposes of subparagraph (A), the term "reasonable cause to believe that the information is inaccurate" means, based on the procedures described in subparagraph (B), has knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

* * * * * * *

(6) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

(A) IN GENERAL.—A consumer may dispute directly with a person the accuracy of information that—

(i) is contained in a consumer report on the consumer prepared by a consumer reporting agency described in section 603(p); and

(ii) was provided by the person to that consumer reporting agency in accordance with paragraph (1)(B).

(B) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information with a person under subparagraph (A) shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

(i) identifies the specific information that is being disputed; and

(ii) explains the basis for the dispute.

(C) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (B), the person that provided the information in dispute to a consumer reporting agency referred to in subparagraph (A) shall—

(i) conduct an investigation with respect to the disputed information;

(ii) review all relevant information provided by the consumer with the notice;

(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(iv) if the investigation finds that the information reported was inaccurate, promptly thereafter report correct information to each consumer reporting agency described in section 603(p) to which the person furnished the inaccurate information.

(7) NEGATIVE INFORMATION.—

(A) NOTICE TO CONSUMER REQUIRED.—

(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) TIME OF NOTICE.—

(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(D) MODEL DISCLOSURE.—

(i) DUTY OF BOARD TO PREPARE.—The Board shall prescribe a brief model disclosure a financial institu-

tion may use to comply with subparagraph (A), which shall not exceed 30 words.

(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.

(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph.

(G) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) NEGATIVE INFORMATION.—The term "negative information" means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms "customer" and "financial institution" have the same meaning as in section 509 of the Gramm-Leach-Bliley Act.

(8) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for the purposes of this title and shall notify the agency of such status.

* * * * * * *

§ 624. Relation to State laws

(a) * * *

* * * * * * *

(b) GENERAL EXCEPTIONS.—No requirement or prohibition may be imposed under the laws of any State—

(1) with respect to any subject matter regulated under—

(A) * * *

* * * * * * *

(E) section 605, relating to information contained in consumer reports *and to identity theft prevention*, except that this subparagraph shall not apply to any State law in ef-

fect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996; or

* * * * * * *

(3) with respect to the form and content of any disclosure required to be made under [section 609(c)] *subsection (c) or (d) of section 609*.

* * * * * * *

(d) LIMITATIONS.—[Subsections (b) and (c)—

[(1) do not affect any settlement,] *Subsections (b) and (c) do not affect any settlement,* agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on the date of enactment of the [Consumer Credit Reporting Reform Act of 1996; and

[(2) do not apply to any provision of State law (including any provision of a State constitution) that—

[(A) is enacted after January 1, 2004;

[(B) states explicitly that the provision is intended to supplement this title; and

[(C) gives greater protection to consumers than is provided under this title.] *Consumer Credit Reporting Reform Act of 1996.*

* * * * * * *

ADDITIONAL VIEWS

I appreciate that this committee has worked very hard to produce a bill that has garnered support on both sides of the aisle. Certainly, FCRA reauthorization had the potential to become a very difficult issue absent the leadership of Chairman Oxley and the leadership of many others in this committee.

As the bill was put together over the past several weeks, compromises were made regarding different elements of the bill. Industry has made many concessions in order to help put strong consumer protections in the legislation. There are, however, new consumer protections contained in title V that are likely to cause lenders and consumer reporting agencies in our country to have great concern, and which I am concerned provide little benefit to consumers.

Specifically, I have concerns about section 502 of the bill. As it is currently drafted, section 502 includes new requirements on mortgage lenders to disclose credit scores to borrowers. While I have no problem with the intent of this provision, I think that this language can be improved so that it is less burdensome and more workable.

Borrowers should be able to see what scores their loans are being based off of, however, one problem I have with this language is that while it sets some clear disclosure standards, it does not make these standards uniform or national. We could be placing new disclosure requirements on lenders, but at the same time allowing states to place duplicative requirements on those companies. This gives me serious concerns because borrowers could be faced with a blizzard of duplicate requirements from both the state and federally governments. Section 502 must be made a national standard, not a duplicate mandate on lenders.

I also have concerns that the language in section 502 is vague concerning when it is appropriate to make the credit score disclosures. As I said earlier, I have no problem with these disclosures, they will help prevent fraud, but we should work to minimize the burden they put on lenders. For example, one solution would be to allow lenders, when sending these scores, to do in it a way that minimizes costs, such as mailing the score with other documents. This could help significantly reduce costs for lenders and borrowers.

I believe that as it moves forward with this important legislation, the committee should consider ways to make section 502 more beneficial for consumers so that they get important information while not imposing new burdens on lenders. At the same time I think we should look at simplifying the disclosure that mortgage originators must make to consumers.

Similarly, I have concerns about significant costs being imposed on consumer reporting agencies under section 501. I am concerned

about he propriety of Congress mandating that any business give away its products for free. In this instance we are imposing a significant financial burden on consumer reporting agencies on the premise that it will provide increased consumer education. In the absence of a uniform standard under title V, section 501 could exacerbate the costs to the consumer reporting agencies. I believe that both Sections 501 and 502 should serve as a national standard for these consumer protections in order to assure the costs of these laws are not increased by virtue of inconsistent or duplicative State laws regarding reports being furnished.

ROBERT W. NEY.

SUPPLEMENTAL VIEWS

Section 501 of the legislation requires consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, upon direct request of the consumer, to provide the consumer with a copy of his or her credit report once annually at no charge. We have concerns about the impact of this provision as it is currently drafted.

Congress has already provided consumers with complete access to their credit reports. In fact, consumers can obtain their credit reports for free, by law, in many instances such as if they have suffered adverse action as a result of information in their credit reports, if they are unemployed and seeking employment, if they are on public assistance, or if they believe false information may be in their files as a result of fraud (e.g. identity theft). In all other instances, the price of a credit report is capped by law—the current cap is $9 and it is adjusted annually for inflation. We note that the $9 fee is not prohibitively expensive and is less than what many public sector entities charge consumers for a copy of their records. The FBI, for example, charges an individual $18 for a copy of his or her arrest record. The Department of Motor Vehicles in the District of Columbia charges consumers $13 for a copy of their 10-year driving record. We will spare the Committee a laundry list of other examples.

Requiring nationwide credit bureaus to provide their product for free to consumers may have admirable goals. However, we fear that Section 501 will actually harm consumers in the long run. As noted above, consumers already have full access to their credit reports, and Section 501 does not expand consumers' rights in that regard. Yet, Section 501 will impose hundreds of millions of dollars in additional costs on nationwide consumer reporting agencies. It seems obvious that at least some of this cost may be passed on to consumers in the form of higher costs for credit and insurance. We are also concerned that nationwide credit bureaus will be at the mercy of unpredictable surges in demand for credit reports. A single story about "free" credit reports on a national news program, or a similar front page headline on a national newspaper or magazine, could result in millions of inquiries to the nationwide bureaus in a very short period of time. No business can adequately plan for such uncontrollable and unpredictable large scale spikes in demand for a product. As a result, consumers in most need of assistance, such as those seeking a reinvestigation of information so that they can close on a home mortgage, will certainly suffer as the credit bureaus shift resources in order to deal with the unpredictable spikes in demand for free credit reports. We strongly hope that the final form of this legislation will include reasonable measures that allow nationwide credit bureaus to manage the cost impact and consumer demand appropriately and fairly.

Finally, in light of the burden Section 501 will place on nationwide credit bureaus, we have asked a noted constitutional scholar, Professor Douglas W. Kmiec, to apprise us of any constitutional questions that may arise if Section 501 is enacted as currently drafted. Judging by Professor Kmiec's response to us, we are concerned that Section 501 may not be constitutional. By way of background, Professor Kmiec is former dean of the Catholic University Law School and is now the Caruso Chair in Constitutional Law at Pepperdine University. Professor Kmiec also served President Ronald Reagan as head of the office of legal counsel in the Department of Justice. Professor Kmiec's detailed analysis is attached.

JUDY BIGGERT.
PATRICK J. TOOMEY.
JEB HENSARLING.

PEPPERDINE UNIVERSITY SCHOOL OF LAW,
Malibu, CA, September 4, 2003.

Re constitutional taking implications of H.R. 2622.

Hon. JUDY BIGGERT,
U.S. Congress, Longworth Building,
Washington, DC.

DEAR CONGRESSWOMAN BIGGERT: As a professor of constitutional law and the former head of the Office of Legal Counsel in the U.S. Department of Justice, I have been asked by the national consumer reporting agencies to review the constitutionality of certain proposed amendments to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. ("FCRA")—specifically, sections 501 and 502 of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. I am pleased to share this analysis with you.

Section 501 would require Credit Reporting Agencies ("CRAs") "upon the direct request of the consumer" to provide each consumer with a copy of his or her credit report "once during any 12-month period without charge to the consumer." Section 502 would require CRAs to supply the consumer with his or her credit score and all of the key factors that adversely affected the credit score.[1]

While the desire of Congress to assist consumers in this context is admirable, these proposals, in my judgment, will likely operate to unconstitutionally deprive CRAs of property without just compensation in violation of the Fifth Amendment. In this regard, Justice Holmes admonition of more than three-quarters of a century ago is apt: "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal* v. *Mahon*, 260 U.S. at 416 (1922).

One final word before sharing with you the analysis in detail. The concerns like those raised by this letter are of such serious magnitude that they have merited the special attention of the Pres-

[1] Section 502 has been modified to permit a reasonable charge for the provision of credit scores. Unlike the credit reports mandated to be provided for free under Section 501, this modification should eliminate any constitutional questions associated with the valuable property interests associated with credit scores, but of course, this important recognition of the private property interests at stake does nothing to address the more pervasive taking of the credit reports, themselves.

idency, and an existing Executive Order (No. 12360) mandates that "actions," including proposed federal legislation, that have takings implications, must "account for the obligations imposed by the Just Compensation Clause of the Fifth Amendment * * * so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc." Further, "executive departments and agencies shall * * * identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget." Insofar as the Executive Order directs the Attorney General, in particular, "to ensure that the policies of the Executive Departments and agencies are consistent with this Order," it would certainly be appropriate before proceeding with the proposed amendments to the FCRA to seek the Attorney General's guidance on their constitutional implications.

Analysis

Because of the importance of the legislative object sought to be achieved by H.R. 2622, I have sought to examine the question indulging whenever possible those standards of analysis that give the greatest latitude to Congress' legislative authority. In this respect, several things should be noted at the outset: first, there is not abundant judicial precedent applying the Constitution's protection against uncompensated regulatory takings in the context of intellectual property, though what there is (as directed below) is credibly supportive of the constitutional concerns of the CRAs; and second, as a matter of constitutional law, should a taking be found, it does not preclude Congress from acting, but it does obligate Congress to compensate the CRAs adversely affected.

Of course, current provisions in the FCRA provide for the free provision of reports, but only under highly limited circumstances (such as a credit denial or fraud); otherwise, CRAs obtain the fair market value for their products. The proposed amendments envision a vastly expanded obligation for free reports. Should this not be legislatively addressed, the CRAs have a statutory right under the Tucker Act, 28 U.S.C. 1346(a)(2) (1988) to seek compensation for the property taken—specifically, for the fair market value of the millions of free credit reports that would literally be physically taken from the CRAs pursuant to the proposed language.[2]

[2]The damages suffered by CRAs are discussed more extensively below, but they consist, at a minimum, of the market value of the free credit reports that would be mandated as well as the increased servicing costs—a severe and singular after-investment liability not wholly dissimilar from the retroactive health insurance liability imposed and found to be unconstitutional in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1988). While it is true that the members of the Supreme Court disagreed in *Eastern Enterprises* over whether the takings clause or the due process clause was the appropriate source of monetary remedy, a plurality wrote unambiguously that if a law imposes "severe retroactive liability on a limited class of parties that could not have anticipated the liability, and the extent of that liability is substantially disproportionate to the parties' experience," it transgresses the Constitution. Concurring in the judgment, Justice Kennedy relied upon both the severity of the loss and its retroactivity or unforeseeability to supply relief as a matter of substantive due process.

The property at issue

Any taking analysis begins with the Fifth Amendment[3] and a careful assessment of the property at issue. Property cannot be legislatively redefined at will. As the Supreme Court has held: "property interests * * * are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."[4] Intellectual property (e.g., patents, copyrightable works or compilations of information, trade secrets) are clearly of importance to a modern, 21st century economy and they have not been, and cannot be, invisible to the Constitution's protections. In this instance, it is reasonable to conclude that there is a distinct property interest that is either taken outright or placed at risk of being taken by the proposed amendments.[5]

The credit reports—A distinct property interest

Credit reports are created when CRAs, employing years of training, labor, skill and judgment, collect and organize information about consumers and their credit history from public records, creditors and other reliable sources. Credit reports are then made available by CRAs to a consumer's current and prospective creditors and employers as allowed by law. Specific information contained in a typical credit report includes:

- The consumer's name, current and previous addresses, phone number, Social Security number, date of birth and current and previous employers.
- Specific information about each credit account held by the consumer, such as the date opened, credit limit or loan amount, balance, monthly payment and payment pattern during the past several years.
- Federal district bankruptcy records and state and county court records of tax liens and monetary judgments.
- Statements of dispute, which allow both consumers and creditors to report the factual history of an account.

This information is obtained from many different sources, and each CRA may produce a report that varies for any given consumer, depending on the reporting sources to which it has access, and the frequency with which those sources provide the CRA with updated information. It is reasonable to treat the CRA's property interests in both the credit reports and the credit score reports as intellectual property interests in the nature of copyright. See *Feist Publ'ns, Inc.* v. *Rural Tel. Svcs. Co.,* 499 U.S. 340, 348 (1991) ("Factual compilations, on the other hand, may possess the requisite originality [to be entitled to copyright protection.] The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that they may

[3] Nor shall private property be taken for public use without the payment of just compensation. Amendment V.

[4] *Board of Regents* v. *Roth,* 408 U.S. 564, 577 (1972).

[5] While the proposal currently allows for a reasonable charge for credit scores, it is possible that the required score and factor disclosure could place the underlying proprietary algorithms at risk in a manner that would implicate the Takings Clause.

be used effectively by readers. These choices as to selection and arrangement, as long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original that Congress may protect such compilations through the copyright laws."). See also *CCC Info. Servs., Inc.* v. *MacLean Hunter Mkt. Reports, Inc.,* 44 F.3d 61, 65 (2d Cir. 1994) (noting that "the protection of compilations is consistent with the objectives of the copyright law * * *." and further that were a legislature or administrative body to adopt a rule abrogating by legislative fiat a party's copyright, it "would raise very substantial problems under the Takings Clause of the Constitution.") *CCC Info. Svcs.,* 44 F.3d at 74.

I am informed by the CRAs that the costs associated with the production of a credit report exceed $7.50 per credit report, and it is fair to surmise that the fair market value for a report is at least equal to the $9 per report authorized under the FCRA. The industry has not yet fully monetized the economic value of the millions of reports that would be taken or mandated to be provided for free under the proposed legislation, but it can be readily anticipated to be in the hundreds of millions of dollars, and if the unforeseen and imposed cost of servicing these reports are incorporated (see note 2, supra) and widespread consumer participation assumed, the ultimate sum may range as high as a billion dollars.

Applying the Fifth Amendment

As noted, the Fifth Amendment forbids the taking of private property for public use without just compensation. It has long been recognized that this constitutional guarantee is "designed to bar Government from forcing some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole."[6] In the instant case, Congress seeks via the proposed FCRA amendments to "prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, [and] make improvements in the use of, and consumer access to, credit information * * *."[7] These are worthy goals. Rather than providing for compensation for the property taken to accomplish these objectives, however, H.R. 2622 seeks to accomplish its purpose at the sole expense of the CRAs. Under existing law, it is fair to conclude that this rises to the level of an impermissible regulatory taking in violation of the Fifth Amendment.

A regulatory taking occurs "when some significant restriction is placed upon an owner's use of his property for which justice and fairness require that compensation be given."[8] Regulatory takings can be analyzed either as per se takings, or under the balancing test established by the Supreme Court in *Penn Central,* depending on the nature of the alleged taking. Per se takings tests apply in two principal contexts: (1) where regulation results in a permanent physical occupation and thereby a denial of all rights to use, sell,

[6] *Palazzolo,* 533 U.S. at 633 (2001) (quoting *Armstrong* v. *United States,* 364 U.S. 40, 49 (1960)).
[7] See Preamble to H.R. 2622.
[8] See *Philip Morris,* 312 F.3d at 33.

or exclude others from the property in question;[9] and (2) where a regulation denies all economically beneficial or productive use of land.[10] It is hard not to understand the mandatory transfer of the physical credit reports from the CRAs to individual consumers, without qualification, as not falling within this per se physical taking standard. While the Supreme Court has permitted the limitation of the use and enjoyment of personal property,[11] there is no precedent sustaining, without compensation, the outright confiscation of personal property, itself. Indeed, what little precedent is available supports the finding of a regulatory taking.[12]

Yet, as I indicated at the start, it was my intent in reviewing this matter to apply the most generous possible taking standard to afford Congress the widest possible legislative authority. To that end, it is useful to examine the issue under the Supreme Court's balancing test articulated in *Penn Central Transp. Co.* v. *City of New York,* 438 U.S. 104 (1978). This is not to suggest that the proposed physical expropriation of the reports is unrelated to the application of the *Penn Central* factors, discussed below. It is not. Supreme Court jurisprudence suggests that where, as here, a physical taking is present, the analysis of the "character of the government's action" (discussed below) will be more rigorous and judges will undertake a "careful examination and weighing of all of the relevant circumstances."[13]

Under *Penn Central,*[14] a regulatory taking is analyzed by examining: (1) What is the economic impact of the regulation; (2) whether the government action interferes with reasonable investment-backed expectations; and (3) what is the character of the government action. Id. *Penn Central* "does not supply mathematically precise variables, but instead provides important guideposts that lead to the ultimate determination whether just compensation is required."[15] Let us examine each individually:

Reasonable investment-backed expectations

There is no clear judicial consensus on what constitutes "reasonable investment-backed expectations," although in at least one case involving trade secrets, the Supreme Court has found the force of the deprivation of a party's reasonable investment-backed expectations to be "so overwhelming" as to be dispositive of the takings

[9] See *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 435 (1982).
[10] See *Lucas* v. *S.C. Coastal Council,* 505 U.S. 1003 (1992).
[11] *Andrus* v. *Allard,* 444 U.S. 51 (1979).
[12] Although there is no reported decision finding a per se taking in the case of abrogated intellectual property rights, Judge Selye, concurring in the *Philip Morris* decision, states that there should be "no principled reason to refrain from extending per se takings analysis to alleged takings of trade secrets. Indeed, the Supreme Court hinted at this result when it observed that the term "property" in the Takings Clause is meant in its more accurate sense to denote the group of rights inhering in the citizen's relation to the physical thing * * * the value of trade secrets, like the value of land, is inextricably tied to both the demand of others for access and the legal enforceability of the owner's right to exclude. In either case, if the sovereign effectively deprives the owner of the right to exclude, the value is destroyed—and the Constitution requires just compensation. Limiting per se taking analysis to cases involving real property is a crude boundary with no compelling basis in the law." See *Philip Morris,* 312 F.3d at 51 (Selye, J. concurring). See also *Nixon* v. *United States,* 978 F.2d 1269 (D.C. Cir. 1992) (applying per se takings analysis to alleged deprivation of presidential papers and finding that statutory enactment "completely abrogated Mr. Nixon's right unilaterally to exclude others from [his presidential papers]—perhaps the quintessential property right.").
[13] See *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency,* 532 U.S. 302 (2002).
[14] *Penn. Central Transp. Co.* v. *New York City,* 438 U.S. 104, 124 (1978).
[15] See *Palazzolo,* 533 U.S. at 634.

issue.[16] That case, *Monsanto,* involved a taking challenge to several provisions of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), which, among other things, required all pesticides sold in interstate or foreign commerce for use within the United States to be registered with the Secretary of Agriculture and appropriately labeled.[17] FIFRA, first enacted in 1947, also empowered the Secretary to require applicants for registration to submit testing data, including pesticide formulae and data on the pesticide's health, safety and environmental impact.[18] In 1978, FIFRA was amended to provide "for disclosure of all health, safety, and environmental data * * * notwithstanding the prohibition against disclosure of trade secrets" found elsewhere in the statute.[19]

Monsanto challenged this amendment, arguing that the forced disclosure of trade secret information submitted by it to the Secretary of Agriculture constituted a regulatory taking in violation of the Fifth Amendment.[20] The Court agreed in part. Stating that a reasonable investment-backed expectation must be more than a "unilateral expectation than an abstract need," the Supreme Court held that as to information submitted by Monsanto after the 1978 amendment:

> Monsanto could not have had a reasonable, investment-backed expectation that EPA would keep the data confidential beyond the limits prescribed in the amended statute itself. Monsanto was on notice of the manner in which EPA was authorized to use and disclose any data turned over to it by an applicant for registration ***. If Monsanto chose to submit the requisite data in order to receive a registration, it can hardly be argued that its reasonable investment-backed expectations are disturbed when EPA acts to use or disclose the data in a manner that was authorized by law at the time of the submission.[21]

For information submitted between 1972 and 1978, however, as to which the then-current FIFRA regulations gave Monsanto explicit assurances that the EPA was prohibited from disclosing publicly any data submitted by an applicant, the Court found that "this explicit governmental guarantee formed the basis of a reasonable investment-backed expectation" that submitted data, designated as trade secrets, would be protected.[22] In rendering its decision, the Court noted that a trade secret's value lies in the "right to exclude others."[23] If others are given the trade secret the "holder of the trade secret has lost his property interest," and the question becomes whether the party received adequate compensation for the taking of that interest.[24]

Similarly, in *Philip Morris,* the First Circuit considered whether Massachusetts' enactment of the Disclosure Act, Mass. Gen. Laws ch. 94, § 307B, which required cigarette manufacturers to provide brand-specific ingredient lists in order to sell cigarettes within

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[16] See *Monsanto,* 467 U.S. at 1005.
[17] Id. at 991.
[18] Id.
[19] Id. at 995–96.
[20] *Monsanto,* 467 U.S. at 998–99.
[21] Id. at 1006–07. See also *Nollan* v. *Cal. Coastal Comm'n,* 483 U.S. 825, 833 n.2 (1987).
[22] *Monsanto,* 467 U.S. at 1101.
[23] Id.
[24] Id.

Massachusetts, and which provided that the state of Massachusetts could publicly disclose the precise formulas for these cigarettes whenever such disclosure "could reduce the risks to public health," operated to unlawfully deprive cigarette manufacturers of property in violation of the Fifth Amendment.[25] In holding that the Disclosure Act operated to deprive the cigarette manufacturers of their trade secrets in violation of the Takings Clause, the Court noted that, unlike *Monsanto,* the question before it was whether Massachusetts can force the tobacco companies to cede their trade secrets in exchange for doing business within its borders.[26] Given the protection afforded trade secrets by the state of Massachusetts, the Court answered this question in the negative, holding that the tobacco companies had reasonable, investment-backed expectations that their trade secrets would remain secret.[27]

Applied to the facts at bar, in my judgment, the conclusion is inescapable: the CRAs have a colorable argument that the proposed FCRA amendments operate to deprive CRAs of their reasonable, investment-backed expectations. That said, and again to give every possible deference to Congress' authority, it is possible to argue that in light of the limited right of free reports under existing federal and state laws,[28] CRAs no longer have any reasonable expectation of a return on investment for even a far broader taking of credit reports. To state the proposition, however, is to refute it since it defies economic reality. Moreover, supplying credit reports to a defined class of individuals denied credit or who have reason to believe that a report is in error, facilitates legislative goals that coincide with the best practices of the industry. It is quite another matter to be treated as the equivalent of a public utility, except that public utilities are guaranteed a reasonable rate of return.[29] The Supreme Court has also made it clear that a taking claim is not defeated merely because one invests in property that has already been regulated. See *Palazzolo* v. *Rhode Island,* 533 U.S. 606, 634 (2001) (hereinafter *"Palazzolo"* ("[T]he state of regulatory affairs at the time [that the property interest was acquired] is not the only factor that may determine the state of reasonable investment-backed expectations ***. Courts instead must attend to those circumstances which are probative of what fairness requires in a given case.").[30]

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[25] *Philip Morris,*, 312 F.3d at 26.

[26] Id. at 39.

[27] Id. at 41.

[28] There are laws in ten states that allow the citizens of those states to obtain copies of their credit reports for free, or at a reduced cost, depending on the circumstances. *See* California, Cal. Civ. Code §§ 1785.11.1, 1785.15, 1785.19 and 1785.19.5; Colorado, Colo. Rev. Stat. § 12–14.3–104(2)(e); Connecticut, Conn. Gen. Stat. § 36a-696(b); Georgia, O.C.G.A. §§ 10–1–392, 10–393(29); Maine, Me. Rev. Stat. Ann. tit. 10, § 1316(z); Maryland, Md. Commercial Law code Ann. § 14–1209(a)(1); Massachusetts, Mass. Gen. Laws Ann. Ch 93, § 59; Minnesota, Minn. Stat. § 13C.01(a); New Jersey, N.F. Stat. Ann. § 56:11–37(a); Vermont, Vt. Stat. Ann. tit. 9, § 2480(c). At least two of these states require CRAs to disclose credit scores if requested by the consumer. *See* Ca. Civ. Code § 1785.15.1; Vt. Stat. Ann. tit. 9, § 2480(c). As discussed in the text, these statutes—passed for different and narrower purposes—are merely factors in the application of the taking analysis under Penn Central, as further applied in *Palazzolo* v. *Rhode Island,* 533 U.S. 606, 634(2001) (hereinafter *"Palazzolo"*).

[29] See *Duquesne Light Co.* v. *Barasch,* 488 U.S. 299, 310 (1989); *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944).

[30] Given that CRAs have accepted existing regulation that, in far less intrusive ways, resembles aspects of the proposed legislation is thus not dispositive. As the Court explained in *Palazzolo* at 626–27: "The theory underlying the argument that postenactment purchasers cannot challenge a regulation under the Takings Clause seems to run on these lines: Property rights are created by the State. See, e.g., *Phillips* v. *Washington Legal Foundation,* 524 U.S.

More than once, the Supreme Court has admonished legislative bodies that the constitutional protection for property, especially as it relates to a core, inherent aspect like the right to exclude, cannot simply be redefined away. In *Monsanto,* the Court held that disclosure of a trade secret could be required as a condition for receiving a valuable governmental benefit (there, a license to sell a pesticide in a highly regulated environment). However, as Justice Scalia explained for the Court in the later case of *Nollan,* v. *California Coastal Commission,* "some core elements of property—like the right to build on one's own property * * * cannot remotely be described as a 'government benefit.' And thus the announcement that the application for (or granting of) the permit will entail the yielding of a property interest cannot be regarded as establishing the voluntary 'exchange' that we found to have occurred in *Monsanto.*" [31]

Likewise, the *Philip Morris* court determined, "allowing a manufacturer to simply sell its legal product is more similar to building on one's land * * *." [32] The sale of credit reports and the right to maintain the proprietary value of credit scores and underlying algorithms is much the same. The dissent in *Philip Morris* did not dispute the analysis of the lead opinion, but simply avoided the constitutional determination of a taking by pointing to available regulatory means under the Disclosure Act that allowed regulated companies to pursue a stay prior to disclosure of its valuable trade secrets. Thus, because of this regulatory escape hatch, the dissent did not think the Disclosure Act was "unconstitutional in every application." Congress has not proposed a similarly tailored means to either compensate CRAs for their property or preserve it from governmental taking contrary to the Constitution.

Economic impact

The law regarding economic impact is fairly straightforward. "The inquiry is whether the regulation 'impairs the value of use of the property' according to the owners' general use of their property." [33] As the *Philip Morris* court noted, "not only is the use to which the property owner puts her property important, but the eco-

156, 163, 118 S. Ct. 1925, 141 L.Ed.2d 174 (1998). So, the argument goes, by prospective legislation the State can shape and define property rights and reasonable investment-backed expectations, and subsequent owners cannot claim any injury from lost value. After all, they purchased or took title with notice of the limitation. The State may not put so potent a Hobbesian stick into the Lockean bundle. The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions. See *Pennsylvania Coal Co.,* 260 U.S., at 413, 43 S. Ct. 158 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law"). The Takings Clause, however, in certain circumstances allows a landowner to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation. Just as a prospective enactment, such as a new zoning ordinance, can limit the value of land without effecting a taking because it can be understood as reasonable by all concerned, other enactments are unreasonable and do not become less so through passage of time or title. Were we to accept the State's rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land."

[31] *Nollan,* 483 U.S. at 833 n.2.

[32] *Philip Morris,* 312 F.2d at 47.

[33] Id. (quoting *Pruneyard Shopping Ctr.* v. *Robins,* 447 U.S. 74 (1982)).

nomic impact needs to be considered in the context of other laws and regulatory schemes."[34]

In *Philip Morris,* the Court noted that economic impact was fairly evident. "The [tobacco companies] have spent millions of dollars developing the formulas for different brands. The evidence shows that public disclosure of the ingredients lists, even in part, will make it much easier to reverse engineer those formulas. If competitors can obtain these formulas, they can replicate [the tobacco companies'] products, undermining the value of the [tobacco companies'] brands."[35]

I believe the argument is similarly straightforward here. Clearly, the CRAs can establish the fair market value of a credit report, and that deprivation, multiplied by the millions that would mandated to be supplied for free under the proposal yields a substantial sum.[36]

Character of the government action

In *Penn Central,* the Supreme Court offered only one example of how the character of the governmental action is relevant to its taking analysis. The one example, however, is manifest here. Said the Court, if the legislative action results in a physical invasion then a taking "may more readily be found * * * then when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good."[37] Scholarly commentators have noted that physical invasion or confiscation so resembles eminent domain that compensation should almost always be forthcoming. In such instances, the hallmark of property—the very right to exclude—is at issue.[38]

Assessing the character of the governmental action may also require the Court to balance reasonable investment-backed expectations and economic impact against the purposes sought to be advanced by the legislation. Justice O'Connor who is acknowledged to be the lead judicial voice for the Court in this area, has suggested that assessment of the character of the government's action includes "the purposes served, as well as the effects produced, by a particular regulation * * * [A regulation] may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial public purpose, [citations omitted], or perhaps if it has an unduly harsh impact upon the owner's use of the property." *Palazzolo,* 533 U.S. at 633 (2001) (O'Connor, J., concurring).

Following Justice O'Connor's instruction, the proposed FCRA amendments must also be balanced against the interests that Congress seeks to protect—namely, to "prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, [and] make improvements in the use of, and consumer ac-

[34] Id. See also *Connolly* v. *Pension Benefit Guar. Corp.,* 475 U.S. 211, 225–26 (1986) (evaluating economic impact of imposing withdrawal fees on employers who have pension funds within the context of entire ERISA scheme).

[35] *Philip Morris,* 312 F.3d at 41.

[36] If disclosure of the key factors behind credit scores foreseeable results in the reverse engineering of those scores, it is possible that a separate taking related to the underlying property or trade secrets in the algorithms that give rise to credit scores would also be presented. This taking of trade secrets would fall squarely within the reasoning set forth in *Philip Morris.*

[37] 438 U.S. at 124.

[38] *Ruckleshaus,* 467 U.S. 986, 1011 (1984).

cess to, credit information * * *."[39] From the outset of this analysis, these legislative purposes have been conceded to be meritorious, but as the appellate court's decision in *Philip Morris* reveals, this is not sufficient to dispose of the taking issue.

While the state of Massachusetts had in *Philip Morris* a compelling interest in protecting the health and welfare of its citizens, this interest "must bear some reasonable relationship to the ends."[40] The court concluded that "for a state to be able to completely destroy valuable trade secrets, it should be required to show more than a possible beneficial effect."[41] This balance was not found in *Philip Morris*, since the Court accepted as paradigmatic the tobacco companies' assertion that as a result of the Disclosure Act provisions, "they [would] lose the right to exclude others from their trade secrets and, consequently, their trade secrets would lose all value."[42] The Court noted that in *Monsanto*, the "Supreme Court recognized that if an individual disclosed his trade secrets to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished."[43] After discussing *Armstrong* v. *United States*,[44] *Andrus* v. *Allard*,[45] and *Hodel* v. *Irving*,[46] the appellate court held that while the "simple loss of economic value, alone, is probably not enough," the fact that the tobacco companies' rights had not just been devalued, but had been extinguished, caused the Disclosure Act to be unconstitutional.[47] The court concluded by observing that "the tremendous individual loss is simply not justified by such a speculative public gain."[48]

The credit reports in the present matter are not merely extinguished, but transferred, and the disclosure of scores and factor analysis may undermine the value of proprietary algorithms as well. In light of this, as salutary as the objectives of the proposed amendments are, they do not constitutionally excuse placing the disproportionate burden of meeting them upon the CRAs.

It bears repeating that the *Philip Morris* analysis does not second-guess the legislative objective—in that case, public health. Rather, in light of the totality of the reasonableness of the invest-

[39] See Preamble to H.R. 2622.
[40] *Id.*
[41] *Id.*
[42] *Philip Morris,* 312 F.3d at 41.
[43] *Id.*
[44] 364 U.S. 40 (1960). As noted by the *Philip Morris* court, in *Armstrong,* "the Supreme Court considered the implications of government action that, as a secondary effect, destroyed a private party's lien. The Court held that this was a taking a not 'a mere consequential incidence of a valid regulatory measure.'" See *Philip Morris,* 312 F.3d at 42. Similarly, the proposed FCRA regulations, which in part would destroy the proprietary credit score algorithms developed by the CRAs, cannot be said to have as a "consequential incidence" the taking of the CRAs' property.
[45] 444 U.S. 51 (1979) (upholding government regulation banning the sale of items containing eagle parts—even though such artifacts essentially lost all economic value after the regulation as passed). "While this was a significant restriction, the Court noted that this destruction of one strand of the bundle of property rights did not constitute a taking. Rather, the substantial state interest in preserving eagles justified the regulation." *Philip Morris,* 312 F.3d at 43. As proposed, the FCRA amendments operate to deprive CRAs of far more than "one strand" of the bundle of their property rights, and thus the Supreme Court's reasoning in *Andrus* is not dispositive.
[46] 481 U.S. 704 (1987) (character of the government action involved dispositive when the government held that regulation destroying the rights of descent and devise which had previously attached to undivided fractionated interests in land created an unconstitutional taking).
[47] *Philip Morris,* 312 F.3d at 44.
[48] *Id.*

ment expectation, the economic impact, and the character of the government's action (viz., whether there was some related physical taking or not), the court inquired into how well-matched the regulatory means were to the presumed-to-be reasonable legislative end. The lead opinion in *Philip Morris* determined that the Disclosure Act "has not been shown to further the stated goal of promoting public health in such a way as to counterbalance the tremendous private loss involved."

Even under the most deferential analysis to Congress, the same is true here. With due respect to the objectives sought to be achieved and the legislative authority to fashion avenues for doing so, the conclusion that the proposed sections implicate the constitutional protections of property is inescapable.

Respectfully submitted,

DOUGLAS W. KMIEC.

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108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 108–263
1st Session } { Part 2

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

SEPTEMBER 9, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

SUPPLEMENTAL REPORT

[To accompany H.R. 2622]

The Committee on Financial Services, to whom was referred the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, having considered the same, reported favorably thereon with an amendment and recommended that the bill do pass.

CORRECTION—COMMITTEE VOTES

Pursuant to clause 3(a)(2) of rule XIII of the Rules of the House of Representatives for the 108th Congress, the Committee on Financial Services is filing this supplemental report to correct errors in the report to accompany H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003 (H. Rept. 108-263).

The table listing the names of Members voting for and against for record votes numbers 13 and 14 contained errors. On record vote number 13, Mr. Bereuter is incorrectly listed as having voted "aye" when he was recorded as having voted "nay", while record vote number 14 incorrectly identifies Mr. Castle as having voted "aye" when he was not recorded. The vote totals in the descriptions accompanying each of the tables were correct.

The corrected tables, along with the descriptions of the motion and amendment, are reprinted below for reference:

An amendment to the amendment in the nature of a substitute offered by Ms. Lee, no. 1s, prohibiting credit reporting agencies from treating the number of enquiries as a negative when calculating the credit score, was not

agreed to by a record vote of 14 yeas and 48 nays (Record vote no. FC-13).

Record vote no. FC-13

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach				Mr. Kanjorski		X	
Mr. Bereuter		X		Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney			
Mr. Castle				Mr. Gutierrez	X		
Mr. King		X		Ms. Velázquez		X	
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman		X	
Mr. Ney		X		Ms. Hooley (OR)		X	
Mrs. Kelly		X		Ms. Carson (IN)	X		
Mr. Paul				Mr. Sherman			
Mr. Gillmor		X		Mr. Meeks (NY)		X	
Mr. Ryun (KS)		X		Ms. Lee	X		
Mr. LaTourette		X		Mr. Inslee	X		
Mr. Manzullo		X		Mr. Moore		X	
Mr. Jones (NC)		X		Mr. Gonzalez	X		
Mr. Ose		X		Mr. Capuano		X	
Mrs. Biggert		X		Mr. Ford	X		
Mr. Green (WI)				Mr. Hinojosa			
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays				Mr. Crowley		X	
Mr. Shadegg		X		Mr. Clay	X		
Mr. Fossella		X		Mr. Israel		X	
Mr. Gary G. Miller (CA)		X		Mr. Ross		X	
Ms. Hart		X		Mrs. McCarthy (NY)		X	
Mrs. Capito		X		Mr. Baca	X		
Mr. Tiberi		X		Mr. Matheson		X	
Mr. Kennedy (MN)		X		Mr. Lynch		X	
Mr. Feeney		X		Mr. Miller (NC)	X		
Mr. Hensarling		X		Mr. Emanuel	X		
Mr. Garrett (NJ)		X		Mr. Scott (GA)		X	
Mr. Murphy		X		Mr. Davis (AL)		X	
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris		X					
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

A motion by Mr. Oxley to report the bill to the House with a favorable recommendation, with an amendment, was agreed to by a record vote of 61 yeas and 3 nays (Record vote no. FC-14).

Record vote no. FC-14

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley	X			Mr. Frank (MA)	X		
Mr. Leach				Mr. Kanjorski	X		
Mr. Bereuter	X			Ms. Waters		X	
Mr. Baker	X			Mr. Sanders*		X	
Mr. Bachus	X			Mrs. Maloney	X		
Mr. Castle				Mr. Gutierrez	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce	X			Mr. Watt	X		
Mr. Lucas (OK)	X			Mr. Ackerman	X		
Mr. Ney	X			Ms. Hooley (OR)	X		
Mrs. Kelly	X			Ms. Carson (IN)	X		
Mr. Paul				Mr. Sherman	X		

Record vote no. FC-14—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Gillmor	X			Mr. Meeks (NY)	X		
Mr. Ryun (KS)	X			Ms. Lee		X	
Mr. LaTourette	X			Mr. Inslee	X		
Mr. Manzullo	X			Mr. Moore	X		
Mr. Jones (NC)	X			Mr. Gonzalez	X		
Mr. Ose	X			Mr. Capuano	X		
Mrs. Biggert	X			Mr. Ford	X		
Mr. Green (WI)				Mr. Hinojosa			
Mr. Toomey	X			Mr. Lucas (KY)	X		
Mr. Shays				Mr. Crowley	X		
Mr. Shadegg	X			Mr. Clay	X		
Mr. Fossella	X			Mr. Israel	X		
Mr. Gary G. Miller (CA)	X			Mr. Ross	X		
Ms. Hart	X			Mrs. McCarthy (NY)	X		
Mrs. Capito	X			Mr. Baca	X		
Mr. Tiberi	X			Mr. Matheson	X		
Mr. Kennedy (MN)	X			Mr. Lynch	X		
Mr. Feeney	X			Mr. Miller (NC)	X		
Mr. Hensarling	X			Mr. Emanuel	X		
Mr. Garrett (NJ)	X			Mr. Scott (GA)	X		
Mr. Murphy	X			Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)	X						
Mr. Barrett (SC)	X						
Ms. Harris	X						
Mr. Renzi	X						

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

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108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–396

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT, 2003

NOVEMBER 21, 2003.—Ordered to be printed

Mr. OXLEY, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2622]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2622), to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair and Accurate Credit Transactions Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

29–006

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "Board" means the Board of Governors of the Federal Reserve System;

(2) the term "Commission", other than as used in title V, means the Federal Trade Commission;

(3) the terms "consumer", "consumer report", "consumer reporting agency", "creditor", "Federal banking agencies", and "financial institution" have the same meanings as in section 603 of the Fair Credit Reporting Act, as amended by this Act; and

(4) the term "affiliates" means persons that are related by common ownership or affiliated by corporate control.

SEC. 3. EFFECTIVE DATES.

Except as otherwise specifically provided in this Act and the amendments made by this Act—

(1) before the end of the 2-month period beginning on the date of enactment of this Act, the Board and the Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act; and

(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible, while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall any such effective date be later than 10 months after the date of issuance of such regulations in final form.

TITLE I—IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

Subtitle A—Identity Theft Prevention

SEC. 111. AMENDMENT TO DEFINITIONS.

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following:

"(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

"(1) ACTIVE DUTY MILITARY CONSUMER.—The term 'active duty military consumer' means a consumer in military service who—

"(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

"(B) is assigned to service away from the usual duty station of the consumer.

"(2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms 'fraud alert' and 'active duty alert' mean a statement in the file of a consumer that—

"(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and

"(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

"(3) IDENTITY THEFT.—The term 'identity theft' means a fraud committed using the identifying information of another

person, subject to such further definition as the Commission may prescribe, by regulation.

"(4) IDENTITY THEFT REPORT.—The term 'identity theft report' has the meaning given that term by rule of the Commission, and means, at a minimum, a report—

"(A) that alleges an identity theft;

"(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and

"(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

"(5) NEW CREDIT PLAN.—The term 'new credit plan' means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.

"(r) CREDIT AND DEBIT RELATED TERMS—

"(1) CARD ISSUER.—The term 'card issuer' means—

"(A) a credit card issuer, in the case of a credit card; and

"(B) a debit card issuer, in the case of a debit card.

"(2) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act.

"(3) DEBIT CARD.—The term 'debit card' means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

"(4) ACCOUNT AND ELECTRONIC FUND TRANSFER.—The terms 'account' and 'electronic fund transfer' have the same meanings as in section 903 of the Electronic Fund Transfer Act.

"(5) CREDIT AND CREDITOR.—The terms 'credit' and 'creditor' have the same meanings as in section 702 of the Equal Credit Opportunity Act.

"(s) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(t) FINANCIAL INSTITUTION.—The term 'financial institution' means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

"(u) RESELLER.—The term 'reseller' means a consumer reporting agency that—

"(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

"(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

"(v) COMMISSION.—The term 'Commission' means the Federal Trade Commission.

"(w) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—The term 'nationwide specialty consumer reporting agency' means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

"(1) medical records or payments;
"(2) residential or tenant history;
"(3) check writing history;
"(4) employment history; or
"(5) insurance claims.".

SEC. 112. FRAUD ALERTS AND ACTIVE DUTY ALERTS.

(a) FRAUD ALERTS.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 605 the following:

"§ 605A. Identity theft prevention; fraud alerts and active duty alerts

"(a) ONE-CALL FRAUD ALERTS.—

"(1) INITIAL ALERTS.—Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 603(p) that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall—

"(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, for a period of not less than 90 days, beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose; and

"(B) refer the information regarding the fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

"(2) ACCESS TO FREE REPORTS.—In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall—

"(A) disclose to the consumer that the consumer may request a free copy of the file of the consumer pursuant to section 612(d); and

"(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

"(b) EXTENDED ALERTS.—

"(1) IN GENERAL.—Upon the direct request of a consumer, or an individual acting on behalf of or as a personal represent-

ative of a consumer, who submits an identity theft report to a consumer reporting agency described in section 603(p) that maintains a file on the consumer, if the agency has received appropriate proof of the identity of the requester, the agency shall—

"(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, during the 7-year period beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of the identity of the requester for such purpose;

"(B) during the 5-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or such representative requests that such exclusion be rescinded before the end of such period; and

"(C) refer the information regarding the extended fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

"(2) ACCESS TO FREE REPORTS.—In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall—

"(A) disclose to the consumer that the consumer may request 2 free copies of the file of the consumer pursuant to section 612(d) during the 12-month period beginning on the date on which the fraud alert was included in the file; and

"(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

"(c) ACTIVE DUTY ALERTS.—Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, a consumer reporting agency described in section 603(p) that maintains a file on the active duty military consumer and has received appropriate proof of the identity of the requester shall—

"(1) include an active duty alert in the file of that active duty military consumer, and also provide that alert along with any credit score generated in using that file, during a period of not less than 12 months, or such longer period as the Commission shall determine, by regulation, beginning on the date of the request, unless the active duty military consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose;

"(2) during the 2-year period beginning on the date of such request, exclude the active duty military consumer from any list of consumers prepared by the consumer reporting agency and

provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer requests that such exclusion be rescinded before the end of such period; and

"(3) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

"(d) PROCEDURES.—Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with this section, including procedures that inform consumers of the availability of initial, extended, and active duty alerts and procedures that allow consumers and active duty military consumers to request initial, extended, or active duty alerts (as applicable) in a simple and easy manner, including by telephone.

"(e) REFERRALS OF ALERTS.—Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert or active duty alert from another consumer reporting agency pursuant to this section shall, as though the agency received the request from the consumer directly, follow the procedures required under—

"(1) paragraphs (1)(A) and (2) of subsection (a), in the case of a referral under subsection (a)(1)(B);

"(2) paragraphs (1)(A), (1)(B), and (2) of subsection (b), in the case of a referral under subsection (b)(1)(C); and

"(3) paragraphs (1) and (2) of subsection (c), in the case of a referral under subsection (c)(3).

"(f) DUTY OF RESELLER TO RECONVEY ALERT.—A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.

"(g) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.—If a consumer contacts any consumer reporting agency that is not described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this section.

"(h) LIMITATIONS ON USE OF INFORMATION FOR CREDIT EXTENSIONS..—

"(1) REQUIREMENTS FOR INITIAL AND ACTIVE DUTY ALERTS.—

"(A) NOTIFICATION.—Each initial fraud alert and active duty alert under this section shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B).

"(B) LIMITATION ON USERS.—

"(i) IN GENERAL.—No prospective user of a consumer report that includes an initial fraud alert or an active duty alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.

"(ii) VERIFICATION.—If a consumer requesting the alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension described in clause (i) in the name of such consumer, a user of such consumer report shall contact the consumer using that telephone number or take reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft.

"(2) REQUIREMENTS FOR EXTENDED ALERTS.—

"(A) NOTIFICATION.—Each extended alert under this section shall include information that provides all prospective users of a consumer report relating to a consumer with—

"(i) notification that the consumer does not authorize the establishment of any new credit plan or extension of credit described in clause (i), other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B); and

"(ii) a telephone number or other reasonable contact method designated by the consumer.

"(B) LIMITATION ON USERS.—No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended fraud alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method described in subparagraph (A)(ii) to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.".

(b) RULEMAKING.—The Commission shall prescribe regulations to define what constitutes appropriate proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the Fair Credit Reporting Act, as amended by this Act.

SEC. 113. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

"(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

"(2) LIMITATION.—This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

"(3) EFFECTIVE DATE.—This subsection shall become effective—

"(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

"(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.".

SEC. 114. ESTABLISHMENT OF PROCEDURES FOR THE IDENTIFICATION OF POSSIBLE INSTANCES OF IDENTITY THEFT.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) by striking "(e)" at the end; and

(2) by adding at the end the following:

"(e) RED FLAG GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621—

"(A) establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

"(B) prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A), to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers; and

"(C) prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after

such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer, in accordance with reasonable policies and procedures—

"(i) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

"(ii) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

"(iii) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subparagraph (B).

"(2) CRITERIA.—

"(A) IN GENERAL.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

"(B) INACTIVE ACCOUNTS.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall consider including reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or financial institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.

"(3) CONSISTENCY WITH VERIFICATION REQUIREMENTS.—Guidelines established pursuant to paragraph (1) shall not be inconsistent with the policies and procedures required under section 5318(l) of title 31, United States Code.".

SEC. 115. AUTHORITY TO TRUNCATE SOCIAL SECURITY NUMBERS.

Section 609(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)(1)) is amended by striking "except that nothing" and inserting the following: "except that—

"(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

"(B) nothing".

Subtitle B—Protection and Restoration of Identity Theft Victim Credit History

SEC. 151. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.

(a) IN GENERAL.—

(1) SUMMARY.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following:

"(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

"(1) IN GENERAL.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.

"(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Commission pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Commission under paragraph (1), and information on how to contact the Commission to obtain more detailed information.

"(e) INFORMATION AVAILABLE TO VICTIMS.—

"(1) IN GENERAL.—For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

"(A) the victim;

"(B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or

"(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

"(2) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under paragraph (1), un-

less the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

"(A) as proof of positive identification of the victim, at the election of the business entity—

"(i) the presentation of a government-issued identification card;

"(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

"(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

"(B) as proof of a claim of identity theft, at the election of the business entity—

"(i) a copy of a police report evidencing the claim of the victim of identity theft; and

"(ii) a properly completed—

"(I) copy of a standardized affidavit of identity theft developed and made available by the Commission; or

"(II) an affidavit of fact that is acceptable to the business entity for that purpose.

"(3) PROCEDURES.—The request of a victim under paragraph (1) shall—

"(A) be in writing;

"(B) be mailed to an address specified by the business entity, if any; and

"(C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including—

"(i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and

"(ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.

"(4) NO CHARGE TO VICTIM.—Information required to be provided under paragraph (1) shall be so provided without charge.

"(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

"(A) this subsection does not require disclosure of the information;

"(B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

"(C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

"(D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

"(6) LIMITATION ON LIABILITY.—Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

"(7) LIMITATION ON CIVIL LIABILITY.—No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.

"(8) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

"(9) RULE OF CONSTRUCTION.—

"(A) IN GENERAL.—No provision of subtitle A of title V of Public Law 106–102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

"(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

"(10) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

"(A) the business entity has made a reasonably diligent search of its available business records; and

"(B) the records requested under this subsection do not exist or are not reasonably available.

"(11) DEFINITION OF VICTIM.—For purposes of this subsection, the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

"(12) EFFECTIVE DATE.—This subsection shall become effective 180 days after the date of enactment of this subsection.

"(13) EFFECTIVENESS STUDY.—Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.".

(2) RELATION TO STATE LAWS.—Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1), as so redesignated)

is amended by adding at the end the following new subparagraph:

"(G) section 609(e), relating to information available to victims under section 609(e);".

(b) PUBLIC CAMPAIGN TO PREVENT IDENTITY THEFT.—Not later than 2 years after the date of enactment of this Act, the Commission shall establish and implement a media and distribution campaign to teach the public how to prevent identity theft. Such campaign shall include existing Commission education materials, as well as radio, television, and print public service announcements, video cassettes, interactive digital video discs (DVD's) or compact audio discs (CD's), and Internet resources.

SEC. 152. BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 605A, as added by this Act, the following:

"§ 605B. Block of information resulting from identity theft

"(a) BLOCK.—Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of—

"(1) appropriate proof of the identity of the consumer;

"(2) a copy of an identity theft report;

"(3) the identification of such information by the consumer; and

"(4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

"(b) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a)—

"(1) that the information may be a result of identity theft;

"(2) that an identity theft report has been filed;

"(3) that a block has been requested under this section; and

"(4) of the effective dates of the block.

"(c) AUTHORITY TO DECLINE OR RESCIND.—

"(1) IN GENERAL.—A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that—

"(A) the information was blocked in error or a block was requested by the consumer in error;

"(B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or

"(C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

"(2) NOTIFICATION TO CONSUMER.—If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as

consumers are notified of the reinsertion of information under section 611(a)(5)(B).

"(3) SIGNIFICANCE OF BLOCK.—For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

"(d) EXCEPTION FOR RESELLERS.—

"(1) NO RESELLER FILE.—This section shall not apply to a consumer reporting agency, if the consumer reporting agency—

"(A) is a reseller;

"(B) is not, at the time of the request of the consumer under subsection (a), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

"(C) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

"(2) RESELLER WITH FILE.—The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if—

"(A) the consumer, in accordance with the provisions of subsection (a), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

"(B) the consumer reporting agency is a reseller of the identified information.

"(3) NOTICE.—In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

"(e) EXCEPTION FOR VERIFICATION COMPANIES.—The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a), a check services company shall not report to a national consumer reporting agency described in section 603(p), any information identified in the subject identity theft report as resulting from identity theft.

"(f) ACCESS TO BLOCKED INFORMATION BY LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.".

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after the item relating to section 605 the following new items:

"605A. Identity theft prevention; fraud alerts and active duty alerts.
"605B. Block of information resulting from identity theft.".

SEC. 153. COORDINATION OF IDENTITY THEFT COMPLAINT INVESTIGATIONS.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following:

"(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

"(1) IN GENERAL.—Each consumer reporting agency described in section 603(p) shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the agency alleging identity theft, or requesting a fraud alert under section 605A or a block under section 605B.

"(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

"(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.".

SEC. 154. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.

(a) PREVENTION OF REINSERTION OF ERRONEOUS INFORMATION.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by adding at the end the following:

"(6) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED INFORMATION.—

"(A) REASONABLE PROCEDURES.—A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

"(B) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.".

(b) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—Section 615 of the Fair Credit Reporting Act (15

U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

"(f) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—

"(1) IN GENERAL.—No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 605B has resulted from identity theft.

"(2) APPLICABILITY.—The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).

"(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit—

"(A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

"(B) the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or

"(C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.".

SEC. 155. NOTICE BY DEBT COLLECTORS WITH RESPECT TO FRAUDULENT INFORMATION.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

"(g) DEBT COLLECTOR COMMUNICATIONS CONCERNING IDENTITY THEFT.—If a person acting as a debt collector (as that term is defined in title VIII) on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person shall—

"(1) notify the third party that the information may be fraudulent or may be the result of identity theft; and

"(2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.".

SEC. 156. STATUTE OF LIMITATIONS.

Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

"§ 618. Jurisdiction of courts; limitation of actions

"An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

"(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

"(2) 5 years after the date on which the violation that is the basis for such liability occurs.".

SEC. 157. STUDY ON THE USE OF TECHNOLOGY TO COMBAT IDENTITY THEFT.

(a) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of the use of biometrics and other similar technologies to reduce the incidence and costs to society of identity theft by providing convincing evidence of who actually performed a given financial transaction.

(b) CONSULTATION.—The Secretary of the Treasury shall consult with Federal banking agencies, the Commission, and representatives of financial institutions, consumer reporting agencies, Federal, State, and local government agencies that issue official forms or means of identification, State prosecutors, law enforcement agencies, the biometric industry, and the general public in formulating and conducting the study required by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 2004, such sums as may be necessary to carry out the provisions of this section.

(d) REPORT REQUIRED.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Secretary shall submit a report to Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative actions as may be appropriate.

TITLE II—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

SEC. 211. FREE CONSUMER REPORTS.

(a) IN GENERAL.—Section 612 of the Fair Credit Reporting Act (15 U.S.C. 1681j) is amended—

(1) by redesignating subsection (a) as subsection (f), and transferring it to the end of the section;

(2) by inserting before subsection (b) the following:

"(a) FREE ANNUAL DISCLOSURE.—

"(1) NATIONWIDE CONSUMER REPORTING AGENCIES.—

"(A) IN GENERAL.—All consumer reporting agencies described in subsections (p) and (w) of section 603 shall make all disclosures pursuant to section 609 once during any 12-month period upon request of the consumer and without charge to the consumer.

"(B) CENTRALIZED SOURCE.—Subparagraph (A) shall apply with respect to a consumer reporting agency described in section 603(p) only if the request from the consumer is made using the centralized source established for such purpose in accordance with section 211(c) of the Fair and Accurate Credit Transactions Act of 2003.

"(C) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—

"(i) IN GENERAL.—The Commission shall prescribe regulations applicable to each consumer reporting agency described in section 603(w) to require the establishment of a streamlined process for consumers to re-

quest consumer reports under subparagraph (A), which shall include, at a minimum, the establishment by each such agency of a toll-free telephone number for such requests.

"(ii) CONSIDERATIONS.—In prescribing regulations under clause (i), the Commission shall consider—

"(I) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

"(II) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

"(III) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

"(iii) DATE OF ISSUANCE.—The Commission shall issue the regulations required by this subparagraph in final form not later than 6 months after the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.

"(iv) CONSIDERATION OF ABILITY TO COMPLY.—The regulations of the Commission under this subparagraph shall establish an effective date by which each nationwide specialty consumer reporting agency (as defined in section 603(w)) shall be required to comply with subsection (a), which effective date—

"(I) shall be established after consideration of the ability of each nationwide specialty consumer reporting agency to comply with subsection (a); and

"(II) shall be not later than 6 months after the date on which such regulations are issued in final form (or such additional period not to exceed 3 months, as the Commission determines appropriate).

"(2) TIMING.—A consumer reporting agency shall provide a consumer report under paragraph (1) not later than 15 days after the date on which the request is received under paragraph (1).

"(3) REINVESTIGATIONS.—Notwithstanding the time periods specified in section 611(a)(1), a reinvestigation under that section by a consumer reporting agency upon a request of a consumer that is made after receiving a consumer report under this subsection shall be completed not later than 45 days after the date on which the request is received.

"(4) EXCEPTION FOR FIRST 12 MONTHS OF OPERATION.—This subsection shall not apply to a consumer reporting agency that has not been furnishing consumer reports to third parties on a continuing basis during the 12-month period preceding a request under paragraph (1), with respect to consumers residing nationwide.";

(3) by redesignating subsection (d) as subsection (e);

(4) by inserting before subsection (e), as redesignated, the following:

"(d) FREE DISCLOSURES IN CONNECTION WITH FRAUD ALERTS.—Upon the request of a consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 without charge to the consumer, as provided in subsections (a)(2) and (b)(2) of section 605A, as applicable.";

(5) in subsection (e), as redesignated, by striking "subsection (a)" and inserting "subsection (f)"; and

(6) in subsection (f), as redesignated, by striking "Except as provided in subsections (b), (c), and (d), a" and inserting "In the case of a request from a consumer other than a request that is covered by any of subsections (a) through (d), a".

(b) CIRCUMVENTION PROHIBITED.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after section 628, as added by section 216 of this Act, the following new section:

"§ 629. Corporate and technological circumvention prohibited

"The Commission shall prescribe regulations, to become effective not later than 90 days after the date of enactment of this section, to prevent a consumer reporting agency from circumventing or evading treatment as a consumer reporting agency described in section 603(p) for purposes of this title, including—

"(1) by means of a corporate reorganization or restructuring, including a merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

"(2) by maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 603(p), in the manner described in section 603(p).".

(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.—Section 609(c) of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended to read as follows:

"(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.—

"(1) COMMISSION SUMMARY OF RIGHTS REQUIRED.—

"(A) IN GENERAL.—The Commission shall prepare a model summary of the rights of consumers under this title.

"(B) CONTENT OF SUMMARY.—The summary of rights prepared under subparagraph (A) shall include a description of—

"(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

"(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 612;

"(iii) the right of a consumer to dispute information in the file of the consumer under section 611;

"(iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;

"(v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Commission prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and

"(vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 603(w), as provided in the regulations of the Commission prescribed under section 612(a)(1)(C).

"(C) AVAILABILITY OF SUMMARY OF RIGHTS.—The Commission shall—

"(i) actively publicize the availability of the summary of rights prepared under this paragraph;

"(ii) conspicuously post on its Internet website the availability of such summary of rights; and

"(iii) promptly make such summary of rights available to consumers, on request.

"(2) SUMMARY OF RIGHTS REQUIRED TO BE INCLUDED WITH AGENCY DISCLOSURES.—A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section—

"(A) the summary of rights prepared by the Commission under paragraph (1);

"(B) in the case of a consumer reporting agency described in section 603(p), a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;

"(C) a list of all Federal agencies responsible for enforcing any provision of this title, and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

"(D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and

"(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 605 or cannot be verified.".

(d) RULEMAKING REQUIRED.—

(1) IN GENERAL.—The Commission shall prescribe regulations applicable to consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act, to require the establishment of—

(A) a centralized source through which consumers may obtain a consumer report from each such consumer reporting agency, using a single request, and without charge to the consumer, as provided in section 612(a) of the Fair Credit Reporting Act (as amended by this section); and

(B) a standardized form for a consumer to make such a request for a consumer report by mail or through an Internet website.

(2) CONSIDERATIONS.—In prescribing regulations under paragraph (1), the Commission shall consider—

(A) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

(B) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

(C) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

(3) CENTRALIZED SOURCE.—The centralized source for a request for a consumer report from a consumer required by this subsection shall provide for—

(A) a toll-free telephone number for such purpose;

(B) use of an Internet website for such purpose; and

(C) a process for requests by mail for such purpose.

(4) TRANSITION.—The regulations of the Commission under paragraph (1) shall provide for an orderly transition by consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act to the centralized source for consumer report distribution required by section 612(a)(1)(B), as amended by this section, in a manner that—

(A) does not temporarily overwhelm such consumer reporting agencies with requests for disclosures of consumer reports beyond their capacity to deliver; and

(B) does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

(5) TIMING.—Regulations required by this subsection shall—

(A) be issued in final form not later than 6 months after the date of enactment of this Act; and

(B) become effective not later than 6 months after the date on which they are issued in final form.

(6) SCOPE OF REGULATIONS.—

(A) IN GENERAL.—The Commission shall, by rule, determine whether to require a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act, to make free consumer reports available upon consumer request, and if so, whether such consumer reporting agencies should make such free reports available through the centralized source described in paragraph (1)(A).

(B) CONSIDERATIONS.—Before making any determination under subparagraph (A), the Commission shall consider—

(i) the number of requests for consumer reports to, and the number of consumer reports generated by, the

consumer reporting agency, in comparison with consumer reporting agencies described in subsections (p) and (w) of section 603 of the Fair Credit Reporting Act;

(ii) the overall scope of the operations of the consumer reporting agency;

(iii) the needs of consumers for access to consumer reports provided by consumer reporting agencies free of charge;

(iv) the costs of providing access to consumer reports by consumer reporting agencies free of charge; and

(v) the effects on the ongoing competitive viability of such consumer reporting agencies if such free access is required.

SEC. 212. DISCLOSURE OF CREDIT SCORES.

(a) STATEMENT ON AVAILABILITY OF CREDIT SCORES.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding at the end the following new paragraph:

"(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.".

(b) DISCLOSURE OF CREDIT SCORES.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

"(f) DISCLOSURE OF CREDIT SCORES.—

"(1) IN GENERAL.—Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

"(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

"(B) the range of possible credit scores under the model used;

"(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

"(D) the date on which the credit score was created; and

"(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

"(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) CREDIT SCORE.—The term 'credit score'—

"(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a 'risk predictor' or 'risk score'); and

"(ii) does not include—

"(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

"(II) any other elements of the underwriting process or underwriting decision.

"(B) KEY FACTORS.—The term 'key factors' means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.

"(3) TIMEFRAME AND MANNER OF DISCLOSURE.—The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).

"(4) APPLICABILITY TO CERTAIN USES.—This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—

"(A) distribute scores that are used in connection with residential real property loans; or

"(B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.

"(5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON.—

"(A) IN GENERAL.—This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

"(B) EXCEPTION.—This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

"(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.—This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

"(7) COMPLIANCE IN CERTAIN CASES.—In complying with this subsection, a consumer reporting agency shall—

"(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

"(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

"(8) FAIR AND REASONABLE FEE.—A consumer reporting agency may charge a fair and reasonable fee, as determined by the Commission, for providing the information required under this subsection.

"(9) USE OF ENQUIRIES AS A KEY FACTOR.—If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.".

(c) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

"(g) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—

"(1) IN GENERAL.—Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the 'lender') shall provide the following to the consumer as soon as reasonably practicable:

"(A) INFORMATION REQUIRED UNDER SUBSECTION (f).—

"(i) IN GENERAL.—A copy of the information identified in subsection (f) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

"(ii) NOTICE UNDER SUBPARAGRAPH (D).—In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

"(B) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.—

"(i) IN GENERAL.—If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

"(ii) NUMERICAL CREDIT SCORE.—However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

"(iii) ENTERPRISE DEFINED.—For purposes of this subparagraph, the term 'enterprise' has the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

"(C) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.—A person that is subject to the provisions of this subsection and that uses a

credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

"(D) NOTICE TO HOME LOAN APPLICANTS.—A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

"'NOTICE TO THE HOME LOAN APPLICANT

"'In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

"'The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

"'Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

"'If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

"'If you have questions concerning the terms of the loan, contact the lender.'.

"(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.—This subsection shall not require any person to—

"(i) explain the information provided pursuant to subsection (f);

"(ii) disclose any information other than a credit score or key factors, as defined in subsection (f);

"(iii) disclose any credit score or related information obtained by the user after a loan has closed;

"(iv) provide more than 1 disclosure per loan transaction; or

"(v) provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

"(F) NO OBLIGATION FOR CONTENT.—

"(i) IN GENERAL.—The obligation of any person pursuant to this subsection shall be limited solely to

providing a copy of the information that was received from the consumer reporting agency.

"(ii) LIMIT ON LIABILITY.—No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

"(G) PERSON DEFINED AS EXCLUDING ENTERPRISE.—As used in this subsection, the term 'person' does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

"(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.—

"(A) IN GENERAL.—Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

"(B) NO LIABILITY FOR DISCLOSURE UNDER THIS SUBSECTION.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.".

(d) INCLUSION OF KEY FACTOR IN CREDIT SCORE INFORMATION IN CONSUMER REPORT.—Section 605(d) of the Fair Credit Reporting Act (15 U.S.C. 1681c(d)) is amended—

(1) by striking "DISCLOSED.—Any consumer reporting agency" and inserting "DISCLOSED.—

"(1) TITLE 11 INFORMATION.—Any consumer reporting agency"; and

(2) by adding at the end the following new paragraph:

"(2) KEY FACTOR IN CREDIT SCORE INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(f)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—Section 625(b) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)), as so designated by section 214 of this Act, is amended—

(1) by striking "or" at the end of paragraph (2); and

(2) by striking paragraph (3) and inserting the following:

"(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 609, or subsection (f) of section 609 relating to the disclosure of credit scores for credit granting purposes, except that this paragraph—

"(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003) and section 1785.15

through section 1785.15.2 of such Code (as in effect on such date);

"(B) shall not apply with respect to sections 5–3–106(2) and 212–14.3–104.3 of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); and

"(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

"(4) with respect to the frequency of any disclosure under section 612(a), except that this paragraph shall not apply—

"(A) with respect to section 12–14.3–105(1)(d) of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(B) with respect to section 10–1–393(29)(C) of the Georgia Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(D) with respect to sections 14–1209(a)(1) and 14–1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

"(F) with respect to section 56:11–37.10(a)(1) of the New Jersey Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); or

"(G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); or".

SEC. 213. ENHANCED DISCLOSURE OF THE MEANS AVAILABLE TO OPT OUT OF PRESCREENED LISTS.

(a) NOTICE AND RESPONSE FORMAT FOR USERS OF REPORTS.—Section 615(d)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)(2)) is amended to read as follows:

"(2) DISCLOSURE OF ADDRESS AND TELEPHONE NUMBER; FORMAT.—A statement under paragraph (1) shall—

"(A) include the address and toll-free telephone number of the appropriate notification system established under section 604(e); and

"(B) be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with

the Federal banking agencies and the National Credit Union Administration.".

(b) RULEMAKING SCHEDULE.—Regulations required by section 615(d)(2) of the Fair Credit Reporting Act, as amended by this section, shall be issued in final form not later than 1 year after the date of enactment of this Act.

(c) DURATION OF ELECTIONS.—Section 604(e) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)) is amended in each of paragraphs (3)(A) and (4)(B)(i)), by striking "2-year period" each place that term appears and inserting "5-year period".

(d) PUBLIC AWARENESS CAMPAIGN.—The Commission shall actively publicize and conspicuously post on its website any address and the toll-free telephone number established as part of a notification system for opting out of prescreening under section 604(e) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)), and otherwise take measures to increase public awareness regarding the availability of the right to opt out of prescreening.

(e) ANALYSIS OF FURTHER RESTRICTIONS ON OFFERS OF CREDIT OR INSURANCE.—

(1) IN GENERAL.—The Board shall conduct a study of—

(A) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

(B) the potential impact that any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

(2) REPORT.—The Board shall submit a report summarizing the results of the study required under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, together with such recommendations for legislative or administrative action as the Board may determine to be appropriate.

(3) CONTENT OF REPORT.—The report described in paragraph (2) shall address the following issues:

(A) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

(B) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

(C) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

(D) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

(E) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect—

(i) the cost consumers pay to obtain credit or insurance;

(ii) the availability of credit or insurance;

(iii) consumers' knowledge about new or alternative products and services;

(iv) the ability of lenders or insurers to compete with one another; and

(v) the ability to offer credit or insurance products to consumers who have been traditionally underserved.

SEC. 214. AFFILIATE SHARING.

(a) LIMITATION.—The Fair Credit Reporting Act (15 U.S.C. 1601 et seq.) is amended—

(1) by redesignating sections 624 (15 U.S.C. 1681t), 625 (15 U.S.C. 1681u), and 626 (15 U.S.C. 6181v) as sections 625, 626, and 627, respectively; and

(2) by inserting after section 623 the following:

"§ 624. Affiliate sharing

"(a) SPECIAL RULE FOR SOLICITATION FOR PURPOSES OF MARKETING.—

"(1) NOTICE.—Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A), may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless—

"(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and

"(B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.

"(2) CONSUMER CHOICE.—

"(A) IN GENERAL.—The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all solicitations referred to in such paragraph, and may allow the consumer to choose from different options when electing to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

"(B) FORMAT.—Notwithstanding subparagraph (A), the notice required under paragraph (1) shall be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) shall be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

"(3) DURATION.—

"(A) IN GENERAL.—The election of a consumer pursuant to paragraph (1)(B) to prohibit the making of solicitations shall be effective for at least 5 years, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

"(B) NOTICE UPON EXPIRATION OF EFFECTIVE PERIOD.—At such time as the election of a consumer pursuant to paragraph (1)(B) is no longer effective, a person may not use information that the person receives in the manner described in paragraph (1) to make any solicitation for mar-

keting purposes to the consumer, unless the consumer receives a notice and an opportunity, using a simple method, to extend the opt-out for another period of at least 5 years, pursuant to the procedures described in paragraph (1).

"(4) SCOPE.—This section shall not apply to a person—

"(A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

"(B) using information to facilitate communications to an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

"(C) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not be construed as permitting a person to send solicitations on behalf of another person, if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);

"(D) using information in response to a communication initiated by the consumer;

"(E) using information in response to solicitations authorized or requested by the consumer; or

"(F) if compliance with this section by that person would prevent compliance by that person with any provision of State insurance laws pertaining to unfair discrimination in any State in which the person is lawfully doing business.

"(5) NO RETROACTIVITY.—This subsection shall not prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with regulations implementing this subsection.

"(b) NOTICE FOR OTHER PURPOSES PERMISSIBLE.—A notice or other disclosure under this section may be coordinated and consolidated with any other notice required to be issued under any other provision of law by a person that is subject to this section, and a notice or other disclosure that is equivalent to the notice required by subsection (a), and that is provided by a person described in subsection (a) to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of subsection (a).

"(c) USER REQUIREMENTS.—Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of this section, constitute requirements with respect to the exchange of information among persons affiliated by common ownership or common corporate control, within the meaning of section 625(b)(2).

"(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) PRE-EXISTING BUSINESS RELATIONSHIP.—The term 'pre-existing business relationship' means a relationship between a person, or a person's licensed agent, and a consumer, based on—

"(A) a financial contract between a person and a consumer which is in force;

"(B) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;

"(C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or

"(D) any other pre-existing customer relationship defined in the regulations implementing this section.

"(2) SOLICITATION.—The term 'solicitation' means the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a), and is intended to encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.".

(b) RULEMAKING REQUIRED.—

(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and the Securities and Exchange Commission, and in coordination as described in paragraph (2), shall prescribe regulations to implement section 624 of the Fair Credit Reporting Act, as added by this section.

(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

(3) CONSIDERATIONS.—In promulgating regulations under this subsection, each agency referred to in paragraph (1) shall—

(A) ensure that affiliate sharing notification methods provide a simple means for consumers to make determinations and choices under section 624 of the Fair Credit Reporting Act, as added by this section;

(B) consider the affiliate sharing notification practices employed on the date of enactment of this Act by persons that will be subject to that section 624; and

(C) ensure that notices and disclosures may be coordinated and consolidated, as provided in subsection (b) of that section 624.

(4) TIMING.—Regulations required by this subsection shall—

(A) be issued in final form not later than 9 months after the date of enactment of this Act; and

(B) become effective not later than 6 months after the date on which they are issued in final form.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 603(d)(2)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681(d)(2)(A)) is amended by inserting "subject to section 624," after "(A)".

(2) RELATION TO STATE LAWS.—Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1)), as so designated by subsection (a) of this section, is amended—

(A) by striking "or" after the semicolon at the end of subparagraph (E); and

(B) by adding at the end the following new subparagraph:

"(H) section 624, relating to the exchange and use of information to make a solicitation for marketing purposes; or".

(3) CROSS REFERENCE CORRECTION.—Section 627(d) of the Fair Credit Reporting Act (15 U.S.C. 1681v(d)), as so designated by subsection (a) of this section, is amended by striking "section 625" and inserting "section 626".

(4) TABLE OF SECTIONS.—The table of sections for title VI of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by striking the items relating to sections 624 through 626 and inserting the following:

"624. Affiliate sharing.
"625. Relation to State laws.
"626. Disclosures to FBI for counterintelligence purposes.
"627. Disclosures to governmental agencies for counterintelligence purposes."

(e) STUDIES OF INFORMATION SHARING PRACTICES.—

(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates.

(2) MATTERS FOR STUDY.—In conducting the studies required by paragraph (1), the agencies described in paragraph (1) shall—

(A) identify—

(i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;

(ii) the types of information shared by such entities with their affiliates;

(iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and

(iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes—

(I) that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or

(II) of general publication of such information; and

(B) specifically examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

(3) REPORTS.—

(A) INITIAL REPORT.—Not later than 3 years after the date of enactment of this Act, the Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly submit a report to the Congress on the results of the initial study conducted in accordance with this subsection, together with any recommendations for legislative or regulatory action.

(B) FOLLOWUP REPORTS.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall, not less frequently than once every 3 years following the date of submission of the initial report under subparagraph (A), jointly submit a report to the Congress that, together with any recommendations for legislative or regulatory action—

(i) documents any changes in the areas of study referred to in paragraph (2)(A) occurring since the date of submission of the previous report;

(ii) identifies any changes in the practices of financial institutions and other creditors and users of consumer reports in sharing consumer information with their affiliates for the purpose of making underwriting decisions or credit evaluations of consumers occurring since the date of submission of the previous report; and

(iii) examines the effects that changes described in clause (ii) have had, if any, on the degree to which such affiliate sharing practices reduce the need for financial institutions, creditors, and other users of consumer reports to rely on consumer reports for such decisions.

SEC. 215. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.

(a) STUDY REQUIRED.—The Commission and the Board, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of—

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

(2) the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal

Credit Opportunity Act and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses experienced by businesses;

(3) the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit and insurance to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of protected classes under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact; and

(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

(b) PUBLIC PARTICIPATION.—The Commission shall seek public input about the prescribed methodology and research design of the study described in subsection (a), including from relevant Federal regulators, State insurance regulators, community, civil rights, consumer, and housing groups.

(c) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 24-month period beginning on the date of enactment of this Act, the Commission shall submit a detailed report on the study conducted pursuant to subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CONTENTS OF REPORT.—The report submitted under paragraph (1) shall include the findings and conclusions of the Commission, recommendations to address specific areas of concerns addressed in the study, and recommendations for legislative or administrative action that the Commission may determine to be necessary to ensure that credit and credit-based insurance scores are used appropriately and fairly to avoid negative effects.

SEC. 216. DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS.

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended by this Act, is amended by adding at the end the following:

"§ 628. Disposal of records

"(a) REGULATIONS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Federal banking agencies, the National Credit Union Administration, and the Commission with respect to the entities that are subject to their respective enforcement authority under section 621, and the Securities and Exchange Commission, and in coordination as described in paragraph (2), shall issue final regulations requiring any person that maintains or otherwise possesses consumer information, or

any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

"(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall—

"(A) consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such agency are consistent and comparable with the regulations by each such other agency; and

"(B) ensure that such regulations are consistent with the requirements and regulations issued pursuant to Public Law 106–102 and other provisions of Federal law.

"(3) EXEMPTION AUTHORITY.—In issuing regulations under this section, the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission may exempt any person or class of persons from application of those regulations, as such agency deems appropriate to carry out the purpose of this section.

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

"(1) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

"(2) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.".

(b) CLERICAL AMENDMENT.—The table of sections for title VI of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by inserting after the item relating to section 627, as added by section 214 of this Act, the following:

"628. Disposal of records.
"629. Corporate and technological circumvention prohibited.".

SEC. 217. REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY.

(a) IN GENERAL.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) as amended by this Act, is amended by inserting after paragraph (6), the following new paragraph:

"(7) NEGATIVE INFORMATION.—

"(A) NOTICE TO CONSUMER REQUIRED.—

"(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

"(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

"(B) TIME OF NOTICE.—

"(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

"(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

"(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

"(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

"(ii) must be clear and conspicuous.

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF BOARD TO PREPARE.—The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.

"(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

"(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

"(G) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) NEGATIVE INFORMATION.—The term 'negative information' means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

"(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms 'customer' and 'financial institution' have the same meanings as in section 509 Public Law 106–102.".

(b) MODEL DISCLOSURE FORM.—Before the end of the 6-month period beginning on the date of enactment of this Act, the Board shall adopt the model disclosure required under the amendment made by subsection (a) after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

TITLE III—ENHANCING THE ACCURACY OF CONSUMER REPORT INFORMATION

SEC. 311. RISK-BASED PRICING NOTICE.

(a) DUTIES OF USERS.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

"(h) DUTIES OF USERS IN CERTAIN CREDIT TRANSACTIONS.—

"(1) IN GENERAL.—Subject to rules prescribed as provided in paragraph (6), if any person uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person shall provide an oral, written, or electronic notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection.

"(2) TIMING.—The notice required under paragraph (1) may be provided at the time of an application for, or a grant, extension, or other provision of, credit or the time of communication of an approval of an application for, or grant, extension, or other provision of, credit, except as provided in the regulations prescribed under paragraph (6).

"(3) EXCEPTIONS.—No notice shall be required from a person under this subsection if—

"(A) the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report; or

"(B) the person has provided or will provide a notice to the consumer under subsection (a) in connection with the transaction.

"(4) OTHER NOTICE NOT SUFFICIENT.—A person that is required to provide a notice under subsection (a) cannot meet that requirement by providing a notice under this subsection.

"(5) CONTENT AND DELIVERY OF NOTICE.—A notice under this subsection shall, at a minimum—

"(A) include a statement informing the consumer that the terms offered to the consumer are set based on information from a consumer report;

"(B) identify the consumer reporting agency furnishing the report;

"(C) include a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge; and

"(D) include the contact information specified by that consumer reporting agency for obtaining such consumer reports (including a toll-free telephone number established by the agency in the case of a consumer reporting agency described in section 603(p)).

"(6) RULEMAKING.—

"(A) RULES REQUIRED.—The Commission and the Board shall jointly prescribe rules.

"(B) CONTENT.—Rules required by subparagraph (A) shall address, but are not limited to—

"(i) the form, content, time, and manner of delivery of any notice under this subsection;

"(ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable;

"(iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers;

"(iv) a model notice that may be used to comply with this subsection; and

"(v) the timing of the notice required under paragraph (1), including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report.

"(7) COMPLIANCE.—A person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the person maintained reasonable policies and procedures to comply with this section.

"(8) ENFORCEMENT.—

"(A) NO CIVIL ACTIONS.—Sections 616 and 617 shall not apply to any failure by any person to comply with this section.

"(B) ADMINISTRATIVE ENFORCEMENT.—This section shall be enforced exclusively under section 621 by the Federal agencies and officials identified in that section.".

(b) RELATION TO STATE LAWS.—Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1)), as so designated by section 214 of this Act, is amended by adding at the end the following:

"(I) section 615(h), relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;".

SEC. 312. PROCEDURES TO ENHANCE THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES.

(a) ACCURACY GUIDELINES AND REGULATIONS.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 15 U.S.C. 1681s–2) is amended by adding at the end the following:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall, with respect to the entities that are subject to their respective

enforcement authority under section 621, and in coordination as described in paragraph (2)—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

"(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

"(3) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.".

(b) DUTY OF FURNISHERS TO PROVIDE ACCURATE INFORMATION.—Section 623(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(1)) is amended—

(1) in subparagraph (A), by striking "knows or consciously avoids knowing that the information is inaccurate" and inserting "knows or has reasonable cause to believe that the information is inaccurate"; and

(2) by adding at the end the following:

"(D) DEFINITION.—For purposes of subparagraph (A), the term 'reasonable cause to believe that the information is inaccurate' means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.".

(c) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)), as amended by this Act, is amended by adding at the end the following:

"(8) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

"(A) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

"(B) CONSIDERATIONS.—In prescribing regulations under subparagraph (A), the agencies shall weigh—

"(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

"(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

"(iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and

"(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3), including entities that would be a credit repair organization, but for section 403(3)(B)(i), are able to circumvent the prohibition in subparagraph (G).

"(C) APPLICABILITY.—Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

"(D) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

"(i) identifies the specific information that is being disputed;

"(ii) explains the basis for the dispute; and

"(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

"(E) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall—

"(i) conduct an investigation with respect to the disputed information;

"(ii) review all relevant information provided by the consumer with the notice;

"(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

"(iv) if the investigation finds that the information reported was inaccurate, promptly notify each con-

sumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

"(F) FRIVOLOUS OR IRRELEVANT DISPUTE.—

"(i) IN GENERAL.—This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

"(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

"(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

"(ii) NOTICE OF DETERMINATION.—Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

"(iii) CONTENTS OF NOTICE.—A notice under clause (ii) shall include—

"(I) the reasons for the determination under clause (i); and

"(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

"(G) EXCLUSION OF CREDIT REPAIR ORGANIZATIONS.—This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i).".

(d) FURNISHER LIABILITY EXCEPTION.—Section 623(a)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(5)) is amended—

(1) by striking "A person" and inserting the following:

"(A) IN GENERAL.—A person";

(2) by inserting "date of delinquency on the account, which shall be the" before "month";

(3) by inserting "on the account" before "that immediately preceded"; and

(4) by adding at the end the following:

"(B) RULE OF CONSTRUCTION.—For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes informa-

tion on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

"(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

"(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

"(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.".

(e) LIABILITY AND ENFORCEMENT.—

(1) CIVIL LIABILITY.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended by striking subsections (c) and (d) and inserting the following:

"(c) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

"(1) subsection (a) of this section, including any regulations issued thereunder;

"(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; or

"(3) subsection (e) of section 615.

"(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.".

(2) STATE ACTIONS.—Section 621(c) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)) is amended—

(A) in paragraph (1)(B)(ii), by striking "of section 623(a)" and inserting "described in any of paragraphs (1) through (3) of section 623(c)"; and

(B) in paragraph (5)—

(i) in each of subparagraphs (A) and (B), by striking "of section 623(a)(1)" each place that term appears and inserting "described in any of paragraphs (1) through (3) of section 623(c)"; and

(ii) by amending the paragraph heading to read as follows:

"(5) LIMITATIONS ON STATE ACTIONS FOR CERTAIN VIOLATIONS.—".

(f) RULE OF CONSTRUCTION.—Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.

SEC. 313. FTC AND CONSUMER REPORTING AGENCY ACTION CONCERNING COMPLAINTS.

(a) IN GENERAL.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following:

"(e) TREATMENT OF COMPLAINTS AND REPORT TO CONGRESS.—

"(1) IN GENERAL.—The Commission shall—

"(A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 603(p) contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or otherwise utilized the procedures provided by subsection (a); and

"(B) transmit each such complaint to each consumer reporting agency involved.

"(2) EXCLUSION.—Complaints received or obtained by the Commission pursuant to its investigative authority under the Federal Trade Commission Act shall not be subject to paragraph (1).

"(3) AGENCY RESPONSIBILITIES.—Each consumer reporting agency described in section 603(p) that receives a complaint transmitted by the Commission pursuant to paragraph (1) shall—

"(A) review each such complaint to determine whether all legal obligations imposed on the consumer reporting agency under this title (including any obligation imposed by an applicable court or administrative order) have been met with respect to the subject matter of the complaint;

"(B) provide reports on a regular basis to the Commission regarding the determinations of and actions taken by the consumer reporting agency, if any, in connection with its review of such complaints; and

"(C) maintain, for a reasonable time period, records regarding the disposition of each such complaint that is sufficient to demonstrate compliance with this subsection.

"(4) RULEMAKING AUTHORITY.—The Commission may prescribe regulations, as appropriate to implement this subsection.

"(5) ANNUAL REPORT.—The Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report regarding information gathered by the Commission under this subsection.".

(b) PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION.—

(1) STUDY REQUIRED.—The Board and the Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with

the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

(2) REPORT REQUIRED.—Before the end of the 12-month period beginning on the date of enactment of this Act, the Board and the Commission shall jointly submit a progress report to the Congress on the results of the study required under paragraph (1).

(3) CONSIDERATIONS.—In preparing the report required under paragraph (2), the Board and the Commission shall consider information relating to complaints compiled by the Commission under section 611(e) of the Fair Credit Reporting Act, as added by this section.

(4) RECOMMENDATIONS.—The report required under paragraph (2) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or administrative action, to ensure that—

(A) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

(B) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act; and

(C) consumer reporting agencies establish and maintain appropriate internal controls and management review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

SEC. 314. IMPROVED DISCLOSURE OF THE RESULTS OF REINVESTIGATION.

(a) IN GENERAL.—Section 611(a)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(5)(A)) is amended by striking "shall" and all that follows through the end of the subparagraph, and inserting the following: "shall—

"(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

"(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.".

(b) FURNISHER REQUIREMENTS RELATING TO INACCURATE, INCOMPLETE, OR UNVERIFIABLE INFORMATION.—Section 623(b)(1) of

the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end; and

(2) in subparagraph (D), by striking the period at the end and inserting the following: "; and

"(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

"(i) modify that item of information;

"(ii) delete that item of information; or

"(iii) permanently block the reporting of that item of information.".

SEC. 315. RECONCILING ADDRESSES.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c), as amended by this Act, is amended by adding at the end the following:

"(h) NOTICE OF DISCREPANCY IN ADDRESS.—

"(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

"(2) REGULATIONS.—

"(A) REGULATIONS REQUIRED.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

"(B) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

"(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

"(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.".

SEC. 316. NOTICE OF DISPUTE THROUGH RESELLER.

(a) REQUIREMENT FOR REINVESTIGATION OF DISPUTED INFORMATION UPON NOTICE FROM A RESELLER.—Section 611(a) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended—

(1) in paragraph (1)(A)—

(A) by striking "If the completeness" and inserting "Subject to subsection (f), if the completeness";

(B) by inserting ", or indirectly through a reseller," after "notifies the agency directly"; and

(C) by inserting "or reseller" before the period at the end;

(2) in paragraph (2)(A)—

(A) by inserting "or a reseller" after "dispute from any consumer"; and

(B) by inserting "or reseller" before the period at the end; and

(3) in paragraph (2)(B), by inserting "or the reseller" after "from the consumer".

(b) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), as amended by this Act, is amended by adding at the end the following:

"(f) REINVESTIGATION REQUIREMENT APPLICABLE TO RESELLERS.—

"(1) EXEMPTION FROM GENERAL REINVESTIGATION REQUIREMENT.—Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

"(2) ACTION REQUIRED UPON RECEIVING NOTICE OF A DISPUTE.—If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice, and free of charge—

"(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

"(B) if—

"(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, not later than 20 days after receiving the notice, correct the information in the consumer report or delete it; or

"(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.

"(3) RESPONSIBILITY OF CONSUMER REPORTING AGENCY TO NOTIFY CONSUMER THROUGH RESELLER.—Upon the completion of a reinvestigation under this section of a dispute concerning the completeness or accuracy of any information in the file of

a consumer by a consumer reporting agency that received notice of the dispute from a reseller under paragraph (2)—

"(A) the notice by the consumer reporting agency under paragraph (6), (7), or (8) of subsection (a) shall be provided to the reseller in lieu of the consumer; and

"(B) the reseller shall immediately reconvey such notice to the consumer, including any notice of a deletion by telephone in the manner required under paragraph (8)(A).

"(4) RESELLER REINVESTIGATIONS.—No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 611(a)(2)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(2)(B)) is amended in the subparagraph heading, by striking "FROM CONSUMER".

SEC. 317. REASONABLE REINVESTIGATION REQUIRED.

Section 611(a)(1)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)(A)) is amended by striking "shall reinvestigate free of charge" and inserting "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate".

SEC. 318. FTC STUDY OF ISSUES RELATING TO THE FAIR CREDIT REPORTING ACT.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study on ways to improve the operation of the Fair Credit Reporting Act.

(2) AREAS FOR STUDY.—In conducting the study under paragraph (1), the Commission shall review—

(A) the efficacy of increasing the number of points of identifying information that a credit reporting agency is required to match to ensure that a consumer is the correct individual to whom a consumer report relates before releasing a consumer report to a user, including—

(i) the extent to which requiring additional points of such identifying information to match would—

(I) enhance the accuracy of credit reports; and

(II) combat the provision of incorrect consumer reports to users;

(ii) the extent to which requiring an exact match of the first and last name, social security number, and address and ZIP Code of the consumer would enhance the likelihood of increasing credit report accuracy; and

(iii) the effects of allowing consumer reporting agencies to use partial matches of social security numbers and name recognition software on the accuracy of credit reports;

(B) requiring notification to consumers when negative information has been added to their credit reports, including—

(i) the potential impact of such notification on the ability of consumers to identify errors on their credit reports; and

(ii) the potential impact of such notification on the ability of consumers to remove fraudulent information from their credit reports;

(C) the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, including—

(i) the extent to which providing such reports to consumers would increase the ability of consumers to identify errors in their credit reports; and

(ii) the extent to which providing such reports to consumers would increase the ability of consumers to remove fraudulent information from their credit reports;

(D) any common financial transactions that are not generally reported to the consumer reporting agencies, but would provide useful information in determining the credit worthiness of consumers; and

(E) any actions that might be taken within a voluntary reporting system to encourage the reporting of the types of transactions described in subparagraph (D).

(3) COSTS AND BENEFITS.—With respect to each area of study described in paragraph (2), the Commission shall consider the extent to which such requirements would benefit consumers, balanced against the cost of implementing such provisions.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the chairman of the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study under this section, together with such recommendations for legislative or administrative actions as may be appropriate.

SEC. 319. FTC STUDY OF THE ACCURACY OF CONSUMER REPORTS.

(a) STUDY REQUIRED.—Until the final report is submitted under subsection (b)(2), the Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

(b) BIENNIAL REPORTS REQUIRED.—

(1) INTERIM REPORTS.—The Commission shall submit an interim report to the Congress on the study conducted under subsection (a) at the end of the 1-year period beginning on the date of enactment of this Act and biennially thereafter for 8 years.

(2) FINAL REPORT.—The Commission shall submit a final report to the Congress on the study conducted under subsection (a) at the end of the 2-year period beginning on the date on which the final interim report is submitted to the Congress under paragraph (1).

(3) CONTENTS.—Each report submitted under this subsection shall contain a detailed summary of the findings and conclusions of the Commission with respect to the study re-

quired under subsection (a) and such recommendations for legislative and administrative action as the Commission may determine to be appropriate.

TITLE IV—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

SEC. 411. PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM.

(a) IN GENERAL.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended to read as follows:

"(g) PROTECTION OF MEDICAL INFORMATION.—

"(1) LIMITATION ON CONSUMER REPORTING AGENCIES.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless—

"(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

"(B) if furnished for employment purposes or in connection with a credit transaction—

"(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

"(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

"(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devises, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).

"(2) LIMITATION ON CREDITORS.—Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

"(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.—Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

"(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

"(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106–102; or

"(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

"(4) LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.—Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

"(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

"(A) REGULATIONS REQUIRED.—Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

"(B) FINAL REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall issue the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.

"(6) COORDINATION WITH OTHER LAWS.—No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.".

(b) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)) is amended—

(1) in paragraph (2), by striking "The term" and inserting "Except as provided in paragraph (3), the term"; and

(2) by adding at the end the following new paragraph:

"(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information dis-

closed to any person related by common ownership or affiliated by corporate control, if the information is—

"(A) medical information;

"(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

"(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(c) DEFINITION.—Section 603(i) of the Fair Credit Reporting Act (15 U.S.C. 1681a(i)) is amended to read as follows:

"(i) MEDICAL INFORMATION.—The term 'medical information'—

"(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

"(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

"(B) the provision of health care to an individual; or

"(C) the payment for the provision of health care to an individual.

"(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.".

(d) EFFECTIVE DATES.—This section shall take effect at the end of the 180-day period beginning on the date of enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as amended by subsection (a) of this section) shall take effect on the later of—

(1) the end of the 90-day period beginning on the date on which the regulations required under paragraph (5)(B) of such section 604(g) are issued in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

SEC. 412. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CONSUMER REPORTS.

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)), as amended by this Act, is amended by adding at the end the following:

"(9) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.".

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding at the end the following:

"(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

"(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

"(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.".

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking "The provisions of subsection (a)" and inserting "The provisions of paragraphs (1) through (5) of subsection (a)".

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s), as amended by this Act, is amended by adding at the end the following:

"(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Commission determines that a person described in paragraph (9) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures, as necessary to ensure that such person complies with such paragraph.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)), as amended by section 411 of this Act, is amended—

(1) in paragraph (1), by inserting "(other than medical contact information treated in the manner required under section 605(a)(6))" after "a consumer report that contains medical information"; and

(2) in paragraph (2), by inserting "(other than medical information treated in the manner required under section 605(a)(6))" after "a creditor shall not obtain or use medical information".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of enactment of this Act.

TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

SEC. 511. SHORT TITLE.

This title may be cited as the "Financial Literacy and Education Improvement Act".

SEC. 512. DEFINITIONS.

As used in this title—

(1) the term "Chairperson" means the Chairperson of the Financial Literacy and Education Commission; and

(2) the term "Commission" means the Financial Literacy and Education Commission established under section 513.

SEC. 513. ESTABLISHMENT OF FINANCIAL LITERACY AND EDUCATION COMMISSION.

(a) IN GENERAL.—There is established a commission to be known as the "Financial Literacy and Education Commission".

(b) PURPOSE.—The Commission shall serve to improve the financial literacy and education of persons in the United States through development of a national strategy to promote financial literacy and education.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of—

(A) the Secretary of the Treasury;

(B) the respective head of each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management; and

(C) at the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Federal Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

(2) ALTERNATES.—Each member of the Commission may designate an alternate if the member is unable to attend a meeting of the Commission. Such alternate shall be an individual who exercises significant decisionmaking authority.

(d) CHAIRPERSON.—The Secretary of the Treasury shall serve as the Chairperson.

(e) MEETINGS.—The Commission shall hold, at the call of the Chairperson, at least 1 meeting every 4 months. All such meetings shall be open to the public. The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this title.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) INITIAL MEETING.—The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

SEC. 514. DUTIES OF THE COMMISSION.

(a) DUTIES.—

(1) IN GENERAL.—The Commission, through the authority of the members referred to in section 513(c), shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy and education programs, grants, and materials of the Federal Government, including curricula for all Americans.

(2) AREAS OF EMPHASIS.—To improve financial literacy and education, the Commission shall emphasize, among other ele-

ments, basic personal income and household money management and planning skills, including how to—

(A) create household budgets, initiate savings plans, and make strategic investment decisions for education, retirement, home ownership, wealth building, or other savings goals;

(B) manage spending, credit, and debt, including credit card debt, effectively;

(C) increase awareness of the availability and significance of credit reports and credit scores in obtaining credit, the importance of their accuracy (and how to correct inaccuracies), their effect on credit terms, and the effect common financial decisions may have on credit scores;

(D) ascertain fair and favorable credit terms;

(E) avoid abusive, predatory, or deceptive credit offers and financial products;

(F) understand, evaluate, and compare financial products, services, and opportunities;

(G) understand resources that ought to be easily accessible and affordable, and that inform and educate investors as to their rights and avenues of recourse when an investor believes his or her rights have been violated by unprofessional conduct of market intermediaries;

(H) increase awareness of the particular financial needs and financial transactions (such as the sending of remittances) of consumers who are targeted in multilingual financial literacy and education programs and improve the development and distribution of multilingual financial literacy and education materials;

(I) promote bringing individuals who lack basic banking services into the financial mainstream by opening and maintaining an account with a financial institution; and

(J) improve financial literacy and education through all other related skills, including personal finance and related economic education, with the primary goal of programs not simply to improve knowledge, but rather to improve consumers' financial choices and outcomes.

(b) WEBSITE.—

(1) IN GENERAL.—The Commission shall establish and maintain a website, such as the domain name "FinancialLiteracy.gov", or a similar domain name.

(2) PURPOSES.—The website established under paragraph (1) shall—

(A) serve as a clearinghouse of information about Federal financial literacy and education programs;

(B) provide a coordinated entry point for accessing information about all Federal publications, grants, and materials promoting enhanced financial literacy and education;

(C) offer information on all Federal grants to promote financial literacy and education, and on how to target, apply for, and receive a grant that is most appropriate under the circumstances;

(D) as the Commission considers appropriate, feature website links to efforts that have no commercial content

and that feature information about financial literacy and education programs, materials, or campaigns; and

(E) offer such other information as the Commission finds appropriate to share with the public in the fulfillment of its purpose.

(c) TOLL-FREE HOTLINE.—The Commission shall establish a toll-free telephone number that shall be made available to members of the public seeking information about issues pertaining to financial literacy and education.

(d) DEVELOPMENT AND DISSEMINATION OF MATERIALS.—The Commission shall—

(1) develop materials to promote financial literacy and education; and

(2) disseminate such materials to the general public.

(e) COORDINATION OF EFFORTS.—The Commission shall take such steps as are necessary to coordinate and promote financial literacy and education efforts at the State and local level, including promoting partnerships among Federal, State, and local governments, nonprofit organizations, and private enterprises.

(f) NATIONAL STRATEGY.—

(1) IN GENERAL.—The Commission shall—

(A) not later than 18 months after the date of enactment of this Act, develop a national strategy to promote basic financial literacy and education among all American consumers; and

(B) coordinate Federal efforts to implement the strategy developed under subparagraph (A).

(2) STRATEGY.—The strategy to promote basic financial literacy and education required to be developed under paragraph (1) shall provide for—

(A) participation by State and local governments and private, nonprofit, and public institutions in the creation and implementation of such strategy;

(B) the development of methods—

(i) to increase the general financial education level of current and future consumers of financial services and products; and

(ii) to enhance the general understanding of financial services and products;

(C) review of Federal activities designed to promote financial literacy and education, and development of a plan to improve coordination of such activities; and

(D) the identification of areas of overlap and duplication among Federal financial literacy and education activities and proposed means of eliminating any such overlap and duplication.

(3) NATIONAL STRATEGY REVIEW.—The Commission shall, not less than annually, review the national strategy developed under this subsection and make such changes and recommendations as it deems necessary.

(g) CONSULTATION.—The Commission shall actively consult with a variety of representatives from private and nonprofit organizations and State and local agencies, as determined appropriate by the Commission.

(h) REPORTS.—

(1) IN GENERAL.—Not later than 18 months after the date of the first meeting of the Commission, and annually thereafter, the Commission shall issue a report, the Strategy for Assuring Financial Empowerment ("SAFE Strategy"), to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the progress of the Commission in carrying out this title.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) the national strategy for financial literacy and education, as described under subsection (f);

(B) information concerning the implementation of the duties of the Commission under subsections (a) through (g);

(C) an assessment of the success of the Commission in implementing the national strategy developed under subsection (f);

(D) an assessment of the availability, utilization, and impact of Federal financial literacy and education materials;

(E) information concerning the content and public use of—

(i) the website established under subsection (b); and

(ii) the toll-free telephone number established under subsection (c);

(F) a brief survey of the financial literacy and education materials developed under subsection (d), and data regarding the dissemination and impact of such materials, as measured by improved financial decisionmaking;

(G) a brief summary of any hearings conducted by the Commission, including a list of witnesses who testified at such hearings;

(H) information about the activities of the Commission planned for the next fiscal year;

(I) a summary of all Federal financial literacy and education activities targeted to communities that have historically lacked access to financial literacy materials and education, and have been underserved by the mainstream financial systems; and

(J) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(3) INITIAL REPORT.—The initial report under paragraph (1) shall include information regarding all Federal programs, materials, and grants which seek to improve financial literacy, and assess the effectiveness of such programs.

(i) TESTIMONY.—The Commission shall annually provide testimony by the Chairperson to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 515. POWERS OF THE COMMISSION.

(a) HEARINGS.—

(1) IN GENERAL.—The Commission shall hold such hearings, sit and act at such times and places, take such testimony,

and receive such evidence as the Commission deems appropriate to carry out this title.

(2) PARTICIPATION.—In hearings held under this subsection, the Commission shall consider inviting witnesses from, among other groups—

(A) other Federal Government officials;

(B) State and local government officials;

(C) consumer and community groups;

(D) nonprofit financial literacy and education groups (such as those involved in personal finance and economic education); and

(E) the financial services industry.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this title. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

(c) PERIODIC STUDIES.—The Commission may conduct periodic studies regarding the state of financial literacy and education in the United States, as the Commission determines appropriate.

(d) MULTILINGUAL.—The Commission may take any action to develop and promote financial literacy and education materials in languages other than English, as the Commission deems appropriate, including for the website established under section 514(b), at the toll-free number established under section 514(c), and in the materials developed and disseminated under section 514(d).

SEC. 516. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) ASSISTANCE.—

(1) IN GENERAL.—The Director of the Office of Financial Education of the Department of the Treasury shall provide assistance to the Commission, upon request of the Commission, without reimbursement.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

SEC. 517. STUDIES BY THE COMPTROLLER GENERAL.

(a) EFFECTIVENESS STUDY.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of the Commission in promoting financial literacy and education.

(b) STUDY AND REPORT ON THE NEED AND MEANS FOR IMPROVING FINANCIAL LITERACY AMONG CONSUMERS.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy among consumers.

(2) FACTORS TO BE INCLUDED.—The study required under paragraph (1) shall include the following issues:

(A) The number of consumers who view their credit reports.

(B) Under what conditions and for what purposes do consumers primarily obtain a copy of their consumer report (such as for the purpose of ensuring the completeness and accuracy of the contents, to protect against fraud, in response to an adverse action based on the report, or in response to suspected identity theft) and approximately what percentage of the total number of consumers who obtain a copy of their consumer report do so for each such primary purpose.

(C) The extent of consumers' knowledge of the data collection process.

(D) The extent to which consumers know how to get a copy of a consumer report.

(E) The extent to which consumers know and understand the factors that positively or negatively impact credit scores.

(3) REPORT REQUIRED.—Before the end of the 12-month period beginning on the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under this subsection, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate, including recommendations on methods for improving financial literacy among consumers.

SEC. 518. THE NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGN TO ENHANCE THE STATE OF FINANCIAL LITERACY.

(a) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the "Secretary"), after review of the recommendations of the Commission, as part of the national strategy, shall develop, implement, and conduct a pilot national public service multimedia campaign to enhance the state of financial literacy and education in the United States.

(b) PROGRAM REQUIREMENTS.—

(1) PUBLIC SERVICE CAMPAIGN.—The Secretary, after review of the recommendations of the Commission, shall select and work with a nonprofit organization or organizations that are especially well-qualified in the distribution of public service campaigns, and have secured private sector funds to produce the pilot national public service multimedia campaign.

(2) DEVELOPMENT OF MULTIMEDIA CAMPAIGN.—The Secretary, after review of the recommendations of the Commission, shall develop, in consultation with nonprofit, public, or private organizations, especially those that are well qualified by virtue of their experience in the field of financial literacy and edu-

cation, to develop the financial literacy national public service multimedia campaign.

(3) FOCUS OF CAMPAIGN.—The pilot national public service multimedia campaign shall be consistent with the national strategy, and shall promote the toll-free telephone number and the website developed under this title.

(c) MULTILINGUAL.—The Secretary may develop the multimedia campaign in languages other than English, as the Secretary deems appropriate.

(d) PERFORMANCE MEASURES.—The Secretary shall develop measures to evaluate the effectiveness of the pilot national public service multimedia campaign, as measured by improved financial decision making among individuals.

(e) REPORT.—For each fiscal year for which there are appropriations pursuant to the authorization in subsection (e), the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives, describing the status and implementation of the provisions of this section and the state of financial literacy and education in the United States.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2004, 2005, and 2006, for the development, production, and distribution of a pilot national public service multimedia campaign under this section.

SEC. 519. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this title, including administrative expenses of the Commission.

TITLE VI—PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

SEC. 611. CERTAIN EMPLOYEE INVESTIGATION COMMUNICATIONS EXCLUDED FROM DEFINITION OF CONSUMER REPORT.

(a) IN GENERAL.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a), as amended by this Act, is amended by adding at the end the following:

"(x) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

"(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

"(A) but for subsection (d)(2)(D), the communication would be a consumer report;

"(B) the communication is made to an employer in connection with an investigation of—

"(i) suspected misconduct relating to employment; or

"(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

"(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

"(D) the communication is not provided to any person except—

"(i) to the employer or an agent of the employer;

"(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

"(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

"(iv) as otherwise required by law; or

"(v) pursuant to section 608.

"(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

"(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term 'self-regulatory organization' includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 603(d)(2)(D) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(D)) is amended by inserting "or (x)" after "subsection (o)".

TITLE VII—RELATION TO STATE LAWS

SEC. 711. RELATION TO STATE LAWS.

Section 625 of the Fair Credit Reporting Act (15 U.S.C. 1681t), as so designated by section 214 of this Act, is amended—

(1) in subsection (a), by inserting "or for the prevention or mitigation of identity theft," after "information on consumers,";

(2) in subsection (b), by adding at the end the following:

"(5) with respect to the conduct required by the specific provisions of—

"(A) section 605(g);
"(B) section 605A;
"(C) section 605B;
"(D) section 609(a)(1)(A);
"(E) section 612(a);
"(F) subsections (e), (f), and (g) of section 615;
"(G) section 621(f);
"(H) section 623(a)(6); or
"(I) section 628."; and

(3) in subsection (d)—

(A) by striking paragraph (2);

(B) by striking "(c)—" and all that follows through "do not affect" and inserting "(c) do not affect"; and

(C) by striking "1996; and" and inserting "1996.".

TITLE VIII—MISCELLANEOUS

SEC. 811. CLERICAL AMENDMENTS.

(a) SHORT TITLE.—Section 601 of the Fair Credit Reporting Act (15 U.S.C. 1601 note) is amended by striking "the Fair Credit Reporting Act." and inserting "the 'Fair Credit Reporting Act'.".

(b) SECTION 604.—Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended in paragraphs (1) through (5), other than subparagraphs (E) and (F) of paragraph (3), by moving each margin 2 ems to the right.

(c) SECTION 605.—

(1) Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended by striking "(1) cases" and inserting "(1) Cases".

(2)(A) Section 5(1) of Public Law 105–347 (112 Stat. 3211) is amended by striking "Judgments which" and inserting "judgments which".

(B) The amendment made by subparagraph (A) shall be deemed to have the same effective date as section 5(1) of Public Law 105–347 (112 Stat. 3211).

(d) SECTION 609.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended—

(1) in paragraph (2), by moving the margin 2 ems to the right; and

(2) in paragraph (3)(C), by moving the margins 2 ems to the left.

(e) SECTION 617.—Section 617(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681o(a)(1)) is amended by adding "and" at the end.

(f) SECTION 621.—Section 621(b)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(1)(B)) is amended by striking "25(a)" and inserting "25A".

(g) TITLE 31.—Section 5318 of title 31, United States Code, is amended by redesignating the second item designated as subsection (l) (relating to applicability of rules) as subsection (m).

(h) CONFORMING AMENDMENT.—Section 2411(c) of Public Law 104–208 (110 Stat. 3009–445) is repealed.

And the Senate agree to the same.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
DOUG BEREUTER,
SPENCER BACHUS,
MIKE CASTLE,
ED ROYCE,
ROBERT W. NEY,
SUE KELLY,
PAUL GILLMOR,
STEVEN C. LATOURETTE,
JUDY BIGGERT,
PETE SESSIONS,
BARNEY FRANK,
PAUL E. KANJORSKI,
MELVIN L. WATT,
LUIS V. GUTIERREZ,
DARLENE HOOLEY,
DENNIS MOORE,
Managers on the Part of the House.

RICHARD SHELBY,
ROBERT F. BENNETT,
WAYNE ALLARD,
MICHAEL B. ENZI,
PAUL SARBANES,
CHRISTOPHER J. DODD,
TIM JOHNSON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The Committee of Conference met on November 21, 2003 (the Senate Chairing) and resolved their differences. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

The Fair Credit Reporting Act was enacted in 1970, and substantially amended in 1996. The amendments made at that time were necessary to make the law relevant in an information age. Included in the 1996 amendment were a number of provisions that explicitly preempt state laws. These preemptions expire on January 1, 2004.

Since 1996, the national credit markets have undergone significant change. Most of these changes were the result of technological innovations. Technology has expanded the availability of credit, and permitted instant credit decisions. Mortgage financing that once took weeks now takes hours, and home ownership rates are at historic highs. Consumer credit can be obtained at the point of sale for major items like automobiles. Technology and the prudently-regulated free flow of consumer information under the FCRA has made much of this possible. We live in a mobile society in which 40 million Americans move annually. The FCRA permits consumers to transport their credit with them wherever they go. Both Committees of jurisdiction have developed detailed records regarding the benefits that our national credit reporting system has visited upon consumers of financial products.

Despite the myriad benefits of technology to the American consumer, there has been one drawback. Namely, the free flow information has enabled the explosive growth of a new crime—identity theft. Both Committees developed comprehensive hearing records

regarding the growth of this crime, and the havoc it visits upon the lives of its victims. Law enforcement professionals are cognizant of the growth of this crime, and have worked with the affected industries to combat it. While criminal prosecutions and strict fraud detection protocols can curtail identity theft, and punish the wrongdoers, not enough had been done heretofore to aid the real victims of this crime—the consumer whose identity is assumed, and can spend months or years trying to rehabilitate their credit and reorder their affairs.

The House bill and the Senate amendment contain a number of identical provisions. In other instances, the provisions in the respective bills addressed the same issue in a slightly different manner. Both the House bill and the Senate amendment addressed the provisions of the FCRA that preempted state laws, and are due to expire on January 1, 2004. Both bills addressed identity theft, medical information privacy and promote greater consumer access to their credit reports.

The House bill, H.R. 2622, and the bill that served as the core of the Senate amendment (S. 1753) are each the result of an extensive deliberative and legislative process with a three-fold purpose: to assist the victims of identity theft; modernize the FCRA and; enhance the national credit reporting system. Readers should refer to the Committee Reports for the respective bills for further elaboration. The conference agreement contains provisions to accomplish these goals. It is the conferees' belief that this legislation will assist the victims of identity theft, and ensure the operational efficiency of our national credit system by creating a number of preemptive national standards.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
DOUG BEREUTER,
SPENCER BACHUS,
MIKE CASTLE,
ED ROYCE,
ROBERT W. NEY,
SUE KELLY,
PAUL GILLMOR
STEVEN C. LATOURETTE,
JUDY BIGGERT,
PETE SESSIONS,
BARNEY FRANK,
PAUL E. KANJORSKI,
MELVIN L. WATT,
LUIS V. GUTIERREZ,
DARLENE HOOLEY,
DENNIS MOORE,
Managers on the Part of the House.

RICHARD SHELBY,
ROBERT F. BENNETT,
WAYNE ALLARD,
MICHAEL B. ENZI,
PAUL SARBANES,
CHRISTOPHER J. DODD,
TIM JOHNSON,
Managers on the Part of the Senate.

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THE ROLE OF FCRA IN EMPLOYEE BACKGROUND CHECKS AND THE COLLECTION OF MEDICAL INFORMATION

Tuesday, June 17, 2003
U.S. House of Representatives,
Subcommittee on Financial Institutions and Consumer Credit,
Committee on Financial Services,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:09 a.m., in Room 2128, Rayburn House Office Building, Hon. Spencer Bachus [chairman of the subcommittee] presiding.

Present: Representatives Bachus, LaTourette, Kelly, Ryun, Gillmor, Biggert, Hart, Tiberi, Hensarling, Barrett, Oxley (ex officio), Sanders, Maloney, Watt, Sherman, Moore, Velaquez, Hooley, Lucas of Kentucky, Crowley, McCarthy, and Emanuel. Representative Pete Sessions was also in attendance.

Chairman **BACHUS.** [Presiding.] Good morning. The Subcommittee on Financial Institutions will come to order.

Our hearing today is the fifth in a series of hearings the subcommittee is holding on FCRA. We previously held hearings covering the importance of the national uniform credit system to consumers and to the economy, and more specifically how the Fair Credit Reporting Act helps consumers obtain more affordable mortgages and credit in a timely and efficient manner.

Today, we will hear how FCRA regulates employee background checks and the collection and use of health information or medical information. This hearing consists of two panels. The first panel will focus on the application of FCRA to employee screening and other background checks. Witnesses will include various business groups, human resource managers and private investigators.

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The second panel will examine how medical information is collected and used for various financial products, including a discussion on the prohibition of the use of health or medical information in the credit-granting process. Panelists will include representatives of life and health insurance companies, the banking industry, and independent experts.

While we usually think of FCRA in the context of credit information, it also applies to background checks for employees. For example, information collected for an employer by a third party about an employee's criminal record, driving record, educational record or prior employment history in some instances falls within FCRA's coverage. The 1996 amendments to FCRA established consumer protections for employee background screening.

Some of these include consumer consent before a prospective employer may obtain a consumer report, disclosure of the report to the consumer once it is completed, and notice to the consumer of his rights before taking adverse action based on the report. Many employers conduct background checks of their employees as a safety precaution. Moreover, according to a 2002 Harris poll, a majority of Americans support their employers's conducting detailed background checks.

Congress has mandated background checks for many workers in the financial services industries, as well as for nuclear, airport and childcare businesses. The number of worker background checks has dramatically increased since 9-11 due to heightened security concerns. As a result, mandatory background checks are now required for workers at ports and for those who transport hazardous chemicals.

Because background checks are becoming commonplace, one issue we need to review today is the FTC's staff Vail opinion letter. It makes it much more difficult for employers to conduct background checks or investigations of their employees. Under the Vail letter, if an employer believes that an employee is engaged in workplace misconduct such as committing sexual harassment, racial discrimination or embezzling funds or other criminal activity, the employer cannot hire an independent third party investigator without getting the employee suspected wrongdoer's consent and telling him about the investigation and how the investigation will be conducted. That makes absolutely no sense. If you are trying to catch a criminal, why warn him in advance?

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Strangely, employers can investigate alleged misconduct without following any of the Vail letter requirements if they do so internally. The Vail letter makes it unworkable to hire an outside unbiased party to do an impartial investigation. Even the FTC admits the law should be fixed.

Our second panel will discuss medical information, health information, and how the FCRA and other state and federal laws govern its use.

The FCRA prohibits consumer reporting agencies from furnishing reports containing medical information without the consumer's consent. Congress passed another law, the Health Insurance Portability and Accountability Act of 1996 which limits the sharing of health information by health care plans and providers. In addition, the States have various laws governing insurance companies in the use and sharing of health information by those companies.

The second panel will help us understand whether there are gaps in the convergence of these laws and whether financial providers are using such information, and if they are, whether they should be prevented from using an individual's medical or health information in any way or in an inappropriate way.

I want to express my gratitude to Chairman Oxley for his leadership in these FCRA hearings. I want to commend Ranking Member Frank and Mr. Sanders for working with the staff, with me, and with Chairman Oxley on FCRA reauthorization. I note that for the second week in a row we have accommodated all of the minority witness requests.

The Chair now recognizes the ranking member of the subcommittee, Mr. Sanders, for his opening statement.

[The prepared statement of Hon. Spencer Bachus can be found on page 52 in the appendix.]

Mr. **SANDERS.** Thank you very much, Mr. Chairman, for holding this important hearing. I very much appreciate all of our witnesses being with us today.

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This hearing will focus on the role of the Fair Credit Reporting Act in employee background checks and the collection of medical information. These are important matters that must be carefully scrutinized by this subcommittee. Before we delve into these issues, Mr. Chairman, I would like to briefly highlight the testimony of two of our witnesses from last week's hearing.

Mr. Chairman, as I recall, you raised a number of concerns about my support for consumers to receive a free copy of their credit reports at least once a year from all three of the credit bureaus. It should come as no surprise that all of the major consumer groups in this country support that view, including U.S. PIRG, the Consumer Federation of America, Consumers Union, and the National Consumer Law Center.

Yet what the chairman and some of the members of the subcommittee might not have heard clearly is that according to the testimony we received last week, that view is also shared by the America's Community Bankers and the Independent Community Bankers of America. I think that it is important that they are coming on board in order to make sure that all Americans receive a free credit report.

Let me turn for a moment to today's hearing. First, the issue of employee background checks, Mr.

Chairman, under the Fair Credit Reporting Act. Companies can turn down job applicants because of the credit history contained in their credit reports, including large student loan debt, high credit card payments, a big auto loan, or a heavy mortgage bill. Even worse, job applicants who have errors in their credit reports as a result of identity theft are being denied employment. In most instances, by the time these errors are taken off the job applicant's credit report, the job they are applying for has already been filled by another person.

Mr. Chairman, this raises troubling questions for the subcommittee. One, should a young person who has accumulated $30,000 or more in student loan debt be denied a job in favor of someone who was fortunate enough to have wealthy parents to pay for their college education?

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According to a May 26, 2003 article in The State newspaper in Columbia, South Carolina, "Ayana Woodson, a recent business administration and finance graduate from Howard University in Washington, DC learned this the hard way. 'These are jobs I have not gotten because of my credit,' said Woodson, now carrying a $25,000 college debt, 'I just assumed after I graduated I would have this high-paying job and would be able to pay it off,' she said. It is like a double-edged sword. I take out this loan so I can get a job, but it may be the very reason to keep me from getting a job."

Mr. Chairman, according to the U.S. Department of Education, the average student loan debt has nearly doubled over the past 8 years to close to $17,000. I think we can all agree that people who had to go into debt to get through college should not be forced to lose job opportunities because of that debt.

Secondly, should employers be allowed to deny employment opportunities to job applicants due to errors contained in their credit reports? I do not think so, but according to a March 3, 2003 article in Investment Dealers Digest, "If you want to work for Goldman Sachs, your name had better be squeaky clean. All it takes is one blemish on your credit history to prohibit employment there. At least that is what one secretarial job candidate recently found out the hard way, and she is not alone. Like many young people at age 24, Kate ran up significant debt on a Citibank credit card. She was unable to pay it off quickly, and the account was ultimately sent to collection.

"Over the next 9 years, she gradually paid down the debt, satisfying it completely by 2002. The problem was the collection agency failed to report this to the credit agencies, and the account showed up on Goldman's credit check-a-mistake for which the collection agency took full responsibility and promised to put it into writing in 30 to 60 days, but would gladly relay orally to Goldman. But according to Kate, Goldman's background checker told her the firm would not accept an oral explanation and needed it in writing."

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To make a long story short, this young lady has a hard time with jobs. Mr. Chairman, I do not believe job applicants should be turned down from their jobs because of errors contained in their credit report.

Finally, we will be looking today at the Fair Credit Reporting Act in the collection of medical information. I have two concerns on this issue. First, we need to make it clear that banks and insurance companies cannot use medical information to deny consumers credit or insurance. Banks should not be allowed to use the fact that you have cancer to increase the interest rate on your credit card. Insurance companies should not be allowed to use the fact that you have diabetes to raise your premiums on your renter's insurance.

Mr. Chairman, thank you very much for calling this important hearing. I look forward to hearing from the witnesses.

Chairman **BACHUS.** Thank you, Mr. Sanders.

Chairman Oxley?

Mr. **OXLEY.** Thank you, Mr. Chairman. Let me thank you for your leadership on this important issue of FCRA as we continue the series of hearings. You have done yeoman work and we appreciate all that

you have done.

I am pleased to announce that last Thursday another federal regulator came out in support of reauthorization of the national uniform standards for FCRA. Don Powell, the chairman of the FDIC, who testified before this committee, said he believes it is necessary to make permanent the preemptions in the FCRA in order to ensure no negative economic impact. Mr. Powell joins the Treasury Secretary, the chairman of the Fed, and the Conference of State Bank Supervisors in support of reauthorizing uniform FCRA standards.

I also just received a report by the independent Congressional Research Service analyzing a critical consumer benefit of the FCRA, and that is increased labor mobility. CRS found that mobility is an important barometer to judge the importance of having a national credit reporting system. No surprise, the U.S. is one of the most mobile societies, with 14.5 percent of the population moving in any given year, and lower-income individuals more likely to move than higher-income groups. It is our national uniform credit system that makes this mobility possible and gives us a further competitive edge over the rest of the world.

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Throughout modern history, national economies have risen and fallen based in large part on the flexibility and mobility of labor and management. American consumers and workers enjoy unprecedented mobility in part because of our uniform national credit standards.

Today's hearing looks at two particular aspects of uniform standards under FCRA. The first panel will address the use of FCRA in employee background screening. Even before 9-11, Americans had become increasingly concerned about ensuring their safety on the job from individual predators with criminal records.

Homicide was the second leading cause of occupational fatalities in 2001, and the recent wave of corporate scandals has highlighted the need to keep out bad actors at all levels of the American workplace. Congress has been calling for expanded background checks for a number of sensitive jobs and courts have been imposing more liability on businesses that do not perform adequate background checks.

Unfortunately, an interpretation of FCRA by the Federal Trade Commission, known as the Vail letter, undermines the ability of businesses to protect their employees and consumers. The Vail letter prohibits employers from using outside third parties to investigate employee misconduct unless they first notify the wrongdoer of the precise investigation, get his consent, and ultimately give him a copy of the investigative report.

How do you investigate a CEO, for example, who is embezzling funds if you have to first get his permission and give him time to cover up his actions? How do you get victims to cooperate with a sexual or racial harassment inquiry if they know their identities will not be protected? You don't, and that is why the FTC's interpretation is at best problematic. Ironically, a company can perform an employee investigation without these requirements, but only by doing it internally without any of the protections of an outside, unbiased, and professional third party. The Vail letter is simply impractical.

Subcommittee Chairman Bachus and I wrote to the FTC last term asking the Commission to change its views, and we support efforts by the members here today to correct this problem.

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On our second panel, we will receive testimony on the use of medical information in the credit-granting process and the interplay between various federal and state health privacy laws. I share the concerns of many of my colleagues that medical information may require special protections to prevent its improper use or theft, and I look forward to our witnesses's views on the appropriate balance of national consumer standards on this issue. Once again, I would like to thank the chairman for his leadership and the continued bipartisan cooperation of our ranking subcommittee and full committee

members, Mr. Sanders and Mr. Frank.

I yield back.

[The prepared statement of Hon. Michael G. Oxley can be found on page 55 in the appendix.]

Chairman **BACHUS.** Thank you.

The gentleman from North Carolina?

Mr. **WATT.** Thank you, Mr. Chairman.

I had intended not to say anything, but my chairman provoked me to say something to balance at least one thing, not necessarily to contradict what he is saying, but to thank you for having this hearing today and the series of hearings, because of the difficulty of these issues.

While the chairman is right to have the governing agency bring these employment background checks and medical information under its jurisdiction, it may be presenting some problems. The other side of that is if they are not under somebody's supervision, then they have the capacity to collect erroneous misinformation on people, and not be subject to any kind of oversight.

So we have got to figure out a way to allow them to provide the valuable service that they provide to employers, but do it in a way that makes sure they are regulated and that they answer to somebody and that they are accountable for collecting information that is not correct and viable. That is the difficulty. I am not arguing with the concern that the chairman of the full committee and the chairman of the subcommittee raised in the letter you wrote, but if they are not regulated under the Fair Credit Reporting Act, then who is going to regulate them, I guess, is the question; and how do they get regulated and how do we keep employees or prospective employees from having their employment possibilities adversely affected by information that may not even be correct?

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That is the difficult balance this committee has to deal with. It is for that reason that we have witnesses here to enlighten us about how we walk that balance and get to a result that is fair, both to employers and the agencies that report information to them about people's criminal records and medical records and sexual harassment in prior venues, or what have you, yet make sure that that information is correct and defensible; and if it is not, that somebody is held accountable for it.

So I thank the chairman. I did not take the time to argue with him about this, but more to point out the difficulty of the balance and the requirement that this committee has as we go forward.

With that, I will yield back, unless the chairman wants me to give him the last word. I am always willing to give my chairman the last word.

[LAUGHTER]

I yield back.

Chairman **BACHUS.** Thank you.

I have a unanimous consent request, and that is that without objection the gentleman from Texas, Mr. Sessions, may be recognized for the purpose of making an opening statement and for the purpose of questioning witnesses under the five-minute rule after all members of the subcommittee and the committee have been recognized. Is there objection? Hearing none, I would ask the gentleman from Texas, who is a cosponsor of H.R. 1543 which addresses the Vail letter, if he has an opening statement.

Mr. **SESSIONS.** I thank the chairman and appreciate you allowing me to be here today. I have got to be on the floor in a few minutes, when they are ready for the new rule.

Mr. Chairman, I would like to thank you for inviting me to join you at this hearing on the Fair Credit Reporting Act, FCRA, as it pertains to employee background checks and the collection of medical information. I am pleased to be rejoining the chairman and my esteemed former colleagues on the Financial Services Committee to discuss an issue that has long been of great interest to me.

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I would also like to thank my colleague from Alabama, the Chairman, for scheduling this important

hearing, for your strong leadership on the issue, and for your diligent oversight on all aspects of FCRA. Certainly, Chairman Bachus's efforts are commendable, and by holding this hearing today he will help Congress to take the first step toward making the workplace a better and safer place for all working Americans.

Mr. Chairman, in order to provide a historical context to this hearing, I would like to recount briefly the events that have brought us here today. In 1999, the staff of the Federal Trade Commission issued an opinion known as the Vail opinion, concluding that outside consultants who perform investigations of alleged employee misconduct are considered to be credit reporting agencies.

As a result, outside consultants and the employees who hire them to help ensure unbiased workplace safety are subject to a number of burdensome and unintended restrictions on their ability to perform these investigations safely, professionally, and efficiently. Accordingly, they are hampered in performing many kinds of workplace investigations, including employee complaints of sexual harassment, discrimination and threats of violence. For the last few Congresses, I have introduced legislation to fix this problem by removing the FCRA requirements for investigations of suspected misconduct related to employment and to compliance with existing laws and preexisting written policies of the employer.

This proposed legislation also respects the rights of the subject of the workplace search, while removing employers from the onerous and potentially dangerous requirement to notify their subject prior to beginning an investigation. The removal of this requirement is important because it prevents violence from employees, from giving them time to cover their tracks, or to initiate intimidation against coworkers who make or corroborate complaints, and are an integral part to ensuring the veracity of data included in these complaints.

Mr. Chairman, back in 1997 when a constituent brought the problems to me that she was having as a result of the Vail opinion, I was shocked to learn that federal law requires an employer who suspects that an employee is dealing drugs or engaged in other misconduct at the workplace to ask that employee's permission before beginning an investigation.

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Furthermore, I was greatly dismayed to find that federal law would also require that the same employer to provide to a potentially violent employee with a report identifying the coworker who made or who corroborated those allegations of wrongdoing, making those helpful employees who were only trying to make the workplace safer a target for violence or retribution, and placing themselves in harm.

This important legislation that I have introduced removes requirements of the federal Fair Credit Reporting Act solely for the purpose of having unbiased third party professional investigations of illegal or unsafe activities in the workplace. These limited activities include drug use or the sale of drugs, violence, sexual harassment, employee discrimination, job safety or health violations, and criminal activities including theft, embezzlement, sabotage, arson, patient or elderly abuse, and child abuse.

I believe that it is critical for Congress to pass this legislation in order to make our workplaces safer, to stop illegal activities such as drug dealing, and to identify dangerous employees so that they can be provided with treatment before violence occurs. This legislation offers Congress the opportunity to replace illegal and dangerous activities in the workplace with investigation and remediation. I think that this is precisely the goal for which we should all be striving.

I also would like to thank the panel that is before us, many of whom have come from all over the country to share their experiences with the Vail opinion and FCRA with us today. I look forward to hearing their testimony on the issue.

I would also like to thank the 16 members of Congress on both sides of the aisle who have cosponsored this bipartisan legislation. I want to thank you, Mr. Chairman, for your leadership, and I appreciate the time you have given me today.

[The prepared statement of Hon. Pete Sessions can be found on page 58 in the appendix.]

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Chairman **BACHUS.** Thank you.

Are there any other members wishing to make an opening statement? If not, I would like to welcome our first panel, which deals with the role of FCRA in employee background checks. Our panelists consist of, from my left, Mr. Christopher P. Reynolds, partner in the law firm of Morgan, Lewis and Bockius, on behalf of the U.S. Chamber of Commerce. I noted that you were a U.S. Attorney for the Southern District of New York.

Mr. **REYNOLDS.** Mr. Chairman, I would hasten to say that I was an assistant U.S. Attorney for the Southern District.

Chairman **BACHUS.** Assistant U.S. attorney, and dealt with many cases involving employee and employment matters.

Mr. **REYNOLDS.** Yes, I did, Mr. Chairman.

Chairman **BACHUS.** Our second panelist is Mr. Harold Morgan, senior vice president, human resources, at Bally Total Fitness Corporation, on behalf of the Labor Policy Association, and previously with Hyatt Corporation where you were director of employee and labor relations. Our third panelist, at the request of Mr. Sanders, is Mr. Lewis Maltby, president of the National Workrights Institute. We welcome you, Mr. Maltby. Mr. Sanders also requested the testimony of Ms. Margaret Plummer, director of operations for Bashen Consulting. We welcome you as a panelist.

Our final panelist on the first panel is Mr. Eddy McClain, chairman of Krout and Schneider, on behalf of the National Council of Investigation and Security Services. Mr. McClain, you are a former private investigator on work-related investigations?

Mr. **MCCLAIN.** Yes, sir.

Chairman **BACHUS.** So we welcome you.

At this time, Mr. Reynolds, we would recognize you for your opening statement.

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STATEMENT OF CHRISTOPHER P. REYNOLDS, PARTNER, MORGAN, LEWIS AND BOCKIUS, LLP ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. **REYNOLDS.** Thank you, Mr. Chairman, and distinguished members of the subcommittee. Good morning.

I am grateful to you for the privilege of testifying before you today. In the interests of time and with your permission, I will summarize my written testimony. My purpose today is to testify on behalf of the U.S. Chamber of Commerce regarding FCRA's affect on employee background checks and employer investigations into workplace conduct.

I do that on the basis of my experience as a partner at Morgan, Lewis and Bockius representing employers in litigation, investigations, and providing advice and guidance; as a member of the American Bar Association's Labor Section and Equal Employment Opportunity Committee; and as also a member of the Securities Industry Association's Legal Division.

Mr. Chairman, the reauthorization of FCRA's uniform standards provisions is terribly important to the members of the Chamber and to the efficient functioning of the national credit system. Without those standards, we would be faced with a complex and confusing web of conflicting state standards that could only impede the availability of credit and limit the access of small businesses to the credit that will help them grow and survive tough economic times. We urge this committee at a minimum to preserve those standards.

The two issues that also concern the Chamber beyond reauthorization would be the background check issue and the workplace investigation issue. Concerning background checks, our primary concern is not with existing law, but with the possibility that new provisions will be added, provisions that hurt an

employer's ability to ensure workplace integrity and workplace safety by obtaining reliable job-related information compelled by business necessity on applicants and employees.

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Now, employers use these background checks to make sure their workplaces are safe and secure. We need them. A recent study by the Avert Internet-based screening firm found that 24 percent of 1.8 million applications in the year 2000 were submitted with misleading or negative information. The Society for Human Resources Management found in a 1998 survey that 45 percent of employers found that an applicant had lied concerning their criminal record. Many states impose on employers the potential liability for negligently hiring someone who is a danger to the safety and security of the workplace. Background checks allow us to avoid that liability and fulfill our legal duty.

Against the painful backdrop of September 11, the public and this government also increasingly expect employers to use background checks. According to a Harris interactive poll in 2002, 53 percent of employees want their employers to conduct more detailed background checks of applicants and coworkers to ensure safety. In this session alone, Congress has introduced 21 different bills requiring background checks for workers. It is a clear signal that the government expects employers to use them.

The Chamber understands and appreciates that there is a necessary and welcome balance between workplace security and privacy. We believe that the existing FCRA provisions of consent, notice and disclosure provide that balance. We also believe that the nation's existing equal employment laws provide a ready remedy for any company or employer that abuses background checks for discriminatory purpose. We also note the numerous State laws that restrict or limit the ability of employers to use information in background checks improperly.

If you do make changes to FCRA on the background check issue beyond its reauthorization, we urge you to allow employers who use contract workers to have access to the contractor's background check information without converting that contractor into a consumer reporting agency. There are many safety-sensitive industries that use contract workers and the underlying employer needs that information to ensure safety.

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Now, with your permission, Mr. Chairman, let me echo your previous comments on the Vail letter. The issue is simple. The FTC through the Vail letter has thrown up a roadblock to the effective use of workplace investigations of employee misconduct. We understand that the FTC will not retract that letter unless Congress acts. The Chamber urges that action.

Employers are instructed by statute in the case of Sarbanes-Oxley; instructed by the Supreme Court in the case of the Faragher-Ellerth precedent; and by regulations of the Equal Employment Opportunity Commission to conduct thorough, effective and objective investigations. Often, the only effective way to do that is through an outside firm or investigator. Under Vail, there is a requirement for notice and consent provisions that would require almost immediate notice to the object of that investigation. That fundamentally guts the investigation's effectiveness. Just a quick example. Say that I receive a request to investigate a senior executive for a sexual harassment complaint. Under the Vail letter, I am obligated to advise that senior executive before I begin my investigation that he or she might be the object of a complaint, and therefore that is going to constrict greatly the ability to find out what happened and take appropriate remedial action. There is simply no way to satisfy both Vail and the need to investigate effectively workplace conduct.

Against that backdrop of increased corporate responsibility for self-monitoring, we believe that this choice must be resolved the way Congress intended under Sarbanes-Oxley, the way the Supreme Court dictated in Faragher-Ellerth, and the way the EEOC's guidance has laid out in favor of effective investigations. The Chamber believes that H.R. 1543 is the right step to address that concern and we urge its passage.

Mr. Chairman, thank you.

[The prepared statement of Christopher P. Reynolds can be found on page 121 in the appendix.]

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Chairman **BACHUS.** Thank you very much, Mr. Reynolds, for that testimony.
Mr. Morgan?

STATEMENT OF HAROLD MORGAN, SENIOR VICE PRESIDENT, HUMAN RESOURCES, BALLY TOTAL FITNESS CORPORATION, ON BEHALF OF THE LABOR POLICY ASSOCIATION

Mr. **MORGAN.** Thank you very much. Do not worry. I will not be asking the members of the committee to do exercises before we begin the testimony today.
[LAUGHTER]
This morning, I have two simple and basic messages regarding FCRA. The first is please do not make it any harder to keep our workplaces safe. And two, if possible, please help us to make it easier to keep our workplaces safe.
I am sure the original intent and the purpose for expanding FCRA to include background checks was to ensure that potential employees were guaranteed certain rights and privileges if their backgrounds were checks. I am sure the same thought applies to investigations in the workplace. However, the actual on-the-job reality of FCRA makes it increasingly difficult to maintain a safe workplace.
Many individual states have added to these restrictions on top of FCRA. The FCRA regulations, in addition to the additional State laws, really cut to the heart of workplace safety. The fact of life today is that every critical public or stakeholder that has anything to do with our operations expects me to run a safe workplace. The duty and trust and obligation of maintaining this safe workplace is even more difficult in businesses such as mine where you have large amounts of employees, a lot of employee turnover, and where you are dealing with customers on a minute-to-minute basis.

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So by way of introduction, this is the overview of where we are coming from on FCRA. But what is at the heart of the problem? The problem is that to make hiring decisions with increasingly more difficult limits and restrictions on what we cannot and can look at is unrealistic and is increasingly compromising workplace safety. For instance, should I hire someone to be a childcare attendant who has several arrests, but no convictions for child molestation? Should I hire a salesperson who has information regarding credit cards and financial information about a potential customer, but who has a deferred adjudication for fraud? Should I hire a personal trainer who has been arrested for assault and battery, but has pled down to a misdemeanor, or who has a conviction that is over seven years old? The problem with FCRA and the additional State laws is that I cannot use this information in making employment decisions.
Congressmen and congresswomen, I believe that this is playing roulette with the safety of everyone involved in the workplace. Employers cannot be subject to courtroom standards in order to keep their workplaces safe. The reality of life is that I should not hire the personal trainer with several arrests, but no convictions, and I should not hire the childcare attendant who has pled down to a misdemeanor for child molestation. Nevertheless, FCRA and the State laws suggest that I should not consider any of this information in making my employment decision.
The other issue, which Mr. Reynolds has covered, is Vail. Very simply, this makes it difficult to conduct investigations in the workplace, which all of you would agree is something that should be done

and should be done in a fair and consistent manner. Vail only results in a chilling effect on people coming forward regarding workplace misconduct and problems that are going on in the workplace. Investigations should be able to be done and proceed in a way that does not limit us and that affords all people involved a great deal of confidentiality.

As I said in the beginning, please help us to make workplaces safer. In order to do that, I would suggest five key issues. First, please allow us to look at criminal backgrounds without any time limitations. Second, please allow us to consider arrests in looking at the totality of an individual's background regarding their suitability to work in a particular place. As long as we are within the EEOC guidelines, the burden of proof beyond a reasonable doubt should not be a standard that applies in the workplace.

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Three, please give us access to national databases so that we do not have to go to thousands of jurisdictions to see if someone should or should not be an employee regarding what they have done in their past. Please give us a safe harbor from more restrictive State laws, provided that FCRA is adhered to from a regulation standpoint. And fifth, please allow us to conduct any and all investigations regarding workplace misconduct in a confidential manner and not subject to FCRA.

Last and certainly to highlight this issue, in 1999, as all of us are aware, several terrorists tried to come through the Canadian border to blow up the LAX airport in celebration of the millennium. The identities that these folks were using were partially stolen out of databases of my company. Now, we have since closed up that issue regarding our databases.

The employee that was involved in selling off these identities to the terrorists had a complete criminal background screen that I conducted; was drug tested; and every attempt was made to make sure that this employee, like all of my employees, were safe in the workplace. Nevertheless, those identities were sold and those identities were given to the terrorists that were fortunately caught before they were able to set up a bomb at LAX airport.

The point is this: It is difficult enough to make decisions about the unknown and about what may happen in the workplace. Please at least let us make decisions regarding what is known.

[The prepared statement of Harold Morgan can be found on page 82 in the appendix.]

Chairman **BACHUS.** Thank you very much.

Our next witness is Mr. Lewis Maltby. Mr. Maltby, I mentioned that you were with the National Workrights Institute. I did not mention that you were the founder of that Institute, so we very much welcome your testimony. We know you as a nationally recognized expert on employee rights in the workplace.

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STATEMENT OF LEWIS MALTBY, PRESIDENT, NATIONAL WORKRIGHTS INSTITUTE

Mr. **MALTBY.** Thank you, Mr. Chairman, and thank you for inviting me to be here this morning.

Let me say from the very beginning, I have no problem, no objection to pre-hire investigations. I have three school-age children. Every morning, I put them on a school bus. I do not want anyone behind the wheel of that school bus with DUI convictions.

But it is not always that simple. There are many situations in which pre-hire investigations occur in ways that simply are not fair and do not help anyone. For example, at least 2.5 million people every year are required to take so-called honesty tests to get a job. There is nothing wrong with employers wanting to hire honest people, but honesty tests fail at least four honest people for every dishonest person they

screen out. That is a very high price for a lot of honest people to pay for businesses to get a dubious advantage at best.

Personality tests are extremely common. They are not inherently wrong. Someone who would do very well in a laid-back Silicon Valley company might not do so well in a very straight-laced Wall Street firm. But some of the questions on these tests I would not ask my wife. There are questions about your religious belief, your sex life, even your bathroom habits on some of these common personality tests. With all due respect to Mr. Reynolds, I do not know why you have to ask an employee about their bathroom habits to tell if they are going to be a productive and safe employee.

I mentioned criminal records checks. There are many cases where that is totally appropriate, like the one with my children. On the other hand, there are many employers in America today that will not hire a person for any job at any time in their lives if they have ever been convicted of anything. You could be, and sometimes are, denied a job as a 40-year-old electrician because when you were 19 you shoplifted a CD. There is something wrong when employers go to that incredible unreasonable extreme.

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The worst part of all of this is the way the information is being used. If this information were being used as something to inform the judgment of a seasoned HR professional, I would not be so concerned. But what is happening is, the machines are taking over. The test results are trumping the evaluation and the judgment of the HR professional. If the honest test says you are dishonest, I don't care if you are a nun, and this is a real case, the HR person cannot say, "Well, the test is obviously wrong." They can't and they don't. If the test says you are dishonest or you don't fit or anything else, you are simply out. That is not the way things ought to be done.

Regarding the Vail letter, let me not belabor the obvious, except to say Mr. Morgan and Mr. Reynolds are right. There is a problem here. As a civil rights lawyer, I want to see investigations of alleged sexual harassment or racial harassment or other civil rights violations conducted quickly, thoroughly and effectively, and the Vail letter as it stands is an obstacle. The real question is, how do we fix the obstacle? Mr. Sessions has certainly taken us the first step in that direction. It is clearly surreal, maybe that is too kind, to say we have to tip off the person we are investigating and get their permission before we conduct an investigation.

But that is not the entire situation we have to deal with. What if, for example, the employee is innocent? Perhaps the investigation clears them. Shouldn't they be told after the investigation is over that they were investigated and they were cleared, and being shown a copy of the report? Is it really fair that that report should follow them for the rest of their career, or at least their career at this company, and they don't even know it happened? I do not think so.

For example, what if there never was any genuine suspicion of wrongdoing? Pretext investigations are not common, but they happen. We do not want a law that says that a company can investigate somebody whose real offense is trying to organize a union on the pretext they have stolen a pencil. The law ought to require that there be a genuine suspicion of wrongdoing before the investigation starts in the first place. And whatever minimal standards the FCRA contains about fairness and accuracy in conducting the investigation and compiling the report should not be lost either.

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I know that none of those problems were intended to be created by Mr. Sessions's bill, but we need to do more than just simply crudely yank criminal investigations in the workplace out from under the FCRA. It has to be done in a more nuanced, thoughtful fashion. Mr. Sessions's bill is the first step, but it is not the only step.

From having looked at the issues, I see nothing here that people of good will and intelligence could not resolve, given discussion. We have already had some discussions on these matters and I am confident that if allowed to continue we could reach a resolution that would accomplish Congressman

Sessions's objectives and the concerns of people like me in the civil rights world.
Thank you.

[The prepared statement of Lewis Maltby can be found on page 60 in the appendix.]

Chairman **BACHUS.** Thank you, Mr. Maltby.
We would also welcome coming together on this issue. We are also optimistic that we can do that.
Ms. Plummer, I previously recognized you. You actually manage EEOC claims, risk management services, quality assurance, and consultant supervision for Bashen. I noted that you practiced business and employment law with the firm of Randolph, Hunter in Greenville, South Carolina, so you also have litigation experience in employment matters. We welcome you.

STATEMENT OF MARGARET PLUMMER, DIRECTOR OF OPERATIONS, BASHEN CONSULTING

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Ms. **PLUMMER.** Thank you very much, and also thank you to the members of the subcommittee for having us here today.
Bashen Consulting is a minority-owned human resources consulting firm that has conducted thousands of employment discrimination, harassment and ethics investigations for companies nationwide. I thank you for allowing us to participate in these important discussions regarding the role of the FCRA in employment-related investigations.
The Federal Trade Commission's interpretation of the FCRA as expressed in the 1999 Vail opinion letter will have a chilling effect on the efforts of employers to prevent and correct unethical discriminatory and harassing behavior in the workplace.
In 1998, the Supreme Court profoundly changed the workplace harassment landscape. It became clear that for employers to protect themselves, they must implement effective policies and complaint procedures, conduct prompt and thorough investigations of employee complaints, and take remedial action. Today, courts and government agencies charged with enforcing civil rights legislation examine not only the fundamental question of whether unlawful conduct occurred, but the quality and integrity of the employer's investigation of the alleged conduct.
Many employers naturally seek the experience and expertise of qualified third parties to thoroughly and impartially investigate employee concerns. Countless companies, especially small companies, do not have the internal resources or skills to investigate employee complaints. In many situations, companies hire third parties to ensure that maximum credibility is given to the investigation, often due to the sensitive nature of the allegations or the high-level position of the alleged wrongdoer.
I recently conducted an investigation for a large corporation in which a human resources staff member complained that he was discriminated against based on his national origin when he was denied a promotion. The company would have been placed in the untenable position of having its human resources department police itself if the investigation was conducted in-house.

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The HR department recognized its potential conflict of interest, and more importantly the appearance of a conflict if the investigation failed to support the staff member's claim. The company hired Bashen Consulting to ensure the integrity of the investigation. However, according to the FTC this company would be subject to increased liabilities and requirements because they hired experts in the field instead of investigating the complaint internally.
Under the FTC's interpretation, companies striving to comply with civil rights legislation must now decide between the risk of uncapped damages under the FCRA if they request an investigation, and the

limited damages available under civil rights laws if they fail to investigate at all. Companies would also be required to obtain a written authorization by the alleged wrongdoer to conduct the investigation. The notion that an accused harasser must consent to an investigation of his inappropriate behavior is contrary to common sense.

More alarming is the detrimental effect the FTC's interpretation of the FCRA poses for employees. The law would require the company to provide the alleged wrongdoer with a complete copy of the investigative report. These reports identify witnesses and the information each provided, and producing it would irreparably compromise the confidentiality of the investigation.

Absent assurances of confidentiality, the FCRA will create a chilling effect on witnesses's willing participation in the investigatory process. Many victims will be too intimidated to complain, thus undermining the expressed intent of all workplace civil rights legislation. The impact of applying the FCRA to employment investigations is monumental. It would erode the great strides companies have made toward eliminating discrimination and harassment.

H.R. 1543 will remove these roadblocks to progress by excluding workplace investigations from the FCRA's purview. We commend Representatives Sessions and Jackson Lee for their leadership on this issue and urge you to amend the FCRA accordingly.

Thank you.

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[The prepared statement of Margaret Plummer can be found on page 105 in the appendix.]

Chairman **BACHUS.** Thank you very much.

Mr. McClain, we note that you have lectured at UCLA and other California colleges and universities, so this ought to be a piece of cake, after doing that.

STATEMENT OF EDDY MCCLAIN, CHAIRMAN, KROUT & SCHNEIDER, INC., ON BEHALF OF THE NATIONAL COUNCIL OF INVESTIGATION AND SECURITY SERVICES

Mr. **MCCLAIN.** Thank you, Mr. Chairman. Thank you to the committee.

I am chairman of Krout and Schneider, which is a 76-year-old firm, but I have only been a licensed investigator for 47 years. I am appearing today on behalf of the National Council of Investigation and Security Services, NCISS, which represents investigative and protective service companies and their state trade associations throughout the United States. We appreciate the opportunity to discuss the FCRA.

Besides many small-and mid-size employers, even many Fortune 100 firms hire third parties for their expertise and impartiality. The FTC says any person who regularly conducts employment investigations is a consumer reporting agency under the law. We agree that is what the law says, even before Vail, but we believe that investigators of workplace misconduct should not be designated as consumer reporting agencies and the reports should not be classified as consumer reports.

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The 1996 amendments to the FCRA have substantially set back progress, as Ms. Plummer said, on sexual harassment and discrimination. The EEOC recommends prompt, thorough and impartial investigation of sexual harassment, but the Act provides no explanation or suggestion of what an employer should do if an accused person refuses to give his or her permission to be investigated.

Regarding violence, when an employee exhibits symptoms of derangement, the last thing the employer wants to do is ask the employee for permission to investigate him. My firm is often hired to assist employers to deal with potentially violent employees. It is not uncommon to have little or no

background information in a personnel file.

In addition to public records and surveillance, we need to conduct covert neighborhood interviews. Neighbors are often aware of suspicious activity, proclivity toward firearms ownership, and even knowledge of explosives. Since the 1996 amendments, the report of such an investigation would be considered an investigative consumer report and it would be unlawful for the employer to order such an investigation without disclosure and permission. The ramifications of advising such an employee that he is going to be investigated, then giving him a report of what witnesses said about him are obvious.

Many business failures are the result of employee theft. When businesses fail, employees lose their jobs. These are the same employees the FCRA is supposed to protect. Investigation of embezzlement requires stealth and expertise. Embezzlers are usually in the best position to cover their tracks.

Yet before an employer can hire an outside expert to investigate embezzlement, written permission must be obtained. Illicit drugs are a scourge on our society. Seven percent of American workers use drugs on the job, but the FCRA makes it very difficult to ferret out drug dealers from the workplace.

Regarding intellectual property and trade secret theft, prior to the 1996 amendments employers were able to hire impartial experts to covertly conduct sensitive investigations that would not be possible today. For example, my firm was engaged to investigate an alleged theft of trade secrets by a Fortune 100 defense contractor. Using a combination of public record information, surveillance and undercover techniques, we were able to determine the facts.

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A salesman, marketing manager and a production chief had conspired with a scientist to form a competing company that was bidding on the same government contracts. Although one conspirator left our client's employ, he was fed information by the other two who remained as moles. Not only were the scientific secrets being disclosed, but bidding information allowing the competitor to slightly undercut their pricing on closed bids. This successful prosecution would have been nearly impossible if our client had to notify the culprits in advance of the investigation.

Conversations with witnesses are considered to be interviews and our report to be an investigative consumer report. The employer must advise the accused of the nature and scope of the investigation, and before taking any adverse action against an employee, a complete unedited copy of the report must be provided to the employee no matter how felonious their behavior. Since the advent of the 1996 amendments, many of our labor lawyer clients have advised their clients not to risk investigations, even in the face of significant losses or danger to coworkers. The reason is the attorneys do not wish to provide subjects with a copy of the investigative consumer report.

We strongly support Representative Sessions's H.R. 1543. This bipartisan measure would make clear the investigations of employee misconduct are exempt from the disclosure and authorization requirements, while still providing protections for consumers and employees. H.R. 1543 does not change the permission requirement for access to credit reports. It also would require that after taking adverse action against an employee, an employer must provide a summary containing the nature and substance of the communication upon which the action is based.

At the FTC, former Chairman Pitofsky recommended Congress consider a legislative change to remedy the unintended consequences of the 1996 amendments. Last month, Howard Beales made the same recommendation to this committee. We hope action will finally be taken.

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Thank you for your attention.

[The prepared statement of Eddy McClain can be found on page 63 in the appendix.]

Chairman **BACHUS.** I thank the gentleman.

My first question, Ms. Plummer. Prior to the FTC letter, was there any indication that Congress intended the Fair Credit Reporting Act to apply to workplace discrimination or harassment investigations?

Ms. **PLUMMER.** There is no indication whatsoever, either in the intent or purposes section of the statute or within the contents of the statute.

Chairman **BACHUS.** Thank you.

Mr. Reynolds, you testified that the Vail letter makes it virtually impossible to use third party investigators, particularly since failure to comply with FCRA can result in unlimited liability, including punitive damages. And yet in many cases, employers lack the resources, skills and fairness to do those investigations in-house. What do these employers end up doing?

Mr. **REYNOLDS.** Mr. Chairman, those employers are caught between a rock and a hard place in fulfilling the mandates of the regulatory schemes that I mentioned earlier and Supreme Court precedent. Often they make the choice, a tough choice, but the choice to protect their employees and to do the investigation nonetheless in a way that allows for the safety and integrity of the workplace. Employers should not be put to that choice by the Vail letter.

Chairman **BACHUS.** Thank you.

In your opening statement you mentioned Sarbanes-Oxley and some of the requirements of that Act. If a company finds itself in a potential Enron-WorldCom-type situation and decides that it needs to investigate some top management for financial impropriety, does the Vail letter pose a problem?

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Mr. **REYNOLDS.** The Vail letter poses a significant problem. Under Sarbanes-Oxley, often corporate boards and management will reach out, and are in fact encouraged to reach out to third party objective investigators. Under the Vail letter, once that investigation begins, even before the investigation begins, consent has to be obtained from the subject or object of that investigation. As Mr. McClain has testified, that has the effect of completely negating the ability to gain a fair and complete picture of the facts, which is precisely what Sarbanes-Oxley went to.

Chairman **BACHUS.** Thank you.

Mr. Morgan, suppose you want to investigate the head manager of a fitness center, how does FTC's Vail letter make it more difficult?

Mr. **MORGAN.** I would have to inform them and get consent prior to that occurring. In a lot of cases, there are things going on that you don't wish them to know about or you don't wish them to know because they could cover their tracks. If someone was stealing money from the facility or if that particular manager was sexually harassing one of my employees, I would certainly want an investigation done in a way that I could get all the information before I made a fair and balanced decision.

Chairman **BACHUS.** Okay, thank you.

Mr. McClain, if a third party investigator uncovers significant evidence of employee wrongdoing, such as racial or sexual harassment, what stops the wrongdoer from disputing every item, particularly the testimony of the victims?

Mr. **MCCLAIN.** Nothing would stop him, Mr. Chairman. One of the major problems that I have with on the sexual harassment issue is when we get an assignment like that from a client, the first thing that we do is we ask our client to get permission from not only the accused, but also the accuser. The reason is we want to establish the credibility of the accuser and oftentimes, not as often as the other way, but sometimes people do conspire to give false information.

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So talk about a chilling effect, when someone, take a fairly new employee who is in the probationary basis trying hard to hang onto their job and is being hit on by a supervisor, so they reluctantly go to management, to HR, because they have heard that they should report this kind of activity. So they

reluctantly go forth and report this, and then management has to turn around and ask their permission to investigate them. Of course, any other witnesses that would come forth, we investigate them, too, because we need to know who all the players are and try to determine what their interests are to be impartial and fair.

So it just doesn't work. As I said before, what do we do when someone refuses to give permission to be investigated? The employer is within his rights to terminate him for failure to cooperate with an investigation, but that in itself could be unfair. Maybe the person does not want to agree just on general principles. So it creates many unintended consequences, I believe.

Chairman **BACHUS.** In fact, I think two or three of the panelists mentioned the EEOC, which actually asks us to protect the identity or protect the witnesses. But under this FTC letter, actually, you cannot protect their identities. In fact, you go to the wrongdoer and give him this information which could actually expose them to danger.

Mr. **MCCLAIN.** Some people think it is a hit list.

Chairman **BACHUS.** Okay, a very good point.

Mr. Maltby, you testified about the bill introduced by Representative Sessions and other members as a step in the right direction, I believe, but not a complete solution. What additional changes would you recommend, particularly since employers can avoid any FCRA requirements simply be conducting investigations in-house?

Mr. **MALTBY.** Mr. Chairman, if I could give you a complete and thorough set of standards for how to get the guilty without violating the rights of the innocent, I would be a much smarter man than I am. I can mention two or three critical points. One is we need to have protection against pretext investigations. They are not common, but they do occur. It is not clear that Congressman Sessions's bill addresses that issue.

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We need to have people be able to see the results of the investigation, possibly with certain information redacted, at whatever time is appropriate. You obviously cannot show someone, especially if they are guilty, the results of the investigation in mid-stream, but at some point the investigation is over. There is nothing left to compromise and the employee, guilty or innocent, ought to be able to see the report, again possibly with certain information redacted.

There are provisions, I believe, in the Fair Credit Reporting Act, not terribly strong, to be sure, but I believe they exist, that set some sort of minimal standards for the fairness of the process and the accuracy of information. Those would be lost if we took employee investigations completely out from under the jurisdiction of the FCRA. I do not think anyone wants to do that.

I would be happy to submit additional suggestions to the Chair in a very short time, if I might have permission to do that.

Chairman **BACHUS.** Thank you, and we would welcome that.

At this time, the gentleman from North Carolina, Mr. Watt.

Mr. **WATT.** Thank you, Mr. Chairman.

I would welcome a copy of Mr. Maltby's follow-up also. Mr. Maltby, you seem to be a little outnumbered on this panel.

Mr. **MALTBY.** I am not, Congressman.

Mr. **WATT.** Not necessarily. I am trying to find common ground here, rather than trying to score points about who is right and who is wrong, because there is some right, as you acknowledged, on both sides of this issue.

So that I can explore that common ground, let me talk to Mr. Reynolds and Mr. Morgan for a little bit here, about their reactions to the things that Mr. Maltby has proposed. He, as I was jotting down what he said, agrees that the prior consent requirement of Vail is probably not a good thing. I think most people would probably agree with that. I take it you all agree with that.

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Mr. **REYNOLDS.** Yes, Congressman.

Mr. **WATT.** Check one for common ground there.

On pretext investigations, he thinks there ought to be some explicit protection that says you cannot use criminal or other background information as a pretext to try to eliminate somebody. What do you think about that?

Mr. **REYNOLDS.** Congressman, there are already provisions in existing law to cover that.

Mr. **WATT.** What law?

Mr. **REYNOLDS.** For example, under Title VII, if an employer were to use a criminal background check as a pretext where the real purpose, for example, was to discriminate, that would clearly violate Title VII.

Mr. **WATT.** So what you are saying is we just need to reconcile EEOC Title VII and the Fair Credit Reporting. Is that an explicit provision or is that case law?

Mr. **REYNOLDS.** That is case law, and it is commonly held case law that has been in place since the 1970s.

Mr. **WATT.** And you agree with that, so if we could figure out some way to get those things consistent, you would be happy with that?

Mr. **REYNOLDS.** Congressman, I believe they are already consistent. Title VII is in existence. The case law is quite explicit.

Mr. **WATT.** Okay, but if we made it explicit under Fair Credit Reporting that you cannot do pretext, would that be something you and Mr. Morgan would object to?

Mr. **REYNOLDS.** At least from my standpoint, Congressman, I believe the pretext issue is covered completely by both Title VII and the courts and I do not see a need to add to the provisions of FCRA in order to address that issue.

Mr. **WATT.** Okay, well, I think you are missing my point. You have one law that doesn't say anything about it, and another law that says something explicit about it, at least in case law, and you all are testifying that there is a conflict here. Couldn't we reconcile that by simply making it explicit? That is the question I am asking. I am looking for common ground here. Am I missing something here?

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Ms. Plummer, would I be chasing the wrong dog if I tried to just make explicit what Mr. Reynolds says is already over there somewhere in another area, but if we just put it in Fair Credit Reporting, would that be okay with you?

Ms. **PLUMMER.** No, it would not be okay.

Mr. **WATT.** Okay, then why wouldn't it be okay?

Ms. **PLUMMER.** The effect of doing that would be to muddy the waters because Title VII and the case law that follows it do completely cover the issue of pretext based on protected class status. If you then add that to the FCRA, you are simply adding yet another burden, yet another interpretation that has to be made of that law.

Mr. **WATT.** But Mr. Reynolds just told me that I am not adding anything because FCRA is already subject to Title VII. So why would I care about making that explicit?

Ms. **PLUMMER.** You would not be adding anything to the rights of the employees or to the citizens, but you would be adding yet another layer of judicial interpretation of the statute that employers would have to combat. As we can see here, the language in the existing statute has brought us all here today. So my concern if we attempt or Congress attempts to clarify pretext in the FCRA, it will lead to confusion.

Mr. **WATT.** Mr. Maltby, what do you say to this? I am trying to be an honest broker here and walk down the middle.

Mr. **MALTBY.** Congressman, I would not say you are chasing the wrong dog, but I would say you are missing a lot of the pack.

Mr. **WATT.** Okay. Go ahead.

Mr. **MALTBY.** I actually think Mr. Reynolds is correct.

Mr. **WATT.** All right.

Mr. **MALTBY.** If the investigation is a pretext for getting the black employee out of the workplace because of some sort of racial bias, I think he may be right; that that is already adequately addressed by Title VII. But that is one of 100 possible reasons for pretext.

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What if the real reason for launching the investigation is because the person is organizing a union, or they are a woman who does not like the way women are being treated in the company and they are starting to make some noise about it, or because you just don't like the guy, or because he is gay in a jurisdiction where that is not protected by law? There are 100 reasons to launch a pretext investigation. One of them may be covered, but the other 99 are not protected.

Mr. **WATT.** What about this copy of the report in some redacted form at some appropriate time? Mr. Reynolds, do you think if somebody is investigating me and I am found to not have any problem; I am investigated and you have found nothing. Do you think it is okay if I get the report at some point, that maybe then I can take it to another employer and say, look, this one turned me down after they found that I was not guilty; maybe you will consider me positively.

Mr. **REYNOLDS.** Congressman, let me at the outset just caution the use of the words "innocence" and "guilt." In the context of workplace investigations, the employer is not the government. They do not make findings of whether someone has violated a statute. This is important for this reason. What Mr. Maltby may suggest in his comments, the provision of the report et cetera, those are certainly potentially due process protections, but they are due process protections that are better suited to the context of governmental action in a criminal prosecution.

In this context, you have an employer whose obligation is to make the best possible judgment based on the best possible investigation they can do. They are not held to the standards of reasonable doubt, nor should a question of innocence or guilt be at issue. The real question is whether or not the employer can do an effective investigation to determine whether or not the company's policies have been violated, and sometimes those policies are broader and more expansive at the employer's option than law.

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So under those circumstances, to get to your question, Congressman, my answer would be that there are many circumstances where it would not be appropriate to mandate that the employer provide a copy of the report. One quick example, there are many instances in which the investigation is about a current employee's actions vis-a-vis another current employee. It is the employer's obligation to make sure that the complaining employee is not retaliated against. We would not want to be in a position of creating the atmosphere, the conditions for retaliation.

Mr. **WATT.** I think that is what Mr. Maltby was trying to redact, I assume. I do not think we would have any problem with that.

Okay, I think what you all have succeeded in doing is showing us how difficult this area is. Mr. McClain is going to clarify it for us.

Mr. **MCCLAIN.** Thank you, Mr. Watt. I would just like to comment on some of these issues.

With regard to providing a copy of the report, Section 609 of the FCRA does provide for discovery. So even if Representative Sessions's bill were enacted, anybody that wanted to dispute their termination still has the ability to get a complete copy of that report usually under a confidentiality agreement supervised by the court. That is the way they do it, so they can get a copy.

Mr. **WATT.** I have to be in litigation before I can get a copy of it?

Mr. **MCCLAIN.** Well, there are reasons for that. The court can protect the witnesses, for instance. If there is some indication that the names of those witnesses should not be just handed over, so then they

use the attorneys for insulation. The other thing, regarding Mr. Maltby's statement, talk about unfairness, some employers, and I do not have any hard and proof evidence of this, but I do believe that sometimes because employers are unable to do a thorough investigation without telling everyone, because of the Fair Credit Reporting Act, I think they sometimes think that the easier way, and it is certainly cheaper than hiring me, the easier way is to just get rid of the suspect; find another reason to get rid of him. Now, that is unfairness and that is an indirect result of a law that is supposed to be protecting these same employees.

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Mr. **WATT.** I think Mr. Morgan wants to say something. I have run out of time myself, but maybe the Chair will let you respond.

Mr. **MORGAN.** Congressman, in a lot of workplaces, the reality is that there are sometimes small groups of employees. My stores, which would not be untypical, usually employ 50 employees. With a 50-employee work group, even providing a redacted document, it will be obvious who did this and that would create additional workplace problems that I would really be concerned with.

Also, regarding Mr. Maltby's comments, if someone was organizing, I cannot fire someone as a pretext under the National Labor Relations Act. And also, if there were a history of discrimination that was going on, I would be subject to a patterns and practice suit under EEOC for that. So there really are a lot of protections out there already.

Chairman **BACHUS.** At this time, I am going to ask Mr. Tiberi to take the chair, and I am going to recognize Mr. Crowley, the gentleman from New York, for questions.

Mr. **CROWLEY.** I thank the Chairman.

My staff is telling me the second round of panelists is going to have more difficult issues, and it is interesting to hear about the Vail letter and the FTC, that this seems to be an issue that needs to be worked on a great deal more. So I appreciate the testimony of all of you here today.

I thank Mr. Watt for his line of questioning as well. I think it amply demonstrated that there is a need to really clarify what the intent is.

I just want to move to another area, and that is concerning the seven criteria. Mr. McClain, if I can direct the question to you, and then if the other members of the panel could respond in some way, I would appreciate it. The consumer credit report certainly includes information about a consumer's credit worthiness, credit standing, and credit capacity, and then four other categories: character, general reputation, personal characteristics, and mode of living.

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I understand that for the most part, the financial services industry generally looks at the issue of credit worthiness, credit standing and credit capacity for granting or denial of credit. The terms "character, general reputation, personal characteristics and mode of living" are used more in investigatory reports that are governed by the FCRA.

As these four criteria are not defined at all under 15 U.S. Code, I was wondering if you would both define these terms as you believe they are used, as well as let the committee know if these are important criteria. And if so, should they be defined in statute to prevent such a broad swath of information from being used in investigatory and/or credit reports under FCRA?

Mr. **MCCLAIN.** I think further definition would always be helpful. I am not sure to what extent you can do that. The FTC has taken the position, and I don't think wrongfully, that pretty much in any report it is very difficult to have a report that does not encompass one or more of those definitions.

So I do not know if a further definition might help, but I think the big issue is whether or not these types of reports should be consumer reports. I believe rather than trying to define all of these things further, if we just made it clear in the law that these types of investigative reports are not covered by the FCRA, I think that would be appropriate.

Many of the investigations that we do, we do not necessarily run credit reports. Credit reports contain information that would be very helpful on embezzlement investigations, particularly when you are looking for someone who is living beyond their means. It is a flag that indicates you might be on the right track. But in every instance, the Sessions bill would not change that. You would still have to have the consumer's written permission before you could run a credit report. So we would be able to do other types of investigations, but we would not be able to run credit reports. I hope I was responsive to your question.

Mr. **CROWLEY.** Would you be in favor of the status quo, then, leaving the seven criteria and those four particularly that I mentioned at the end, intact?

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Mr. **MCCLAIN.** We have learned to live with and understand what they mean, provided that this general category of misconduct investigation is excluded, and it clearly indicates that it is not a consumer report, then those definitions would not affect misconduct investigations, but they would still affect all of the other investigations.

I do not have any problem with preemployment. We have learned to live with that. I think most of the employers have learned to get applicants's permission before they investigate them. That is not a problem. It is when you have an existing employee who is malfeasant in some respect that you have to investigate. Therein lies the problem.

Mr. **CROWLEY.** In all four of these, character, general reputation, personal characteristics, mode of living, are these all opinions that you derive from information that is given to you? For instance, personal characteristics and general reputation, how would you define that?

Mr. **MCCLAIN.** Well, the FTC can say that just about anything we do, I mean, if I go down and check Superior Court records on someone and they say that that record check is going to possibly indicate the mode of living or the characteristics, so I do not know how else to get around that.

Mr. **TIBERI.** [Presiding.] The gentleman's time has expired.

The gentlelady from New York is recognized for five minutes.

Ms. **VELAZQUEZ.** Thank you, Mr. Chairman, and thank you to all the members of the panel for the information that will help us embarking on this comprehensive reauthorization of the legislation that is before us.

Mr. Maltby, employers obviously collect an abundance of data regarding their employees. Some of the data, such as salary, is furnished to credit reporting agencies and plays an integral part in the credit-granting process. Outside of salary and tenure data, what sort of data to employers do employers systematically collect on their employees?

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Mr. **MALTBY.** It obviously varies a great deal from employer to employer. But if I think back to the days when I was a corporate general counsel and had responsibility for the HR function, I cannot think of a great deal that I could not find out about one of our employees if I were to take a very careful look through the personnel file. There is almost nothing that I could imagine that would not be in there.

Ms. **VELAZQUEZ.** How do employers use this information? Do they furnish this data to credit reporting agencies?

Mr. **MALTBY.** Ma'am, I really do not know that for sure. My assumption would be that if the employee had applied for the loan and the employer knew the employee had applied for the loan, the employer would provide any information that appeared to be relevant, but that is strictly an impression on my part. I really do not have any hard data to back that up.

Ms. **VELAZQUEZ.** Mr. Morgan, given your HR experience, could you please comment on this as well?

Mr. **MORGAN.** Yes. We would only give out information to an agency if I had written permission

from the employee to do that. Under normal circumstances, I am not gathering data up and giving it out to anyone. As a matter of fact, I see it as one of my great responsibilities to the employees to not do that.

So generally speaking, I would only give out any information as long as I had a release from the employee. That also would go for reference checks. The reality of life today is that reference checks do not exist because no employers are giving out any information.

Ms. **VELAZQUEZ.** Thank you.

I would like to ask this question of Ms. Plummer and Mr. Maltby. I understand the restrictions that the Vail letter imposes on employers. Employers must provide an employee with notice that they are being investigated, and also must secure their consent before an investigator can begin their investigation.

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I also understand that these restrictions can prevent outside consultants from conducting an effective investigation. What risks to the employee do external private investigators pose to employees? In your experience, is there a need for enhanced protections when a third party conducts these employee investigations?

Mr. **MALTBY.** Ma'am, I would not go so far as to say that there are no concerns for having an outside third party investigator, but in general it is probably better off if there is a third party investigator. There are just too many possibilities for bias or intimidation in an internal investigation, particularly if the person being accused is fairly far up the corporate food chain.

Again, I would not want to make that as a blanket recommendation, but my blood does not run cold when I hear that a firm has brought in an outside investigator, assuming they are a competent professional firm. It might be better to bring in someone from the outside who does not have all the potential for bias that an inside party might have.

Ms. **VELAZQUEZ.** Ms. Plummer?

Ms. **PLUMMER.** There are no enhanced concerns for the employee when a third party is brought in to investigate. In fact, it improves, as Mr. Maltby just expressed, the possibility of an impartial and fair investigation. In fact, it is to the employee's benefit to have somebody from outside the company come in to investigate for just that purpose.

Ms. **VELAZQUEZ.** Thank you.

Thank you, Mr. Chairman.

Mr. **TIBERI.** Thank you.

I would like to thank the panelists from our first panel for testifying today, and ask the second panel to be seated for their testimony. Thank you very much.

Thank you all for coming today. I will introduce the second panel, starting from my left, working to my right: Mr. Chris Petersen, attorney with Morris, Manning and Martin, LLP, on behalf of the Health Insurance Association of America; Mrs. Roberta Meyer, Senior Counsel, American Council of Life Insurers; Mr. Marc Rotenberg, Executive Director, Electronic Piracy Information Center; Ms. Joy Pritts, Assistant Research Professor, Health Policy Institute, Georgetown University; and last but not least, Mr. Edward L. Yingling, Executive Vice President, American Bankers Association.

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Thank you all for being here today. I would like to remind all of you that you have 5 minutes to give us your testimony, and it will be followed by questions from those who remain here today. I would like to start with Mr. Petersen. Thank you for being here.

STATEMENT OF L. CHRIS PETERSEN, ATTORNEY, MORRIS, MANNING & MARTIN, LLP, ON BEHALF OF THE HEALTH INSURANCE ASSOCIATION OF AMERICA

Mr. **PETERSEN.** Thank you very much, Mr. Chairman, members of the subcommittee.

My name is Chris Petersen. I am a partner with the law firm of Morris, Manning and Martin. Today I am testifying on behalf of the Health Insurance Association of America. The HIAA is the nation's most prominent trade association representing the private health insurance system. Its nearly 300 members provide the full array of health insurance products, including medical expense, long-term care, dental, disability and supplemental coverage to over 100 million Americans.

My written statement focuses on the continuum of federal and state privacy laws and the interplay among those various laws. In my oral testimony, I will examine these additional privacy laws, in conjunction with the Fair Credit Reporting Act, limiting health insurers' ability to disclose information. As the committee is aware, important provisions of the FCRA are up for reauthorization. The HIAA supports the reauthorization of the Fair Credit Reporting Act.

The HIPAA privacy rule is the first of these many privacy laws that health insurers must comply with. The rule provides that those insurers that meet the definition of a health plan may not use or disclose protected health information except as permitted or required by the privacy rule. In addition, the privacy rule provides for six instances under which a health plan is permitted to use or disclose information. Most relevant for today's discussion are the permitted uses and disclosures for treatment, payment and health care operations, and those uses and disclosures made pursuant to an authorization.

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Health care operations encompass uses and disclosures necessary to administer a health plan's business and provide benefits to covered individuals. Many of the health plan's routine uses would fall under this provision. However, disclosing to a financial institution for that institution's operations would not fall under the health care operations exception. As a result, the HIPAA privacy rule would not allow a health plan to disclose health information to another financial institution without that individual's signed authorization for purposes of that financial institution to make credit decisions regarding the individual that is the subject of the information.

The HIPAA privacy rule also provides the privacy standards requirements under the rule. State laws are preempted if they are contrary to the HIPAA privacy rule. Therefore, we have to also look at state privacy laws to determine how they interact and regulate the ability of a health insurer to disclose financial information or health information.

In 1999, Congress enacted the Gramm-Leach-Bliley Act establishing a statutory framework for all financial institutions to use in disclosing information. The National Association of Insurance Commissioners adopted a model law regulating Gramm-Leach-Bliley disclosures by health insurers at the State level to provide guidance for State insurance departments in regulating this important area.

That model regulation governs financial disclosures, but the State insurance departments went further than the federal law as they also regulate disclosures regarding health insurance information. Insurance entities may not rely on the opt-out rule of the Gramm-Leach-Bliley Act to disclose nonpublic personal health information. Instead, insurance entities must either have the individual's written authorization to disclose the information, or the disclosure must be allowed under the regulation's permitted exceptions.

Generally, the regulation allows an insurance entity to disclose information in order to service a transaction that a consumer requests, or to conduct insurance functions, or to make disclosures that are in the public good. This regulation was drafted with industry, regulatory and consumer input, and I believe those exceptions, once again, would not allow an insurance entity to disclose health information to another financial institution for the purpose of that financial institution making credit decisions.

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In 1982, the NAIC adopted a comprehensive privacy model. This also regulates insurance institutions and requires that an insurer must have an authorization in order to disclose financial or medical information or personal characteristics information, as we discussed earlier. Once again, you can disclose for insurance functions, but you cannot disclose for purposes to another institution for that

institution's credit-making decisions without an authorization.

Finally, there are a whole array of State privacy laws that govern sensitive health information, for lack of a better term. These laws are additional protections for specific types of information. As you look at the HIPAA privacy rule, insurers have to once again make a decision: Do these laws provide greater privacy protections, and limit the scope and uses and disclosures of health information? If so, health plans must comply with these laws as well.

In conclusion, a whole array of laws would prevent health plans and health insurers from disclosing medical information for credit purposes.

Thank you.

[The prepared statement of L. Chris Petersen can be found on page 96 in the appendix.]

Mr. **TIBERI.** Thank you.

Ms. Meyer?

STATEMENT OF ROBERTA MEYER, SENIOR COUNSEL, AMERICAN COUNCIL OF LIFE INSURERS

Mrs. **MEYER.** Thank you, Mr. Chairman, and members of the subcommittee. I am very pleased to be here to testify before you today on behalf of the American Council of Life Insurers, the principal trade association for life insurance companies. Our members sell life insurance, disability income insurance, long-term care insurance, and also provide annuities.

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Life insurers have a very long history of trading highly sensitive information, including our policyholders's medical information, in a highly professional and appropriate manner. Life insurers collect and use this information in order to serve their existing customers. At the same time, life insurers support very strict protections relating to the confidentiality of the medical records. Accordingly, we strongly support prohibiting the sharing of medical information in connection with the extension of credit.

Today, I am going to very briefly explain why life insurers collect medical information and why it is so important to the life insurance process. I will very briefly provide an overview of ACLI's policy on medical records confidentiality, and then again touch on the key elements of the numerous federal and state privacy laws that do in fact provide very comprehensive protection to life insurers's policyholder medical records. In today's world, life insurance protection is more important than ever. In order to continue to make insurance products and services widely available at the lowest possible cost, life insurers must have access to medical information. The risk classification process, which is based in large part on medical information, provides the fundamental framework for the current private system of insurance. In fact, it is largely this process which has made it possible for insurers to make their products widely available to American consumers today.

ACLI's privacy policy, as I said before, provides for very, very strict limits on insurers's ability to both obtain and disclose consumer medical information. The principles also support a prohibition on the sharing of policyholders's medical information with a financial institution for purposes of determining eligibility for credit, even if in fact that financial institution is an affiliate of the insurer.

I would now like to speak very quickly to the various federal and State laws. Mr. Petersen has spoken to some of them already, so I will just touch very briefly on the key elements of those provisions. First, under the Fair Credit Reporting Act, medical information may be a consumer report because it does in fact bear on the consumer's personal characteristics and is used as a factor in determining an individual's eligibility for insurance. However, medical information is afforded special status under the FCRA.

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Medical information can be disclosed by a consumer reporting agency to an insurer only in connection with an insurance transaction and only with the consumer's consent. Insurers believe that the FCRA is critical to their business. It in fact facilitates widespread availability and affordability of insurance today.

ACLI member companies also strongly support the privacy provisions of the Gramm-Leach-Bliley Act. As Mr. Petersen has already indicated, medical information under that Act is treated as nonpublic personal information, and may only be disclosed by a financial institution provided the individual is given notice of the sharing and given the opportunity to opt out of the sharing.

The only circumstances under which notice and opt-out do not need to be provided is when the information is shared for operational insurance business functional purposes or in connection with joint marketing agreement. In fact, state privacy laws generally go further than this and require insurers to obtain an opt-in for the sharing of medical information.

In fact, when the National Association of Insurance Commissioners and the States were first developing and then adopting the State laws to enforce and implement the Gramm-Leach-Bliley Act, the ACLI member companies strongly expressed the view that medical information should be afforded increased protection, given its highly sensitive nature.

Both with the NAIC and throughout the country, as the States have considered adoption of the NAIC model, Gramm-Leach-Bliley confidentiality regulation, the ACLI has firmly expressed its support for the privacy provisions, medical records provisions of that regulation, which provide that in fact before a policyholder's medical information may be disclosed, there has to be obtained by the insurer the authorization or the opt-in of the individual.

Similarly, the old NAIC model privacy act, as it is called, which was enacted before Gramm-Leach-Bliley, would require the opt-in of an individual before his or her medical information could be shared with a non-affiliated third party, unless in fact the information was again being shared for operational insurance business functions.

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Mr. **TIBERI.** If you could wrap up, Ms. Meyer.

Mrs. **MEYER.** I can. Thank you very much.

The HIPAA rule, similarly, even though the HIPAA rule does not directly impact on life and disability income insurers, it would in fact require that a health care provider obtain the consent of the individual before an individual's medical records may be disclosed to a life or disability income insurer.

Finally, Mr. Chairman, we appreciate the opportunity to testify today. We strongly support strict medical records privacy protections, and would strongly support a prohibition on the sharing of medical information for purposes of determination of eligibility for credit.

Thank you.

[The prepared statement of Roberta B. Meyer can be found on page 72 in the appendix.]

Mr. **TIBERI.** Thank you.

Mr. Rotenberg?

STATEMENT OF MARC ROTENBERG, EXECUTIVE DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER

Mr. **ROTENBERG.** Thank you very much, Mr. Chairman, members of the committee.

My name is Mark Rotenberg. I am Executive Director of the Electronic Privacy Information Center. I have taught information privacy law for many years at Georgetown. I also chair the American Bar

Association's Committee on Privacy and Information Security, although I am testifying today on behalf of myself and not on behalf of the ABA. Also with me this morning are Chris Hoofnagle, Deputy Counsel at EPIC, and Anna Slomovic, our Senior Fellow.

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I am very grateful to you and the members of the committee for looking at the issue of medical record privacy. This is clearly one of the top privacy concerns for consumers in the United States. I think the particular challenge that you face this morning is trying to understand the relationship between three different regulatory regimes, and whether or not they adequately safeguard the privacy of medical records, particularly when they may be made available to employers.

Now, the HIPAA privacy rules, which have been discussed earlier, do a good job of providing privacy protection for covered entities, which are typically the health care plans. But the HHS understood that HIPAA could not be generally extended to employers, and that protection for that type of use of personal information would have to be found elsewhere.

The Fair Credit Reporting Act, while it recognizes certain protections for medical information, does not in fact go as far as the HIPAA rules, which set out a separate category of protected health information. The Gramm-Leach-Bliley rules do not speak directly to the protection of medical record information. Other means were needed to try to safeguard the protection of medical information after passage of Gramm-Leach-Bliley.

Where does that leave us today? I would like you to consider the following scenario. Imagine a prospective employee who is seeking a job and the employer asks this person to provide consent for access to the credit report, which is done increasingly today, both through standard employment practices and also through obligations imposed by federal statute. The employee, believing she has a fine credit report and that there is nothing there that would produce an adverse determination, signs the consent.

Now, it turns out that the credit report may in fact provide information from which the employer could infer medical care or medical services that she has received because, for example, she has obtained credit from a neonatal clinic for fertility drugs, an expensive procedure and something where people might quite likely obtain credit and establish what would be considered on the credit report a trade line. From this, the employer may be able to infer some information about her intent to have children.

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As a general matter in employment law, it would be improper to use that information in the employment determination, but it is an example of how information could be made available through a credit report to an employer that the HIPAA rule would otherwise try to protect, but could not protect in this instance because the employer is not in fact a covered entity under the HIPAA rules.

Now, I think there are legislative approaches to try to solve this problem. But I want to suggest to you more generally, particularly in the context of the Fair Credit Reporting Act and the many issues that you are considering in this session, that it is particularly important to understand the role that the States play in safeguarding the right of privacy. I think we have been a little bit too quick over the last few years to look for national uniform solutions that effectively restrict the ability of State regulators to safeguard the interests of consumers when these types of issues arise.

Returning again, for example, to the example of medical privacy under Gramm-Leach-Bliley, this was a problem that was dealt with by the National Association of Insurance Commissioners. It was in fact the NAIC model guidelines promulgated after Gramm-Leach-Bliley that provided a framework for good state regulations intended to safeguard the privacy of medical information that GLB did not otherwise cover.

But more generally, if you look at the development of privacy law in the United States over the last

30 years, invariably what you see is that Congress passes a baseline standard to provide a basic level of protection to protect privacy interests for consumers across the country, and allows the States to regulate upwards, to provide more protection when they identify new problems that perhaps Washington cannot get to as quickly.

Sometimes the State efforts succeed, in which case they will be followed by other States. Sometimes the State efforts fail, in which case they will be disregarded. I think this is precisely what is meant by the concept of the States being the laboratories of democracy.

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So I would urge you today as you consider medical privacy issues in the context of financial services, and more broadly the importance of the Fair Credit Reporting Act, that you safeguard the ability of the States to protect the interests of consumers. I think it would be a mistake to allow the preemption loophole to be extended beyond this Congress.

Thank you very much.

[The prepared statement of Marc Rotenberg can be found on page 146 in the appendix.]

Mr. **TIBERI.** Thank you, sir.

Ms. Pritts?

STATEMENT OF JOY PRITTS, ASSISTANT RESEARCH PROFESSOR, HEALTH POLICY INSTITUTE, GEORGETOWN UNIVERSITY

Ms. **PRITTS.** Good morning, Mr. Chairman and members of the Subcommittee on Financial Institutions. I would like to thank you for this opportunity to testify today on medical information and how it is protected in the financial services area.

I would like to incorporate everything that Mr. Rotenberg just said into my testimony, because I think he said it so well. But I would also like to emphasize that this is an area that consumers are very concerned about. They do not want their medical information shared in the financial service area without their advance permission.

In particular, there is a Gallup survey which was done in the year 2000 which showed that fully 95 percent of Americans said they did not want their banks to have access to medical record information without their advance permission. This is a consistent trend, too. It is not something that has just happened. It is consistent. It is persistent. People are concerned.

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There is no question that those in the financial service industry collect and use medical information for legitimate uses in a variety of different contexts. From the written testimony that was submitted, many of those in the financial services industry say that they believe, and as we have heard earlier from Ms. Meyer, that they believe that it is improper to use in particular health information for credit purposes.

These are important policies that the financial services trade associations have in place and many do subscribe to them, but policies are not enough. The consumer cannot enforce the policy. You cannot take it to court. More important, I think, is also the fact that policies can change. Fifteen years ago, you would have never seen an insurer using a credit score for underwriting purposes. There are many instances in which health information can lead people to financial distress, so what is to prevent in the future from people using health information for credit purposes? What we really need are adequate legal protections. The time to put them into place is now, before the sharing of this type of information is used consistently as a business practice for determining credit purposes and for other purposes that medical

information really was not intended.

One of the things that we really saw when the HIPAA privacy regulations were being drafted was a very persistent problem that people had been using health information for a long time in manners that health care consumers really did not understand and know about. Yet because it had become an established business practice, it was in many ways difficult to control it. The horse was out of the barn and there was no getting it back.

The problem I see is that the laws that we have today are inadequate. There are a lot of them, but there still are a number of loopholes. For one thing, they do not cover everyone who holds and uses health information in a commercial-type context. They set different standards and they are often inadequate for using and sharing health information. And where they overlap, there is confusion as to which law prevails. It is that last point, which I think is fairly confusing to a lot of people, but which I also find to be fairly disturbing.

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I think that the FCRA and GLBA, the Gramm-Leach-Bliley Act, are particularly problematic from a health consumer's point of view. They govern the sharing of financial information which can, by implication, and often does include medical information in the financial services industry.

The Gramm-Leach-Bliley Act allows the sharing of financial information, including medical information, among affiliates without the permission of the consumer. It does provide for notice, but as anybody who has received the scores of privacy notices from financial institutions knows, those notices are often incomprehensible.

This type of sharing of health information is precisely the activity that consumers have repeatedly and strongly said they do not want. They do not want insurers and banks looking at it and then asking them after the fact whether this is something that they really would permit.

The states have stepped up to the plate. They have filled a lot of these gaps, particularly in the health insurance area. They have been very, very much advanced as to protections that they offer. But the concern is that these laws are subject to attack.

In particular, the problem here lies, and this is a very kind of wonky discussion I am going to launch into, but the problem lies with the fact that GLBA has essentially two preemption provisions. It allows states to have stronger laws, but then it also incorporates all the provisions of the Fair Credit Reporting Act. The Fair Credit Reporting Act has a provision that prohibits states from enacting laws with respect to the exchange of information sharing among affiliates.

There have been a number of articles in some trade association magazines and law reviews that say what this effectively does is prevent States from requiring, for instance, an opt-in for the sharing of affiliate information. We think that this really needs to be clarified and the time to clarify it is now. There is no need to wait for a court to make that sort of decision.

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In summation, I would say that health care consumers prefer and demand that they have an opt-in for sharing of medical information, including information among affiliates; that the Fair Credit Reporting Act preemption provision should be allowed to expire, it is merely causing confusion; and that the Congress needs to clarify when you have these three different statutes, HIPAA, Gramm-Leach-Bliley and the Fair Credit Reporting Act, where they overlap, and there is some confusion as to which one is going to prevail, because that is not in the Congressional Record whatsoever.

Thank you.

[The prepared statement of Joy Pitts can be found on page 113 in the appendix.]

Mr. **TIBERI.** Thank you.

Mr. Yingling?

STATEMENT OF EDWARD YINGLING, EXECUTIVE VICE PRESIDENT, AMERICAN BANKERS ASSOCIATION

Mr. **YINGLING.** Thank you, Mr. Chairman.

The ABA appreciates the subcommittee's holding hearings on the Fair Credit Reporting Act and the issue of protecting consumer information, including medical information. Before I address medical privacy specifically, I would like to briefly outline the philosophy of the banking industry regarding the use of information and the importance of preserving FCRA for our economy.

First, the cornerstone of banking is preserving the trust of our customers. That only can be accomplished by protection and responsible use of information. Not only is protecting privacy the right thing to do, the highly competitive financial market demands it. No bank can be successful without having a strong reputation for protecting the confidentiality of consumer information.

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Second, we do believe preserving a national credit reporting system is critical to the U.S. economy. The strength and resiliency of the U.S. economy is linked to the efficiency of consumer credit markets. U.S. consumers have access to more credit, from more sources, and at lower cost than consumers anywhere else in the world.

What makes this possible is a nationwide, seamless, and reliable system of credit reporting. Such a system would be impossible without the Fair Credit Reporting Act. For consumers, it means they can walk into an auto dealership and drive off with a new car within an hour. They can move across the country and open a banking account without hassle. They can quickly refinance their mortgage loan from lenders across the country to take advantage of falling interest rates.

As is pointed out in a study cited in my testimony, one of the more remarkable achievements of the FCRA is the increased access to credit for lower-income households. By enabling complete and accurate credit histories, FCRA has helped extend credit to millions of Americans who otherwise might not have been able to get it. Simply put, the U.S. credit system works and is the envy of the world. The reauthorization of FCRA, and in particular the preemption of State laws which assures a national, consistent and complete system, is very important.

Turning to medical information, it is obvious that such information is at the top of the list of personal information that consumers worry about. Three years ago, we convened a select group of bankers to work on privacy issues. Regarding medical privacy, the task force believed it important to reassure the public that, to the extent banks possess medical information on a customer, it will be held sacred.

Concern has been expressed that lenders might use medical information obtained elsewhere in making a credit decision. ABA's position is that such use of medical information in a credit decision, obtained without the knowledge and consent of the borrower, is just plain wrong.

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There are, of course, a limited number of instances where medical information is directly relevant, for example in loans to sole proprietorships or small businesses where the franchise value of the firm hinges on one or two key individuals. In such cases, insurance on the key individuals might be required.

In those instances, the prospective borrower will know what information is required and can expressly consent to it being obtained and used. Otherwise, the lender should not need such medical information. Finally, any such information obtained should be kept strictly confidential by the lender.

Mr. Chairman, we appreciate the opportunity to testify today, and I would be happy to answer any questions.

[The prepared statement of Edward L. Yingling can be found on page 162 in the appendix.]

Mr. **TIBERI.** I don't think I have ever seen that before. You have 1 minute and 20 seconds to spare.
Mr. **YINGLING.** I am the last guy before lunch.
[LAUGHTER]
Mr. **TIBERI.** Thank you, Mr. Yingling.
Thank you, panel, for your testimony today.
I am going to defer my 5 minutes for questioning. I am going to call on the gentlelady from New York for 5 minutes.
Mrs. **KELLY.** Thank you.
We have been talking today about the use of information that is collected with regard to people. I would like to just ask anyone on the panel, who is collecting this? Where do you go to get this information? There was at one time a situation I recall, for instance with medical information, there was only one company that carried it. It was all in one massive computer, so everybody went there to get that information. Where do you go to get this information about people?

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Mr. **PETERSEN.** Health insurers typically get most of their information first, from an application and/or a claim. So that would be the starting base. Some of the insurance industry would use a clearinghouse that you are referring to. A lot of the health insurance industry does not use that clearinghouse because of the cost-benefit analysis.
So for health insurers, it would be primarily the application process. Then they would get an authorization, and they have to get an authorization both under State law and federal law, to collect information from other sources. Those sources would be identified in the authorization. It would be primarily providers, other insurers, and maybe in some limited circumstances this clearinghouse that you are referring to.
Claim information, if it is a claim, that information generally would come first from the claim submitted by the individual, but most generally from the providers themselves.
Mrs. **KELLY.** In that clearinghouse that you are talking about, where they hold the information, does a consumer have the opportunity to change medical information?
Mr. **PETERSEN.** Once again, I am speaking from the perspective of health insurers, both under the National Association of Insurance Commissioners's 1982 NAIC Act, people have a right to access and amend their information. The clearinghouse would be one of the covered entities under that Act.
Now, that Act is only in 16 states. It was the first comprehensive privacy attempt at the State level. A lot of very significant population states have it, but it is only 16 states. The HIPAA privacy rule would allow you to get access and amend your information, so you would have access to the information that the health insurer had, and if the health insurer disclosed it, you would have to correct the information down the disclosure chain.
Mrs. **KELLY.** How complicated is that? How easy is it to find out who has your information?

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Mr. **PETERSEN.** Once again, from the health insurance perspective, you have to make an accounting of disclosures, both under HIPAA and under the 1981 Act. So if you made disclosures to those kinds of entities, you would have to tell them they had it, and if you made a correction, you would have to tell them you made a correction. If you wanted a correction and me, the insurance company, disagreed, you would have to allow that individual to put something in the record stating that you disagreed with the failure to make the correction.
This is all fairly recent, though, so it is not well-tested as to how well it works, to be quite honest, under the HIPAA rule because April was the effective date, so we do not know how well it works, but

they have a process, I think, to address concerns of the past in that area.

Mrs. **KELLY.** Thank you.

Ms. Pritts, do you want to speak to that?

Ms. **PRITTS.** Yes. I think that your original inquiry was directed towards the Medical Information Bureau. Is that correct? The Medical Information Bureau is essentially like a credit reporting agency for health information. It is a national bureau that I believe other insurers, other than health insurers, can rely on for obtaining more or less the status of health information for individuals.

MIB reached an agreement with the Federal Trade Commission a number of years ago that its reports would be considered to be consumer reports. So individuals have the right now to obtain a copy of their report from MIB, much as they would a credit report from a credit reporting agency, for a fee of I think it is $8.50 now. They can review that information and they can request that that information be corrected if it is inaccurate. They can try to supplement that record if it is incomplete.

As a matter of practice, people who have actually attempted to use this process have met with mixed degrees of satisfaction with it.

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Mrs. **KELLY.** What I am really driving at is if you are in the process of questioning your medical record that someone else is holding, and a financial institution is also getting some of that information, is that then flagged to the financial institution so that the financial institution knows that there is a question about something on your record? There are some things on people's records that they simply do not want others to know, and yet you must sign, in certain situations, you feel you must sign a disclosure form.

So my question is, if you are in the process of questioning the great computers in the sky that hold all of this information about your credit and your medical records, then how is that transmitted to you as institutions for your use so that you know that these are issues that are at question?

Ms. **PRITTS.** Under HIPAA, what happens is, as Mr. Petersen was explaining, the individual has the right, first of all, to look at their own health information, and we would urge health consumers to do that so you have an idea before you sign one of those authorization forms what exactly your financial institution would be receiving. If you see something in there that you think is erroneous, under HIPAA you can ask your doctor to correct that information.

Now, there are a number of circumstances under which they do not have to do that. What they do is, the patient can also submit a statement saying, "I still think that this information is wrong." At that point, the health care provider is supposed to forward that, either they correct it or they deny it, and we are going to assume that the patient has supplemented and said, "I still disagree with you." At that point, they are supposed to forward that information on to places like perhaps a financial institution.

If a patient has said, "Look, I am worried; I think this information might be getting into my credit report," they would have to identify them as somebody that this information should be forwarded to.

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Mrs. **KELLY.** I am out of time, but I hope you will give me my own time to further pursue this a bit.

Thank you.

Mr. **TIBERI.** Mr. Lucas?

Mr. **LUCAS OF KENTUCKY.** Thank you, Mr. Chairman.

I have found this testimony very enlightening. In my prior life for some 32 years, I was involved in insurance underwriting and also banking, so I am a little conflicted here about some of the things that I hear.

I can see, Mr. Yingling, from the bankers's standpoint, particularly the analysis used of a small business owner, this medical information is very relevant in making a credit decision. I also can appreciate from the fact of people wanting privacy that there is some information that may get out there that they do not want people to know, that is not relevant to the decision.

I guess from a public policy standpoint, I think that we need to reauthorize the preemption. But I would be interested in what kinds of things we could do to tweak this so we could hopefully make everybody reasonably comfortable, because as it is now, we have some problems. So does anybody want to take a shot at that?

Mr. **YINGLING.** Congressman, I would just say that the only time in the credit-granting process that we believe medical information ought to be used is where two criteria are met. One is that it is relevant; and two, that you get the express consent of the potential borrower.

Now, this is really tight. It is not just a tight criteria. It is not opt-in. It means that for this specific transaction only, you are going to get the permission of the borrower to get specific information, so that the borrower would have the ability to say, for example in Ms. Kelly's question, "You are not going to some third party that has all this information in a computer. You can go to my insurance company and make sure I have an insurance policy. I will show you the insurance policy that protects you in case I die and I am the franchise."

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Or in rare instances, where there is a specific health question, you can go to my doctor and get specific information. But it seems to me that you have a real governor here in that the borrower has the ability to say, "Yes, I will give you the information and I will only give you that specific information, and here is where we are going to agree to go get it."

Mr. **LUCAS OF KENTUCKY.** What if you had a situation of a small business owner and he found out that he was terminally ill. So he thought, "Well, I will go to my bank and get this line of credit set up that will help my wayward son who is not that good a businessman; I will get this set up for him." And you know about the information, you find out about it, but he has withheld it. What do you do in a situation like that, where you know, you have gotten that information, but he has not given you that information? How do you deal with that?

Mr. **YINGLING.** Well, I think that would depend on how you get it. I do not think the lender has the right to go out and ask for the information without the permission of the borrower. I guess you could conceive of a small town where everybody knows it and so it is common knowledge that there is a health problem or some other problem. I guess from my point of view, it is hard to say the banker could not act on that general knowledge. But the lender should not be in a position of going out and fishing without the permission of the borrower.

Mr. **LUCAS OF KENTUCKY.** Okay. Any other thoughts?

Mr. **ROTENBERG.** Well, Congressman, I think you put it very well. It is a public policy issue. Certainly, one of the things that privacy laws try to do is to allow people to participate in the marketplace, to obtain credit, to pursue employment, without being required to disclose a great deal of personal information, because many people would rightly feel that if they were forced to say everything about themselves, they might choose not to go for the loan or they might choose not to try to get the job.

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I have always believed the privacy laws are actually good for the economy because they give people the safety and assurance that they can pursue economic opportunity without having to disclose a lot of personal information. Now, I think in the years ahead, this problem is going to become quite a bit more serious. Diagnostics are becoming more precise, more advanced. There has been more commercialization of this information. It is easier for employers to get access to. Our health care system is being radically transformed by new technology.

I think it is very much appropriate for the Congress at this point to draw some lines and to say the information that might be appropriate in the diagnostic setting in the delivery of medical care for an individual is not necessarily information that we should make available to employers, even though they may be interested.

Let us be honest on this point as well. Employers would probably like to know a great deal about their employees. But I think it is very appropriate for Congress in those situations to say, that person is your employee; they are not your patients, and there is only certain information that you are going to learn about that person.

Mr. **LUCAS OF KENTUCKY.** Okay. Anybody else?

Mrs. **MEYER.** I might say on behalf of the life insurers that we believe that extension of the FCRA affiliate-sharing provisions is absolutely critical. Just as the FCRA has made it possible for credit to be widely available in the United States, it has also very much facilitated the availability and the affordability of life insurance products across the country.

It is essential, as I stated in my testimony, that insurers be able to obtain and use medical information in order to assess risk, in order to make life insurance products widely available and affordable. At the same time, we recognize and very much appreciate consumers's particular concerns about medical information. For that reason, we do in fact support laws and regulations that would actually impose strict requirements and limits on our ability to in fact obtain and disclose this information. We very much support a prohibition on the sharing of medical information to determine credit.

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Mr. **LUCAS OF KENTUCKY.** Thank you.

Mrs. **MEYER.** Thank you.

Mr. **TIBERI.** Thank you. The gentleman's time has expired.

I am going to recognize the gentleman from Ohio for 5 minutes.

Mr. **LATOURETTE.** Thank you, Mr. Chairman.

Mr. Petersen, I apologize. I was not in the room for your testimony, but I have read it and I have a question that has nothing to do with fair credit reporting, and just wonder, as a representative of the health insurance industry, if you have an observation.

When I talk to the small business folks in my district about the implementation of HIPAA and the law of unintended consequences, they are describing a situation that because, not that they want to root around in their employees's medical information, but because when they approach a health insurer they can only share or know so much information. They are finding that their insurance premiums are dramatically increasing because the insurance company is not aware of the risk that they are being asked to insure. Is that a reasonable observation by these people?

Mr. **PETERSEN.** It is difficult. First off, for your small employers, I feel for them because I represent large insurers who have the absolutely same responsibilities as very small employers, and individual doctors. They all have to comply with this very large rule, and not all of them can afford to hire attorneys. So it is a very difficult problem.

There is one problem about how you share information as an employer. The rule sets up group health plans, plan sponsors and employer requirements, all for the separate sharing of information. Unless you provide notices and put in policies and procedures, you may have restrictions on your ability to obtain and/or disclose information.

I have heard of situations where small employers are finding it difficult to sometimes have one health plan disclose to the other health plan, or just to get the information generally and to disclose. From a health insurance perspective, if you do not have the information, a conservative underwriting approach is to, unfortunately, consider that it is probably bad.

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There has been some state activity. A few states are now enacting laws requiring one health plan to give it directly to the other health plan, so that the employer is not in the middle. They can just tell the one insurance company, give my information to the other insurance company. I think those types of laws will help address it, but it is a 50-state problem.

Mr. **LATOURETTE.** Thank you.

Mr. Rotenberg, I was in the room for your testimony and I heard you talk about a credit report of a prospective employer that might have some billing or a credit application for fertility. I think you said that the employer could not make an inference, which would be improper in the employment setting anyway.

But couldn't the same inference be drawn, since we are talking about inferences, by an employer who was interviewing a woman who was 22 years old who just got married, from the fact that on her credit report there was testing for fertility, that she may want to in the foreseeable future start a family?

In both of those inferences, if you reach the conclusion that she was desiring to get pregnant, that would not, under the laws already on the books, be a disqualifier. It would be an impermissible reason to disqualify someone for employment. Is there a better example or a greater danger that you see than the one that you cited to us in your testimony?

Mr. **ROTENBERG.** Congressman, I actually think the example is a fairly good one because it is a medical service that is increasingly likely to appear on credit payments. In fact, when the Federal Reserve took a look at credit reports, they were very interested in their study of February 2003 this year to find a very large number of credit payments related to medical services.

So we could go into a bit more detail. We could imagine certain types of clinics that provide help for people with stigmatizing conditions. But I think the critical point is that there is information made available today through the credit report that would otherwise be covered under HIPAA, but for the fact that the employer is not a covered entity under HIPAA. That is the statutory problem.

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Mr. **LATOURETTE.** And Ms. Pritts, as I read your testimony, there was a reference that I did not hear you talk about, but there was apparently a banking executive that served on his county health board, is that right?, and you cite that as an example of bankers using medical information for making credit decisions.

My question is, based upon your study of HIPAA, wouldn't the conduct of, I assume it is a fellow, but this banker prior to 1993 be a violation of HIPAA today? And if not, why not?

Ms. **PRITTS.** He is not a health care provider, and it is not clear where he was getting his health information from. He was serving on a board, I believe. It is not clear whether that registry would be a covered entity under HIPAA, because of the definition of health care provider.

Mr. **LATOURETTE.** Okay. But you would agree with me if in fact the information was being supplied by a health care provider, that it would be covered, and your answer is that it would?

Ms. **PRITTS.** Well, if it is supplied by the health care provider to a registry, it then becomes uncovered by HIPAA, so then it is not protected.

Mr. **LATOURETTE.** Thank you very much.

Thank you, Mr. Chairman.

Mr. **TIBERI.** Thank you.

Mr. Crowley is recognized for 5 minutes.

Mr. **CROWLEY.** Thank you, Mr. Chairman.

Let me just take Mr. Rotenberg's example to another level. I would ask Mr. Petersen and Ms. Meyer or Ms. Pritts to chime in.

If an individual were to obtain the TB test or an AIDS test or even a mammogram and pay for that using a credit card, would it be possible for that information then to be shared with affiliates? If so, is that possibly exposing what we determine as risky behavior in one's personal behavior that could be used against them to deny them insurance, both health and PC? Or even taking it to a further extent, is it possible that information could be used to deny them employment?

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Mr. **PETERSEN.** I will take the first shot at the question. The mere fact that they charged the information from a health insurance perspective, if they then submitted that charge to the health insurer for reimbursement, that would become protected health information and would be subject to all the protections I described.

The 1982 Act, you asked earlier about avocation, lifestyle, reputation, the 1982 Act of the NAIC provides special protections for that information as well. They essentially treat it for health purposes like marketing. So if you inferred something from that, you also could not share that for marketing with a third party.

Mr. **CROWLEY.** What if you are an affiliate with the company?

Mr. **PETERSEN.** You have limitations under HIPAA about how you can share protected health information from marketing. You can share it to do upgrades to existing products, for instance, but very limited ability to use that. So if you just had that claim information, I think you would be restricted on how you could use it within the internal, even within affiliates, or internal uses. So you would have limitations on how you could do it.

Under HIPAA, if it was not a part of the hybrid entity, for instance if you had an affiliate that was a life company, you could not disclose at all to the life affiliate. It would have to be health to health, and for limited ways to share it for marketing.

Now, on the other hand, of course, if it was something that came up in the application process, so you paid for it with your credit card, but it came up in the application process, then the health insurance company could use that information.

Mr. **CROWLEY.** They could use it. Well, then, Ms. Meyer, would you like to respond?

Mrs. **MEYER.** Yes, thank you.

If in fact you are talking about the bank sharing information with an insurance affiliate. Under the Fair Credit Reporting Act in fact that probably would be an experience in transaction information, so that the bank could share it with the life insurance affiliate. Although, I have got to tell you, I am hard-pressed to think of an actual situation where a bank would be sharing information of that nature, of a charge with a life insurance company.

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But say in fact the life insurance company did get the information, then once the life insurance company gets the information, then it would first, I cannot even think of the real-world where it would get it, so that it would even be an issue, because I cannot imagine they get that information in connection with underwriting.

But if in fact an insurer ever did get the information, then the whole ambit of all the body of laws dealing with insurer's ability to disclose information would come into play, notably the NAIC model regulation, which requires an opt-in for the sharing of medical information, unless it is for an insurance business function, or the old NAIC model Act, which again requires an opt-in. Then you would possibly get into the Fair Credit Reporting Act, which would probably require an opt-out for the sharing.

But in fact, insurers that do business all over the country adhere to the NAIC model Act and regulation, essentially in all States in which they do business. So that essentially ends up being the law of the land. But again, getting to the very beginning, I am hard-pressed to think of a situation where a life insurer would actually be getting that type of information from a bank.

Mr. **CROWLEY.** You may be hard-pressed, but it not inconceivable that something like that could happen in the future.

Mrs. **MEYER.** I just don't know how.

Mr. **CROWLEY.** We don't know where this is going, actually. Things are evolving in terms of information and the need for more information to make decisions based on one's personal life, especially risky business.

Mrs. **MEYER.** I guess conceivably, but that flow of information is something that I have not seen.

Mr. **CROWLEY.** Difficult. Okay, Mr. Chairman, just one more question, if I could, for Mr. Yingling.

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I missed your opening statement, but it was pointed out to me by my staff that it says, "With respect to the banks, medical information should only be used for the express purpose for which it is provided and should not be shared without the express consent of the consumer." Are you advocating a system of opt-in for health information, as opposed to opt-out?

Mr. **YINGLING.** As I mentioned in a previous answer, I don't think it really is opt-in. I think it is stricter than opt-in. An opt-in regime could be a general approval to seek information or to use information, and it could be prospective and cover additional transactions.

When we say with the approval and consent of the potential borrower, what we mean is a specific approval of the information that is needed for the application in front of you, so to speak. So it actually I think is stricter than opt-in.

Mr. **CROWLEY.** Thank you.

I thank the chairman.

Mr. **TIBERI.** Thank you. The gentleman's time has expired.

Without objection, the gentleman from Illinois, Mr. Emanuel, may be recognized for the purpose of questioning witnesses under the 5-minute rule. Do I hear an objection? Not hearing an objection, Mr. Emanuel? Mr. Emanuel is recognized for 5 minutes.

Mr. **EMANUEL.** Mr. Chairman, thank you. As a member of the full committee, I ask unanimous consent to ask questions. Thank you.

First of all, thank you for holding this hearing and putting this panel together. To follow up on this set of questions and your answer, I think we are at a critical point in finding a balance here that allows commerce and information to flow freely, but also give consumers a certain level of protection in this storm that they have a safe harbor. As you said, it is more strict than opt-in or opt-out. I actually am working on a bill creating a blackout as it relates to medical information.

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We have to create, I think, for consumers, because it touches on what Ms. Pritts said earlier as it relates to information, what consumers most care about is their medical privacy. If you look at it as a set of issues, you go down the ladder of what they care about, at least in the data and the research I have seen, and obviously I am dealing with five experts here who may show counter-data, but medical information is what they care most about in the sense that they feel vulnerable and they feel that their privacy has been violated, and then forces greater than they can control and have access to things about them that are not relevant.

With that, and again the world we live in is changing by the time we deal with this, and we are trying to set up some set of rules going forward that do not allow the different legislation that we have passed in the past, at least to set a clear mark of what the rules of the road are going forward.

Let me ask a question, and this is for anybody, so have at it. I have a set of questions. What are some of the scenarios that could occur if the existing loopholes are not closed as we try to explore different scenarios? And is there a chance for widespread abuse here? I have some follow-up questions after that, so does anybody want to just take at it?

Mr. **ROTENBERG.** Congressman, I return to the original purposes of the Fair Credit Reporting Act. It was an extraordinary law at the time it was passed in 1970. Senator Proxmire and others came together. People became aware that a lot of derogatory information about individuals was being gathered up and being used in an adverse way. The information was inaccurate. We would call it today probably defamatory. It kept people out of jobs. It kept people from getting loans.

The Fair Credit Reporting Act was passed to create stable transparent markets that consumers could participate in by ensuring accuracy and fairness and privacy. I think what happens, as you describe, as the technology gets ahead of us and some of the new business practices get ahead of us, we get back in some ways to where we were back in the 1960s, where there is the risk that inaccurate information,

defamatory information will produce bad consequences.

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I think Congress was very wise in 1970 to deal with the problem then. I think you are going to have to deal with it today with new technology and with new business practices.

Mr. **PETERSEN.** I think from the health insurance perspective, it is very difficult to think of any loopholes that actually exist as the HIPAA rule interacts with the State laws. Our firm conducted an analysis of how the HIPAA privacy rule interplays with all 50 State insurance codes. That analysis is over 600 pages, and I am assuming a non-lawyer could do it in 400 pages or however many extra words we might add to it. It is still a very lengthy analysis. State law, from a health insurance perspective, adds a lot of additional layers of privacy protections.

Now, it is very difficult as a national carrier to interact with all those, so sometimes preemption might be good. But you look at, as I said in my testimony, you have two NAIC models; you have the HIPAA rule; and then you have sort of sensitive information, reproductive rights, genetic testing, mental health, substance abuse, a variety of information that states have deemed to be extra-sensitive, and they have passed additional laws on the uses and disclosures. So I think from a health insurance perspective, almost all bases have been covered.

Mr. **EMANUEL.** Okay.

Mrs. **MEYER.** I think from the perspective of life insurers, which are in a slightly different position than health insurers because they are not directly subject to the HIPAA rule, life insurers's and disability income insurers's ability to obtain medical information is very much determined by the HIPAA rule, which would not permit health care providers to give information to life insurers and disability income insurers without their providing the authorization of the individual.

So you take all of the others, the Fair Credit Reporting Act, Gramm-Leach-Bliley, the HIPAA rule and all of the State privacy rules, and again the combination, the fitting of all these rules together in effect operates in the same way, because both life insurers's ability to get the information and then to disclose the information is covered by the combination of all of these rules.

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Mr. **EMANUEL.** Did you want to say something?

Ms. **PRITTS.** Yes. I think HIPAA protects health privacy fairly well in the context of health insurance, but HIPAA is not comprehensive. It only covers health care providers and only if they do certain kinds of transactions, a health care clearinghouse, and health plans. So it does not cover everybody.

The other point I want to make is that we have heard repeatedly today how important the State laws have been in filling in the gaps at the federal level. They are particularly important with insurance, because that is traditionally governed at the State level. To the extent there is this ambiguity in GLBA and FCRA about whether the States can go as far as they want to go, I really think that needs to be clarified.

Mr. **EMANUEL.** One question is, and if you have the life of a member as I do, with office hours in grocery stores, meeting people, doing constituent work, making it easier for people. My day is, and it is a pathetic life, maybe; I do it on Saturday. You meet people. You try to make office hours easier. And I don't think consumers have any idea that on a credit background, health information is accessible. Maybe from the insurance side, but I will tell you from the general public, I would be interested if, from your own background and your own research, your own knowledge of the public, whether you think they know that health information is accessible on a credit background check.

Mr. **TIBERI.** The gentleman's time has expired, but please answer the question.

Mr. **EMANUEL.** Thank you, Mr. Chairman.

Mr. **YINGLING.** If I could comment, I am sure I am oversimplifying here, but the expansion that we

are talking about here is due to the Fair Credit Reporting Act covering a whole bunch of different types of reporting agencies.

If you are talking about the basic credit reporting system, when a bank looks at an application and goes and gets a credit report, they do not have medical information in that report. When people are doing employment checks, they go to a different type of reporting agency where they get that kind of information. I think it is important to make that distinction.

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I am a little concerned if we start trying to deal with issues that just go through basically the payment system or the traditional credit card system where all you have is something that says a payment was made to the Yingling Clinic, and that is all that is in there, or a late payment was made to the Yingling Clinic. Then to ask the reporting system somehow or other to make a distinction between whether the Yingling Clinic is a health clinic or a doctor clinic or a golf clinic, and people who have seen me play golf know that it is not, when you are dealing with millions and millions of transactions with one little piece of information. I do not think you want to require those kinds of reports, or in the situation of those kinds of reports, to have people sit there manually and try and figure out what the Yingling Clinic is.

Mr. **EMANUEL.** Thank you, Mr. Chairman.

Mr. **TIBERI.** Thank you.

The gentlelady from New York is recognized for 5 minutes.

Mrs. **MALONEY.** Thank you very much.

I would like to follow up on the questioning of my colleague, Mr. Emanuel. I agree that certainly health information and privacy information and medical information is one of the most sensitive areas this committee deals with. I would like to go back to some of the testimony by Mr. Rotenberg, in which he talked about the availability of medical information in credit reports and the ability to infer a person's medical history based on this information. He cited studies by the Consumer Federation and the Federal Reserve on this point.

I would like to ask the panel, beginning with Mr. Rotenberg, do you know of any companies that are using this information to make conclusions about people's medical history and base credit decisions on such information, not just late payment, but medical history? You could say payments to a clinic; you could infer they have cancer or whatever. So starting with you, Mr. Rotenberg, and if anyone else would like to comment.

Mr. **ROTENBERG.** Congresswoman, the quick answer to your question is no, we have not been able to identify organizations that have used this information in an adverse way. I want to say two things, though, on this point. First of all, that the problem has recently come to light. The Consumer Federation of America report is from December of last year; the Federal Reserve Board report is February of this year.

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Secondly, I think it will take further investigation to actually find those instances where these kinds of determinations are made. But having looked at the report from the Federal Reserve Board, it seems apparent, it was at least apparent to them that medical record information can now be obtained from a credit report.

Mrs. **MALONEY.** Has anyone else on the panel, do any of you know of any business that has used this information in an adverse way? Any other members of the panel?

I would like to follow up and ask, do you, Mr. Rotenberg, or anyone else on the panel, believe that employers are using this information to base employment decisions on people's health? People look at credit reports for employment decisions also.

Mr. **ROTENBERG.** Well, I suspect that an employer with access to this information would consider

it. Now, as I also indicated in my earlier statement, certain types of determinations, for example a prospective pregnancy, would not be a permissible factor in an employment determination. Nonetheless, under the HIPAA guidelines, which would prevent people from getting access to this information, without those safeguards applying to employers who get access in effect to the same information through the credit report, they can now make judgments about AIDS trials and TB and so forth. I think it is a problem that the committee will need to look at more closely.

Mrs. **MALONEY.** Yes.

Mr. **PETERSEN.** I was going to say from a HIPAA perspective, employers that provide group health plans, their group health plan is treated just like a health insurer under HIPAA. So if in the context of providing benefits to their employees, if they receive protected health information that identifies the individual, they are subject to all of the same rules as a health insurer. So they could not use the information received in that context to make employment decisions. I think Mr. Rotenberg was talking about information where you could infer health status.

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Mr. **ROTENBERG.** Just to clarify if I might, Mr. Petersen is describing the information obtained by virtue of the health plan, which is correctly covered under HIPAA. I am talking about the information that is obtained from the credit report that the employer might access as part of an employment determination, which would not be covered under HIPAA.

Mr. **PETERSEN.** That is correct, yes.

Mr. **YINGLING.** I just want to add again that when we use the term "credit report," we may think that we are talking about the credit report a bank gets. It is technically a credit report because it is all covered by the Fair Credit Reporting Act, but when a lender gets a credit report, they do not get that information. All they get is the payments and the late payments and your credit history. They do not get the medical information. When you are an employer, you are going to a different type of entity, and that is where you may be getting some of this medical information.

Mrs. **MALONEY.** But as I understand it from Mr. Rotenberg's testimony, just getting the payment history can infer medical conditions. Is that what you were saying?

Mr. **ROTENBERG.** To be precise, it is the trade line information that would indicate, for example, an outstanding debt to a clinic. That information would be made available to the employer through a credit report, and that is the type of information that is being made more widely accessible today.

Mrs. **MALONEY.** And you were implying that you could gain information just from the credit report on a person's health.

Mr. **ROTENBERG.** Yes, exactly.

Mrs. **MALONEY.** And a health condition, if you are making a payment to a cancer clinic, obviously you probably have cancer, that type of thing. What specifically did the Federal Reserve say about this? Could you elaborate?

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Mr. **ROTENBERG.** Well, I have the Federal Reserve report in front of me, and I would be happy to provide it to the committee, perhaps as an attachment to my testimony. But I will just read one sentence, and this is under a heading "collection agency accounts." I am reading from the report of the Federal Reserve, February of this year: "Information on noncredit-related bills and collections such as those for unpaid medical services is reported to credit reporting companies by collection agencies. In addition, collection on some credit-related accounts also are reported directly by collection agencies."

So the Federal Reserve, this is a very good study, it is a non-political study. They were simply trying to understand how the credit report is generated, where does the information come from. They seem to be interested in the fact that a significant amount of information, in fact on page 69 of the report, they indicate that approximately 52 percent of transactions relate to medical payment. So this is I think very

interesting.

Mrs. **MALONEY.** Yes. My time is up. I thank all the panelists.

Mr. **TIBERI.** The gentlelady's time has expired.

We will go for a second round of questioning between the three of us, if both of you would like to stay.

Mr. Yingling, just following up on this line of questioning from the last two questioners, let's say a customer of one of your banks has a checking account and is writing a check to the Ohio State cancer clinic, or is a credit cardholder with one of your banks and goes to a grocery store pharmacy and purchases medication that is for mental illness or something. Typically, how is that information protected for a consumer?

Mr. **YINGLING.** Typically, all the payment system information is protected. There is no distinction, I don't think, made with medical versus any other type of information. It is protected through normal security measures. If you look at Gramm-Leach-Bliley, there are specific provisions in there that require that banking institutions have security that protects all this type of private information.

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Quite frankly, it is moving through the computers so fast that I don't think any human looks at it unless it is an exception item. I believe that our task force was pretty clear in the Statement that it made in its report that is quoted at the end of my testimony. It said that none of that type of information should be gathered or should be used for any purpose other than making sure that the checks are paid and the accounts are reconciled.

Mr. **TIBERI.** In terms of the wording, "should be" or "cannot be" used? Can you comment on that?

Mr. **YINGLING.** Well, I don't make law, so I can't say "cannot." But I recommend "cannot" should be used. If you chose to make it "cannot," you could make it "cannot." However you would have to have an exception to cover all those instances, and we have been talking about one example, which is the key-man insurance on a small business. You would have to have many exceptions, but even in those exceptions it would only be with the express consent of the potential borrower.

So I think the better way to phrase it so you do not have to get into the business of trying to foresee every exception, which is impossible, would be to say it can only be used with the express consent of the customer.

Mr. **TIBERI.** But to your knowledge, your membership does not abuse that customer relationship now, to your knowledge?

Mr. **YINGLING.** No, not to my knowledge. It is hard to foresee instances where it would be worth the candle to try to do it, quite frankly. There are lots of instances where you do get medical information. Another one, for example, is we do a lot of trust work, and quite often when you are setting up a trust, if you have a child that has medical problems or mental problems, you would want that banker working with you to set up the trust, to understand that. You want the person running the trust to have the authority to make decisions about when additional medical care is needed or not needed. But those are the exceptions, and again it is for that express purpose and that purpose only.

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Mr. **TIBERI.** In your testimony earlier, you mentioned the State preemption of the FCRA is important for us to re-extend or extend. Can you explain or delve into why that is important and, in your mind, what would happen if it is not extended?

Mr. **YINGLING.** Well, part of that is to go into all the benefits of the Fair Credit Reporting Act, which I won't do, but there are just huge benefits, one of which is the way it helps low-and moderate-income individuals obtain loans. There is a remarkable chart in this study that shows the incredible growth in the availability of credit to low-income people since the passage of the Fair Credit Reporting Act.

I was interested in Chairman Oxley's comment, which is another aspect of this, about the incredible mobility we have for people to move and to get jobs, which is so important to our economy, and that is in part due to the Fair Credit Reporting Act.

Specifically in answer to your question, I think the best way to frame it is to give you an example that came to my attention recently when I was talking to the CEO of a small bank down in the southern part of Virginia. She was saying, because we all know California is very active in this area, "You mean to say that if I have a son or daughter of one of my long-term customers who goes to California as a student, that I am going to be subject to California law?"

Well, you carry that out. Suppose it was a graduate student that moved to California. The first thing this community bank would have to do is apparently track all their customers to figure out if they had moved. Then they would have to figure out, well, this is a graduate student. Are they a resident of California or a resident of Virginia? Are they subject to California law now or not? And then if they are subject to California law, they would have to have somebody explain to them all the nuances of what they could collect and what they could report on the credit card loan and the auto loan to that son or daughter.

Now, there is almost no way for them to do that other than to have a lawyer on hand in every state that can tell that community bank how you cover that person. The end result is, they will not report on that person. They cannot afford to report on that person.

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That means if that person has problems and does not make payments, that is not going to be reported. On the other hand, maybe with this graduate student, the only loans he or she has ever had were the credit card and the automobile loan, and now that is not reported, so the student has no credit history.

So you can see how the whole system can start to break down if you do not have one national law that this Virginia banker can plug into.

Mr. **TIBERI.** Thank you.

Unfortunately, my time has expired. I will recognize Mr. Crowley for 5 minutes.

Mr. **CROWLEY.** Mr. Yingling, I understand that while health information is not allowed on credit reports, affiliate sharing is often exempt from FCRA privacy rules. So as banks and insurance companies, and this goes back somewhat to my original question, become more affiliated, could this information flow between affiliates, particularly these new brands of banks that are buying and marketing health insurance plans, could that information flow between?

And who would govern the privacy of this health information, HIPAA, FCRA or no entity? And where is this distinction codified in the law, as I don't think anyone wants to see this end up in the courts for many years of litigation to sort out these issues, especially as it pertains to such important issues as the issue of one's personal privacy?

Mr. **YINGLING.** I think the simple answer is if you had a bank that chose to violate all the principles of trust of their customers and to take medical information and give it to an affiliate, it could do it. There is nothing illegal about it.

Mr. **CROWLEY.** So you think the pressure of the market would come to bear, advertisement by other competitors?

Mr. **YINGLING.** I think that would be a major factor. We believe it is wrong to do it, but if you are asking me, is there a law that prevents it at this moment in time, the answer is no, sir, there is not.

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Mr. **CROWLEY.** Would anyone else like to comment on it?

Mr. **PETERSEN.** There are rules against the flow in the opposite direction. So in that situation you described, if a bank were to purchase a health insurance health plan, the bank evidently can flow information to the health plan. The health plan could not flow information to the bank under the HIPAA

privacy rule of 1982 and the NAIC Act article five.

So you would have restrictions of the information flowing the other way, and you would have to have an authorization for the health plan to release that information to the bank. Most of this sensitive information will be within the health plan.

Mr. **CROWLEY.** Ms. Meyer?

Mrs. **MEYER.** I was just going to say, to the extent there ever would be that flow from the bank in another direction, it would seem to me that both the Fair Credit Reporting Act and GLB itself would govern those disclosures and require at least an opt-out in that situation. Although again, it seems a stretch.

Mr. **CROWLEY.** I keep coming back to those difficult stretches for you, don't I, Ms. Meyer?

[LAUGHTER]

Just to show you how I think. I thank you.

Would you like to respond, Ms. Pritts?

Ms. **PRITTS.** Yes, I would like to just go back to the one point that I think we continually miss, which is that Congress in enacting HIPAA and in enacting Gramm-Leach-Bliley subsequently, never really indicates who is on first.

The Fair Credit Reporting Act was passed I think in 1990. The amendments to the Fair Credit Reporting Act were in 1996. HIPAA was in 1996. HIPAA does not say anything about the Fair Credit Reporting Act. HIPAA hardly says anything about how you protect health information, in all honesty, the statute.

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Subsequently, you have the Gramm-Leach-Bliley Act, which was enacted after HIPAA, and very detailed. It does not mention HIPAA. Subsequent to that, then, you have the actual promulgation of the HIPAA privacy regulations, which are very detailed. But if you actually go through an implied repeal analysis, first of all you should not have to do that. We should have some indication from Congress as to what law governs if there is an overlap. It is an easy thing to fix, and it is something that we should not be relying on the court for.

Mr. **CROWLEY.** Thank you.

I thank the chairman. I have other questions, but I will submit them in writing for an answer.

Mr. **TIBERI.** Ms. Meyer, you were going to comment, it looked like?

Mrs. **MEYER.** Actually, I was going to say that in fact insurance companies for a number of years have been dealing with the meshing of all of these rules together. It is because of the fact that there is this meshing, we see that it is going to be so critical to reauthorize the preemption provisions of the Fair Credit Reporting Act, so in fact there will be certainty as to what the rules are.

Mr. **TIBERI.** The gentleman from New York's time has expired.

I would like to thank all the witnesses for being here today. The record will be open for 30 days for members to submit any additional testimony or comments or questions.

The hearing is now adjourned.

[Whereupon, at 1:03 p.m., the subcommittee was adjourned.]

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

Wednesday, July 9, 2003
U.S. House of Representatives,
Committee on Financial Services,
Washington, D.C.

The Committee met, pursuant to call, at 10:14 a.m., in Room 2128, Rayburn House Office Building, Hon. Michael Oxley [Chairman of the Committee] presiding.

Present: Representatives Oxley, Leach, Bachus, Royce, Lucas of Oklahoma, Kelly, Gillmor, Ryun, Ose, Biggert, Shays, Miller of California, Hart, Capito, Tiberi, Kennedy, Hensarling, Murphy, Barrett, Harris, Renzi, Frank, Waters, Sanders, Maloney, Velazquez, Ackerman, Hooley, Carson, Sherman, Lee, Inslee, Moore, Capuano, Hinojosa, Lucas of Kentucky, Clay, Israel, McCarthy, Baca, Matheson, Miller of North Carolina, Emanuel, Scott and Davis.

The **CHAIRMAN.** [Presiding.] The Committee will come to order.

The Committee meets today for a legislative hearing on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, the FACT Act, comprehensive legislation to reauthorize certain key provisions of the Fair Credit Reporting Act and make other needed reforms to our national credit reporting system.

The bill was introduced just prior to the 4th of July recess by a bipartisan coalition of 32 members of this Committee, 18 Republicans and 14 Democrats, led by the Chairman of the Financial Institution Subcommittee, the hardworking Mr. Bachus, Ms. Hooley, Mrs. Biggert and Mr. Moore.

The FACT Act grew out of an exhaustive series of hearings that Chairman Bachus's subcommittee has held on the FCRA over the past several months. Those hearings, which featured testimony from some 75 witnesses, representing every conceivable perspective on the FCRA, has laid the groundwork for this Committee to act, hopefully later this month, to preserve the benefits of the national credit reporting system and give consumers important new rights in the process.

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I commend Chairman Bachus and all of the members of the Financial Institutions Subcommittee for their diligent and very thorough approach to this complex issue. The legislation that the Committee considers today is a testament to their months of hard work.

The subcommittee's hearings have, in my view, established a compelling case for reauthorizing the FCRA's uniform national standards. As one of our distinguished witnesses at today's hearing, FTC Chairman Muris, has stated, the "miracle of instant credit created by our national credit reporting system has given American consumers a level of access to financial services and products that is unrivaled anywhere in the world."

According to the Federal Reserve Board, since FCRA's enactment, the overall share of families with general purpose credit cards increased from 16 to 73 percent, with low income families achieving the greatest increase.

American families' ability to buy a home has also increased, with ownership levels growing significantly from 60 to 68 percent, again with the largest gains achieved by lower income and minority groups.

These improvements in the credit and mortgage systems have saved consumers nearly $100 billion annually, according to some estimates. The FACT Act is, first and foremost, an attempt to make sure

that the considerable benefits of that system to consumers and to the U.S. economy do not go up in smoke at the end of this year when the FCRA's uniform national standards are set to expire.

Let me highlight just a few of the provisions that I was particularly pleased to see included in this important jobs and economic growth bill.

The FACT Act incorporates a number of provisions drawn largely from legislation introduced earlier this year by Ms. Hooley and Mr. LaTourette that aimed to reduce the incidence of identify theft and protect those who are victimized by this increasingly common form of criminal activity.

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The bill prohibits the printing of complete account numbers and expiration dates on credit and debit card receipts and requires verification of certain address changes so that consumers are less likely to have their accounts stolen.

It helps consumers who fear they have been victimized by identify theft to place fraud alerts on their credit reports to ensure that criminals can't access their accounts.

And it allows identity theft victims filing police reports to block any fraudulent information from appearing on their credit reports to protect their credit reputations from being destroyed.

With these targeted reforms, the FACT Act will strike a serious blow against the identity theft criminals who have succeeded in victimizing millions of innocent Americans over the years.

The FACT Act also contains a number of provisions strengthening consumers' ability to dispute the accuracy of incorrect or incomplete information that appears on their credit report.

For example, perhaps the most fundamental protection the bill gives consumers is the right to a free annual credit report accompanied by an explanation of their individual credit score and what steps they can take to improve it. This will not only help consumers guard against identity theft, but will empower consumers to ensure they will not be unfairly denied access to credit or other financial products before the need arises.

Let me again thank Chairman Bachus and the original co-sponsors of this legislation for their leadership and exemplary work.

Let me also indicate to members that I fully expect this bipartisan consumer protection legislation to continue to be perfected as it moves through the markup process.

The ranking minority member, Mr. Frank, has stated that one of his priorities will be to ensure that the legislation includes heightened safeguards for consumers' health-related information. We have been working hard on that issue and I am committed to continuing to work with him in the same bipartisan spirit that has characterized the Committee's review of FCRA thus far.

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Other members on both sides of the aisle have thoughtful proposals addressing various aspects of the FCRA that also warrant the Committee's careful consideration.

In closing, I want to welcome Secretary Snow and Chairman Muris before the Committee and thank them for their constructive role in this process. Just last week, Secretary Snow unveiled the Bush administration's proposal for reauthorizing FCRA's uniform national standards, which included sweeping new protections for the security of America's personal financial information.

And under Chairman Muris's leadership, the FTC has recently begun implementing its national "do not call" registry—bless your heart—something that I and many members of Congress have long supported to limit unwarranted telemarketing phone calls. Judging from the millions of Americans who have signed up for it thus far—and I understand it is 20 million and counting—this Bush administration effort appears well on its way to becoming one of the most popular consumer protection initiatives of all time.

The Chair would add that pursuant to the Chair's prior announcement, he will limit recognition for opening statements to the Chair and ranking minority member of the full Committee, the Chair and

ranking minority member of the Subcommittee on Financial Institutions and Consumer Credit, or their respective designees, to a period not to exceed 16 minutes evenly divided between the majority and minority. The prepared statements of all members will be included in the record.

The Chair now recognizes the ranking member, Mr. Frank, for an opening statement.

[The prepared statement of Hon. Michael G. Oxley can be found on page 94 in the appendix.]

Mr. **FRANK.** Thank you, Mr. Chairman. I appreciate the cooperative spirit in which we have been able to work so far.

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I think it is very clear from a wide range of conversations I have had that the votes exist, both on the Committee and in the House, to continue the existing FCRA, including the seven preemptions. I can't name them all. I think I can get more of them than of the seven dwarfs, but I am not sure, but I know them when I see them.

[Laughter.]

So that outcome is not in question. There are, I should say, within the responsible consumer community, on our side of the aisle here, some people who oppose that. And what I am giving now is not my personal preference, but my statement of a fact. It is clear to me that there is majority support for extending the preemptions. The question is, in what form?

Now, we should accept reality. It is very clear that if the majority party in this House decides to pass something, it will pass. A lot of time may pass before it passes, as we learned a week ago, but it will pass.

Things are obviously different in the Senate, and that is what is relevant here.

Just briefly, our deliberations will decide, I believe, whether or not a bill passes the House extending the preemptions with 240 or 250 votes or 380 to 390 or maybe even 400 votes. I think it would be better if it were the latter.

One, I think it would be in the interests of the country and of the economy for us to pass a bill that extended the preemptions with increased consumer protections.

And I should note that there is, I think, a very high degree of agreement among all of the members of the Committee, about the consumer protections. There is a very high degree of conceptual agreement, areas such as identity theft, medical information, better information for consumers about what is in fact happening to them. I am impressed with the degree of consensus.

We have had a very good set of hearings and I congratulate the Chairman of the subcommittee and the ranking member of the subcommittee. I read the hearing opening statements over the break. I don't often read opening statements for hearings unless there is no other soporific available. But in this case I really found them cumulatively quite useful.

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So the question then is, can we translate this conceptual agreement on a lot of things into enough agreement so that we get a large vote? And the reason for a large vote is very important. Obviously, the United States Senate is going to be getting this bill, and there is a deadline of the end of December, so the bill will be one of the things being acted on along with appropriations bill at the end of the session.

And as I said, I acknowledge that in the House the majority will be able to pass it. In the Senate, obviously, things are very different. I mean, I have explained to people that if a dog dies in the wrong place it can keep the United States Senate from acting. If a dog dies in the House it gets a rule and gets passed.

[Laughter.]

So, I mean, that essential difference between the two bodies ought to be kept in mind.

The more we can achieve a consensus and a large vote in the House, the likelier we are to get a bill that can be signed into law in a way that won't be disruptive by the end of the year.

Now, there is one particular issue. As I said, I am struck by the degree we have had a lot of agreement on more transparency, on identity theft, which is a problem both for the consumer and for the financial institutions. The consumer bears a great deal of the anguish and stress of this; the financial institutions bear a great deal of the burden.

I think it makes sense to focus on the Fair Credit Reporting Act and not on Gramm-Leach-Bliley. There are issues to be addressed there. I think opening them up would be—I do not see how the United States House and the United States Senate can complete action on this between now and December 31 with all the other business pending if we broaden this beyond the Fair Credit Reporting Act.

There are a couple of areas that are particularly important to me. Our colleague from New York, Mr. Ackerman, has been raising the question of giving consumers notice when there is inaccurate information, they think, about them. We are all in agreement that people should be able to correct inaccurate information about themselves, but if you don't know it has been put there, then by definition you can't do anything about it. And waiting until you have been penalized for inaccurate information obviously imposes costs on the consumer that I think are unacceptable.

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In addition, there is one flaw in the system that I have seen. I do believe the consumer credit system works well. I think it works well on the whole. It obviously supports a considerable part of our economy. We have increased the extent to which people get credit. All those are good things.

I think there is a problem in the extent to which individuals who are the victims of identity theft or simple error or whatever are able to get some redress. That is, I do believe that the existing procedures whereby a consumer who has been the victim of inaccurate information tries to get that corrected are not very good.

I was told by one of the groups, "Well, if you have information about you that is inaccurate we will include in the statement that we send out your statement that what we say isn't true."

So if I want to get some credit people will get a statement about how bad I am and a corresponding statement from me saying, That is not true, I am really a nice person.

I think that is the equivalent of the newspaper that having printed an inaccurate obituary corrects that by printing a birth notice. Sending out information that is both accurate and inaccurate I think is unacceptable.

I think we can do a better job of mandating that the credit furnishers and the credit reporting agencies take care of those cases where there is injustice.

And I want to address specifically the argument that, well, there are people who think the system works very well and there are people who think it doesn't work well.

I think it works well with the major exception that—and it is a relatively small number of individuals who are victimized by inaccurate credit, but I don't think it is acceptable to say to them that in the interest of the system as a whole they are going to have to bear that particular burden. I think we can do a better job of cleaning up their accuracy.

So from that standpoint I hope that we will be able to proceed, as the Chairman has said, to take a basically reasonable approach and make it stronger, and I look forward to our being able to work together, and I hope that with that kind of approach we will be able to get a very large majority ultimately for a bill that extends the preemptions and protects consumers.

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The **CHAIRMAN.** The gentleman from Alabama?

Mr. **BACHUS.** I thank the Chairman.

What we are dealing with here is a national delivery system, and that is our national credit reporting system. And like our national interstate highway system, like our national power grid, like our national communications system, they deliver an incredible amount of value and are very important to the

economy.

Consumers today are able to move from state to state, they are able to finance loans, get mortgages at low rates. And part of the reason is what they never see, and that is the national uniform credit reporting system.

As much as anything, and I think Secretary Snow pointed this out in a press conference last week, we have seen the democratization of credit, where low and middle income families enjoy incredible access to credit today at unparalleled levels.

And I think that no one on this Committee wants to jeopardize that. At the same time, Chairman Oxley earlier this year recognized that many of the uniform standards were expiring, that that was a threat to this national uniform system, and he made it the top priority of this Committee not only to reauthorize those national standards, but to also improve upon the system. And we can improve upon it, and that is what this legislation is all about.

The ranking member, Mr. Frank, pointed out identity theft. That is the fastest growing white collar crime in America. Hundreds of thousands of victims. People used to rob banks, and then they found that it was easier to rob railroad or trains, because they weren't protected like the banks were.

Well, the last thing that thieves have discovered is easy to rob is people's credit, because people's credit has a great deal of value to them, and people are now stealing people's identity and using that identity and the credit that goes with that identity to steal millions of dollars every day here in America.

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This legislation is the result of a bipartisan group of members—Ms. Hooley, Mr. Moore, Mr. Frank, even Mr. Sanders has had input and his stamp is on this bill, Chairman Oxley, Ms. Biggert. Really, you have got 14 co-sponsors on each side of this Committee, and every one of them has had a role to play in this legislation.

This is a work in progress, as any legislation. We are at the beginning of the legislative process, we are at the end of the hearing process where we had 75 witnesses. We will continue to work with the members to refine this. We are aware of Mr. Ackerman's concerns. We are aware of concerns of other members.

And what we will do as we address all these concerns, we will try to determine what is in the best interest of the American consumer, the public, and we will try to balance the concern with the benefit of the system as it now exists.

And if we can tweak that system, if we can make refinements to that system without erecting barriers to our uniform national credit reporting system, we will do that, and where justice dictates, we will do that.

Now, I want to end, Mr. Chairman, by saying that, as much as anything, this bill demonstrates that when the Administration works with the Congress what a benefit that is.

The Treasury Department and the FTC have worked very closely with us. Witnesses on our first panel have been very helpful to us, and their agencies.

But as much as anything else, this is a bill where bipartisan cooperation has come together, and we have all put aside some of our personal differences to come up with the legislation that is a starting point for renewing the uniform credit system. Thank you.

The **CHAIRMAN.** I thank the gentleman.

The gentleman from Vermont.

Mr. **SANDERS.** Thank you, Mr. Chairman. And I want to thank you and Ranking Member Frank for holding this important hearing on H.R. 2622, introduced by Subcommittee Chairman Bachus, and I want to thank Spencer Bachus for his openness in this entire process, and for his willingness to work in a non-partisan way. We appreciate that, and we look forward to continue working with him.

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And I also want to thank Secretary Snow for being with us today, as well as our other witnesses.

And, Mr. Secretary, you and I will be meeting later on today to deal with another crisis, and that is the collapse of our pension system, which is affecting millions of American workers, and we look forward to that meeting, as well.

Mr. Chairman, while this bill does include some modest consumer protections, H.R. 2622, as currently drafted, does not include a number of reforms that are needed to increase the accuracy of credit reports, reduce identity theft, and protect the medical privacy of consumers.

Most importantly, H.R. 2622 contains a major anti-consumer provision that would permanently bar the States from passing stronger bad credit reporting laws designed to protect their citizens against any number of problems, including identity theft and the ability to protect consumers' access to credit by ensuring that the notoriously flawed credit reporting system is cleared up, and in my mind just that is not acceptable.

Mr. Chairman, this issue is extremely important to consumers, which is why the National Association of Attorneys General, representing all 50 of our states, unanimously passed a resolution opposing this preemptive language.

They, the Attorney Generals throughout this country, who are closest to the problem, know that to protect consumers in this country, they have got to have the ability, whether it is in Alabama or Ohio or Massachusetts or Vermont, the ability to respond quickly and effectively to the particular consumer problems of people in their own State. And we should not deny them that right.

Mr. Chairman, this preemption provision is also opposed. We hear the word consumer very often, but we should be clear that this preemption provision is also opposed by every major consumer organization in this country, including the Consumer Federation of America, or ACORN, the Center for Community Change, Consumers' Union, Consumer Action, U.S. Public Interest Research Group, and the lower-income clients of the National Consumer Law Center.

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I look forward to working with Subcommittee Chairman Bachus, Ranking Member Frank, and Chairman Oxley, on improving this legislation before it reaches the floor.

Let me also mention a few other concerns that I have. While HR 2622 does allow consumers to receive free credit reports annually, and that is a very important step forward, it is not clear that it does allow consumers to receive free credit scores, the most important information consumers need to find out if they qualify for credit.

The language here is vague, and I look forward to working with the Chairman to improve that language, to make it clear, abundantly clear, that consumers who receive free credit will receive free credit scores along with their free credit report, including the key factors adversely affect the consumer's credit score.

Further, Mr. Chairman, we must address the crisis in the credit card bait-and-switch scam, as recently reported by The New York Times, the Washington Post, ABC News and other media outlets.

Credit card companies are penalizing customers who have always paid their credit card bills on time by, in some cases, tripling their interest rates due to information contained in the consumer's credit reports that were linked to other loans.

In other words, people pay their bills on time, month after month, and because they may have borrowed money for a personal crisis, or for another reason, credit card companies around this country are doubling or tripling their interest rates, and that is not acceptable and we have got to address that issue.

Lastly, Mr. Chairman, I also support the visions that would protect Social Security numbers from identity thieves, protect the medical privacy of consumers, protect the credit of persons in combat or activated to military service, provide notification to consumers when negative information is put on their credit reports, protect consumers by disclosing insurance clause, reduce the time frame available for credit bureaus to investigate and correct consumer reports, increase the penalties for companies that

repeatedly report inaccurate information to credit bureaus, and prohibit credit and insurance clause for bringing reduced space on the number of credit inquiries.

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Finally, Mr. Chairman, credit is more important than ever in our society. Consumers need to know that both the Federal and State governments are working hard to protect their access to credit. We need a strong federal law with flexibility by the States to react to local problems.

I thank the Chairman, and I look forward to working with him and Mr. Bachus to improve this bill.

Thank you.

The **CHAIRMAN.** The gentleman's time has expired.

And the Chair would reiterate that all members' opening statements be made part of the record. Without objection, so ordered.

We now turn to our distinguished panel, beginning with the Secretary of the Treasury, Mr. John Snow.

And, Secretary Snow, it is good to have you back again before the Committee.

And also to Chairman Muris from the Federal Trade Commission.

We thank both of you.

And, Mr. Secretary, whenever you wish, you may begin.

STATEMENT OF HON. JOHN W. SNOW, SECRETARY, DEPARTMENT OF THE TREASURY

Secretary **SNOW.** Thank you very much, Mr. Chairman, Chairman Bachus, Ranking Member Frank, Member Sanders. It is a pleasure to be back here with you.

In listening to your opening statements, for the most part I would say, as lawyers often say in proceedings, I stipulate to what you said and want to identify myself with it and adopt it as my own, because you have really hit on the high points of what this is all about, and there is hardly any reason for me to go through a lengthy statement.

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I have submitted a statement for the record, and I would ask that it be adopted——

The **CHAIRMAN.** Without objection.

Secretary **SNOW.**——and included in the record.

As Chairman Bachus said, the FCRA is the invisible infrastructure of the credit markets of the United States, and that invisible infrastructure makes possible the most extensive and widely available credit at the best rates anywhere in the world. And it simply wouldn't be possible without that broad sharing of information. And that is why it is so important, so important, critically important, that you take the steps to make those standards permanent.

Consumers have two vitally important interests here. First is access to credit and other financial services. They also, though, have a vital interest in the accuracy and the security of their financial information. Good legislation is going to serve both interests, and any proposals, it seems to me, should be judged by those two standards: Does the proposal advance the availability of credit, and does it make the information more secure and more accurate?

It is important to recognize, I think, as we think about the extension of the FCRA, how important it has been for lower income people and how many people at the lower portions of the income scales in the United States have credit today because of the FCRA and the information pooling that it makes possible.

It is also important to recognize just how many people generally benefit from the national uniformed standards.

The Council of Economic Advisers has done some studies in this regard that I have detailed in my submitted testimony. They estimate that without the national standards, 280,000 home mortgage applications that are now approved each year would be denied. And that is roughly $22 billion of new mortgage money made available, made available because of these standards.

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And as I say, this democratization of credit has especially benefited minority and lower-income families. And if you look at the credit numbers, you will see that credit extension, credit card extension, mortgages and so on have even grown even faster among minorities and lower-income people over the last decades than among the populace generally.

Good as it is, it can be improved. And significant improvements are suggested by the Administration and are included in the legislation that is pending before you today. A critically important area where improvements can be made is in this area of identify theft that needs to be addressed. It is a terrible national problem. In my written testimony I have offered some examples illustrating the lengths that these identify thieves go to rob people of their financial identity, illustrating how clever they are, how adaptable they are, how heartless they are as they perpetrate these horrors on innocent victims. And one of the worst aspects of the identity theft is how quickly one's good reputation can be destroyed, and in turn how long it takes to get it back.

Our proposals and your legislation addresses that issue. And it is important to recognize how important these national standards for sharing information can be in both reducing the prospects for identity theft and in correcting it once the crime has occurred. And I have detailed in my testimony the various ways we would suggest that be done.

In closing, I want to congratulate the sponsors of this important legislation, the Bachus-Hooley-Biggert-Moore bill, all of whom I think I see here on the podium. This is legislation that is very much akin to the proposals that the Administration thinks makes good sense and the very proposals I talked about last week. And we are in very broad agreement, I want you to know, with what you were proposing in that legislation.

We look forward to working with the members of the Committee, and the sponsors particularly, to move a strong package of reforms forward to ensure that the Fair Credit Reporting Act becomes an even more effective tool for meeting the financial needs of American consumers. I am confident that the legislation that is being proposed does that, and we want to see it become law.

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And I thank you for the opportunity to testify before you this morning.

[The prepared statement of Hon. John W. Snow can be found on page 243 in the appendix.]

The **CHAIRMAN.** Thank you, Mr. Secretary. And again, it is always good to have you here before the Committee. And thank you for your good work in this area.

We now turn to Chairman Muris from the Federal Trade Commission. Mr. Chairman, welcome.

STATEMENT OF TIMOTHY MURIS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. **MURIS.** Thank you. Thank you very much, Mr. Chairman, and members of the Committee.

I am certainly pleased to appear here today to discuss the FTC's legislative recommendations with respect to the Fair Credit Reporting Act. The FCRA has been a remarkably effective law and serves as a model for our efforts to protect consumer privacy.

As the Chairman mentioned, the FCRA makes possible what I call the miracle of instant credit. This miracle occurs all over American every day. For example, if a consumer has good credit he or she can borrow $10,000 or more from a complete stranger and within an hour drive away in a new car. Now, I am told that you need a higher authority than a credit manager to bestow miracles, but it is a remarkable event when you focus on it.

The flexibility of our credit markets is one of our great strengths as a nation.

It is one reason why we are so large, strong, and prosperous.

Since the FCRA was enacted, over 30 years ago, consumer credit has expanded exponentially and today accounts for two-thirds of our nation's GDP.

Since 1970, access to credit has greatly expanded as well. Thirty years ago, less than 10 percent of the least affluent Americans had credit cards. Today, more than half do.

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The FCRA has facilitated this growth while at the same time protecting consumers' sensitive financial data.

Our recommendations for legislation will help fight identity theft and improve credit report accuracy. At the same time, they will preserve the benefits to consumers of the national credit reporting system.

To begin, the Commission recommends that Congress renew the existing preemptions of Section 624 of the FCRA. The national character of our credit markets is a powerful argument for retaining these provisions. The current system functions well, and we believe there is no compelling justification for fundamental changes.

This is not to say that the FCRA is perfect, and we have other proposals that we believe would improve the act.

These proposals focus on getting credit reports more easily to consumers who want them, streamlining the dispute process and easing the burden on identity theft victims.

I want to finish by highlighting our proposal to expand adverse action notices to consumers.

In its basic operation, the FCRA is an extraordinarily insightful statute. Without the consent or choice of consumers, an enormous amount of information is collected, information that allows our national credit markets to function.

Use of this information is strictly limited, however, to permissible purposes as defined under the statute.

With all of the information, some inaccuracy is inevitable. Here to, the FCRA solution is ingenious. The FCRA requires that when credit is denied based even in part on a consumer report, the creditor must notify the consumer of one, the identity of the credit bureau from which the creditor obtained the report, two, the right to obtain a free copy of the report, and three, the right to dispute the accuracy of information in the report.

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Now, the self-help mechanism embodied in the FCRA scheme of adverse action notices and the right to dispute is critical to maximize the accuracy of consumer reports.

It puts credit reports in consumers' hands when they are the most motivated to inspect the report for inaccuracies. That is, after they have been denied credit, employment, insurance, or another benefit based on the report.

Moreover, adverse action notices help fight identity theft. An adverse action notice can alert a consumer that he may have bad marks on his credit that he doesn't know about.

The subsequent free credit report helps consumers discover these accounts that an impostor may have opened.

Enforcing the FCRA's adverse action provisions is at the heart of FTC action, but we believe there is room for improvement.

Today, the FCRA requires an adverse action notice only when a consumer is denied credit based on his credit report. The consumer who is offered credit on less advantageous terms and accepts the offer gets no adverse notice.

Ten years ago, consumers simply were denied credit based on their credit report. Today, however, with the prevalence of risk-based pricing, it is more likely that consumers are charged a higher rate rather than rejected outright.

For this reason, we recommend that Congress give the FTC rule-making power to expand the circumstances under which consumers will get adverse action notice in these credit transactions.

We make several other specific recommendations, which I will be happy to discuss in response to the Committee's questions.

It is a pleasure to be here, and particularly to be here with Secretary Snow, and we support his proposals as well.

Thank you very much.

[The prepared statement of Hon. Timothy J. Muris can be found on page 207 in the appendix.]

The **CHAIRMAN.** Thank you, Mr. Chairman.

And let me begin with a couple of questions for Secretary Snow.

Mr. Secretary, you testified that the Council of Economic Advisers estimates that if Congress doesn't reauthorize the uniformity under FCRA and the States pass significantly different laws, that as many as 280,000 mortgage applications per year could be denied, especially for first-time home buyers.

Doesn't that make the legislation that is before us, the FACT Act, the top priority for our country and, indeed, guarantee our economic viability?

Secretary **SNOW.** Absolutely, Mr. Chairman.

I couldn't agree more strongly. These national standards are essential to the way credit gets made available in this country. They have made for much more robust credit markets. Those robust credit markets lie at the heart of the success of the American economy. They are integral to the success of the American economy.

As Chairman Muris said, consumers represent some 70 percent of all the activity in the American economy. And that depends on credit. And we have the best credit markets and the most available credit and the lowest cost credit in the world. And that is, in large part, due to these standards.

So I would see the legislation pending here, making these standards permanent, an essential condition for the continued success of the American economy.

The **CHAIRMAN.** Mr. Secretary, I was struck by some testimony, when Chairman Bachus had his series of hearings, as to how mobile our society really is, almost clearly the most mobile society in the world. Fourteen percent of Americans move every year.

We indeed do have a national credit system that is, I suspect, the envy of most countries. And despite that, there are those who—including the gentleman from Vermont—who mentioned the attorneys general not wishing to have a uniform national standard.

It just seems to me that based on this incredible infrastructure of credit that we have developed in a national marketplace and given the mobility that our people have that it is almost incumbent upon us to maintain that national system. Would you agree and expound on that?

Secretary **SNOW.** I would indeed. In some ways, credit is as American as apple pie. We lead our lives because credit is so readily available. And so many Americans are in the system because of widespread credit availability.

Those numbers on mobility. I have seen that study. It is an astonishing thing. Americans move, on average, every 6 years. That is about 17 percent of the U.S. population in a given year. It is an astonishing number.

There is no other country that has that sort of mobility. And that sort of mobility is central to keeping this economy fluid and flexible with people moving to where the jobs are.

It is at the very heart of having flexible labor markets. And you can't have those flexible labor markets unless people have the credit to be able to buy the home in the new location, unless they can open checking accounts, unless they can shop.

And these standards allow one to take your good credit reputation with you wherever you go. And that facilitates labor mobility and is a critical part of what defines the success of the American economy.

So I agree entirely.

The **CHAIRMAN.** It just seems that we have such a mobile society. They move because that is where the jobs are, which is exactly what you want in a vibrant economy. But it is one thing to move from Ohio to Arizona and get a job and then have problems getting credit, which really defeats the purpose behind the move in the first place.

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We appreciate the comments.

Chairman Muris, how does our current system of credit reporting help to ensure that people who should not get credit, who are not qualified to get credit, do not get credit?

Mr. **MURIS.** Well, the system works, as I mentioned, not at the choice of consumers. Consumers who have bad credit can't hide that fact, and that is a very important part of why the system functions so well.

In many parts of the world, so-called negative information is not allowed to be reported. We allow that to be reported, and that is of tremendous benefit to the people who have good credit records, that the absence of that negative information when it is reported.

The **CHAIRMAN.** My time has expired.

The gentleman from Massachusetts.

Mr. **FRANK.** I appreciate the testimony, and particularly, in both cases, I think, the witnesses represent what we need to do, which is to let us now start to get specific about improvements.

Mr. Muris, I am particularly pleased to see a couple of things for that. As I said, my sense of this is that the one weakness that I believe most critical to address is that a very small minority of consumers about whom inaccurate information gets kind of locked in, and I think they are inadequately protected, and I think it is within our capacity in this large system to improve the protections for these individual consumers without burdening the system.

I mean, people say it is going to cost more. Yes, we are socializing the cost a little bit, but when we are talking about the hundreds of billions of dollars that are supported here, I don't think we are out of the ball park. I am also, I have to say, joining the Chairman congratulating you on implementing the do-not-call list.

When I read some of the concerns about some of the industry groups about some of the consumer protections we are talking about, they predict danger to the economy, damage to the economy, like the people who are in the call business predict from the do-not-call lists.

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And I don't think they were right there, and I don't think they are right here. That is, the gloom and doom we heard about the do-not-call list, I think, will soon be shown to be that I don't think the American economy has really been that dependent on bothering people's dinner.

And I don't think that perpetuating inaccurate information in files is necessary to the consumer credit situation.

You had a couple of very important specific suggestions, which I am going to be asking the people on my staff to be working on. One, on page 15, you recommend that the FCRA be amended to provide that disputes raised with furnishers receive the same treatment as disputes filed with a credit reporting agency.

That is very important. To some extent, it is almost like sort of 18th century England: If you are the consumer, you must go through all the right forms, and if you don't go through all the right forms, you are penalized.

In my conversations, I too often heard with some of the people who are in the business of furnishing credit or other credit reporting entities the argument, well, if the consumer does it all right then this or that can happen.

With identity theft, or whatever, if you filed the police report, well, not everybody knows they are supposed to file a police report or can find it easy to file a police report, or in a lot of communities when they are having to lay-off cops you are going find a policeman to report it to, because he is busy out there trying to catch a bad guy who is trying to whack some guy.

So, here the notion that you would not have a substantive right to get your reinvestigation because you didn't go to the FCRA, I think that is very, very important, and I appreciate it.

I also was pleased in pages 10 and 11, with your specific endorsement of making it statutorily clear the resellers have the same responsibility as other people.

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I mean, I think we ought to be very clear. You have a right to complain, you have a right to a substantive reinvestigation, and you have that right with anybody who might be perpetuating the, or sending along the misinformation.

And one of the things that strikes me here, and, well, I know we will probably wind up preempting going forward, the advantages of not having preempted prematurely seem to me to come forward.

My own State of Massachusetts, and I was not previously familiar with this, it wasn't an area I had specialized in, is grandfathered in a piece of legislation which gives the furnishers and others a somewhat higher standard, and I am struck by that because apparently Massachusetts has been able to sell things.

The existing of the higher standard in Massachusetts has not had the negative consequences that some of the furnishers predict. And so I am going to be looking at that, I think, in that we have some happy experience here in those three States that were grandfathered, and I look forward to working with your staff.

As I said, I am going to be trying to translate these two into statutory language, we will look forward to you working together on that, and I appreciate your coming forward with that.

So I thank you.

Mr. **MURIS.** Thank you.

Mr. **FRANK.** Mr. Snow, I also appreciate your testimony. I really want to talk to you about capital controls in Argentina, but we will do that some other time. Thank you, Mr. Chairman.

[Laughter.]

The **CHAIRMAN.** Gentleman yields back.

The gentlelady from New York, Ms. Kelly.

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Mrs. **KELLY.** Thank you, Mr. Chairman. Secretary Snow, and Chairman Muris, I would like to thank you both for appearing before the Committee and voicing your strong support for H.R. 2622.

As you know, this legislation's been drafted after careful consideration by this Committee that included a multitude of views from many diverse witnesses. We actually began the process by investigating the issue of identity theft in several oversight subcommittee hearings, including a joint hearing that I chaired with Chairman Bachus in the beginning of April, and I am pleased that this legislation specifically addresses some of the problems we discovered in these hearings and hits at the heart of identity theft.

In the past few months, in my subcommittee, we have also investigated another important security issue, the blocking of terrorist financing under the USA PATRIOT Act. I believe this legislation will further help law enforcement combat financial fraud and track down criminals and terrorists.

However, there are some concerns about the privacy under this act. And as we move forward with consideration of the FCRA reauthorization, I believe we must also be concerned about the sanctity of privacy for the American people in this act.

As we will hear from several witnesses today, medical information is readily available and easily identifiable on credit reports. I am currently exploring language that will protect medical information of individuals without disrupting the access to low cost credit and the security of information. In fact, I believe it enhances the security of personal information.

To that end, I would like to ask a couple of questions.

Chairman Muris, is it the intent of a credit report to specify information outside the realm of the credit-granting process? Would you support coding medical information in a way that would allow

financial transactions to appear on a credit report, but not the actual names of the institutions or the entities that have provided those transactions?

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Mr. **MURIS.** This is a problem or an issue that has recently been brought to my attention. First of all, I am not sure the extent to which there is a problem. We are looking, and we will be glad to work with you and the other members and your staffs, to see what the impact of that would be.

I do know under the FCRA there are separate standards and separate procedures for getting medical information. And if you want to get a life insurance policy, for example, you will need to consent to the insurance company for the right to receive medical information about you. That is regulated to a certain extent by the FCRA.

But the specific issue that you mention is one that has just been recently brought to my attention, and we would be glad to work with you on it.

Mrs. **KELLY.** Let me just give you an example of what I am concerned about. In New York City we have a wonderful cancer-treating institution called Memorial Sloan-Kettering. If I am being treated and I have a bill dispute with Memorial Sloan-Kettering, the assumption would be that I am being treated for cancer and the assumption is in many people's mind still that cancer is almost inevitably problematic to the extent that it deeply affects your ability to work or can result and does result in death.

My concern is if that name, like Memorial Sloan-Kettering, appears on a credit report, there may be an assumption made by someone who is looking at that credit report that I have a difficulty without understanding that I am there because I am actually going back in for a checkup and there was a discussion about that bill.

I want to make sure that we work out a method so that the financial end of that could be presented, but the entity providing that service is not listed. That is my intent, that is the legislation that I am working on, and I am glad to think that you would be working with me on that. I would hope that you would support that.

Mr. **MURIS.** Well, yes, we would certainly be glad to work with you on it, and it may be easy to do that. I don't know what the ramifications are.

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I do know that in the situation that you are talking about, if someone currently, under the current law, is denied a benefit because someone drew an inference they didn't like in their credit report, the person has to be told that they were denied the benefit because of the credit report.

The person has to be told that they were denied the benefit because of the credit report.

So some protection already exists. And I would be glad to work with you on the additional issue.

Mrs. **KELLY.** Recognizing that that protection does exist, my problem is that it is one more step that we simply, I don't believe, need to have people get involved in if we can stop it before it happens.

Secretary Snow, in your testimony you discuss the integrity of information and note that one of your most important assets is your reputation. Do you believe that there needs to be specific medical information on an actual credit report? Or do you think it makes sense to consider coding the information in some way, as I have described?

Secretary **SNOW.** You raise a good issue, an important issue. And I don't have a fixed answer to it. I want to think about it, though, against the criteria that we set forth—I set forth in my statement, and that is how would a given proposal such as that, affect the accuracy and security of information to protect the individual, and how would it affect access to the credit?

And I think your proposal is something to be looked at, but against those criteria. Today, of course, there is some sharing of medical information that grows out of so-called experiential, but not otherwise.

And getting that line right, I think, is something that deserves attention. And like the Chairman, we would be pleased to work with you to try and get that balance right. But it is a critically important issue

and a very sensitive issue.

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The **CHAIRMAN.** The gentlelady's time has expired.

Mrs. **KELLY.** Thank you very much.

The **CHAIRMAN.** The gentleman from Vermont, Mr. Sanders.

Mr. **SANDERS.** Thank you, Mr. Chairman.

Gentlemen, the legislation that we are discussing today allows consumers to receive free credit reports annually, and that is something that some of us have fought for and we think is a real step forward. Unfortunately, the language in the bill is vague when it comes to providing free credit numerical scores along with a free credit report, including the key factors that adversely affect the consumer's credit score.

So my first question to both of you is does the Administration support the right of consumers in this country not only to get free credit reports, but to get the scores and the explanation about adverse numbers that might impact the consumer? Mr. Snow?

Secretary **SNOW.** We would support, as we have said in the testimony, access to the credit bureaus of the data. We would also require that with the data go some help in understanding how the data is used, so that the individual consumer would be in a better position to understand what they might be able to do to improve their credit standing.

The score I am more dubious on, and I will tell you why, Congressman. The score itself is a proprietary product. It comes from not the credit bureaus, of course you know, but from these private entities, who have invested a good deal of intellectual capital developing their algorithms and so on.

Mr. **SANDERS.** Mr. Secretary, you used the word "proprietary"; that is my information, that is my life that that information is about. And to suggest that it is an intellectual property right for somebody else when it is information about what the heart of what my life is about, I would suggest it is my information.

Secretary **SNOW.** But it is your information, but it is there methodology and their intellectual property.

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Mr. **SANDERS.** But don't I have a right to know if three different credit companies, agencies, provide three different scores, don't I have a right to know how that came about?

Secretary **SNOW.** You will have the data under our proposal that they use; you will know what the records are. And you will be given assistance and help in trying to understand how that data would be applied. The scores comes from a different source.

Mr. **SANDERS.** Frankly, that is not good enough for me, and I think we have got to go further than that. And I look forward to working with you and with the majority to clarify that issue. I think consumers are entitled to more.

Second issue, what I call bait-and-switch. As you know, right now if I have a credit and I responded to one of the 5 billion applications that people get in this country at 3 percent and then I take out a loan because my wife is ill, suddenly it can go up to 25 percent.

I think that is an outrage. I think that is a ripoff of consumers in this country.

Is the Bush administration going to be strong in protecting consumers against this ripoff and help us include strong language, strong language, in this bill?

Secretary **SNOW.** This is an area that the Chairman can speak to.

Mr. **SANDERS.** Thank you.

Mr. **MURIS.** It certainly is under our jurisdiction. To the extent it involves banks and credit cards, it is not. But to the extent it is under our jurisdiction and for a lot of lenders, it is.

There are circumstances under which, I think, this raises a problem. We are looking at this issue

specifically and, in general, the issue about unilateral modifications to standard form contracts. As an old contracts law professor, there are many circumstances in which those modifications should not be allowed.

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Mr. **SANDERS.** Just a question. In English.

I sign up with your credit card company at 3 percent. You are giving me this 1 year at 3 percent. Every month, I pay my bills on time. Suddenly, I am now paying, instead of three percent, five months later I am paying 25 percent although I have paid what I owe you every month promptly.

Is that appropriate? Is that right? Or should we make sure that credit card companies cannot do that.

Mr. **MURIS.** I think, again, you would have to look at the circumstances. But if someone on their own, which is what unilaterally means, not bilaterally with the consent of the consumer, changes the terms in a one-sided fashion, that can easily be a problem.

Mr. **SANDERS.** Well, I look forward to working again with you and the majority on that issue. Lastly, I want to make a philosophical statement and let you respond.

Your Administration is, admittedly, in a conservative administration, in my view, one of the most conservative administrations in the history of this country.

Day after day, I hear on the television, hear on the radio, how the big, bad federal government should not be taking over the powers that folks closest to the people have, that we have got to protect States' rights, and so forth and so on. And yet, what I am hearing from you is that despite what the Attorney Generals of the United States want, despite what every consumer organization wants, you think that the federal government should crush the ability of state governments to protect consumers and fight and pass standards that are higher than the federal government.

Why would a conservative administration that tells us how bad the big, bad federal government is want to crush States' rights in protecting consumers' needs.

The **CHAIRMAN.** The gentleman's time has expired. The gentleman will respond.

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Secretary **SNOW.** Congressman, I think you know we are not alone in this view that these uniform standards should be applied in the preemptive way that has been suggested.

It has come to my attention that the Conference of State Bank Supervisors, that is all the state bank supervisors themselves, support the legislation that is pending here and the Administration proposal. And they do so because they recognize the greater good that comes from the existence of these——

Mr. **SANDERS.** Then, answer my question why a conservative administration——

Secretary **SNOW.** Well, because of the greater good.

The **CHAIRMAN.** Gentleman's time has expired.

Mr. **MURIS.** Mr. Chairman, could I say something about that.

The Federal Trade Commission has four Clinton appointees and one Bush appointee. And the recommendation to support these proposals is unanimous.

Mr. **FRANK.** Well, that would explain their disregard for States' rights.

[Laughter.]

Mr. **MURIS.** Well, I would be glad to respond to that. It was a two-part question. One is how the conservatives—I don't think the four Clinton administration appointees—but could I respond to——

Mr. **FRANK.** That is my point. Sure.

Mr. **MURIS.** Just as one of the most important things that happened in our country was in 1787, when they formed the Constitution. One of the main purposes of that was because the States were preempting a national economy. The states had individual tariffs. They had individual standards.

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National credit standards, although not as important as prohibiting states from imposing tariffs, I think national credit standards are extraordinarily important. And it is that uniformity which provides enormous benefits for consumers.

If we need more consumer protection, and I think we do, it should come as part of national standards.

Mr. **FRANK.** Just for 10 seconds. If you could, maybe, send me the reference in Bailyn's Debates on the Constitution to credit reporting, I would appreciate that.

The **CHAIRMAN.** Gentleman's time has expired.

The gentleman from Connecticut, Mr. Shays.

Mr. **SHAYS.** Thank you. I thank both of you for your good work to our country and the sacrifices you make in serving our country.

I just would like you to respond as clearly as you can to the consequence of not taking action.

Secretary **SNOW.** Well, I think, Congressman, that the consequences of not taking action would be to, in a far-reaching way, undermine the performance of the American economy. I think these national standards are integral to the enormous success of the American economy, because they underpin credit, and we are a credit-based economy. They underpin, as we talked about earlier, labor mobility, and labor mobility is a hallmark of the success of this economy.

The uniform standards make credit available to lots of people who otherwise wouldn't have it, which means they can get into the mainstream of economic activity in this country. And I don't have the econometric studies' results in my mind, but it is pretty far reaching, something like 3 percent reduction in the total credit availability in the country and something on the order of a 50-basis-point increase in the cost of credit. Fifty-basis-point increase in the cost of credit on a $7 trillion credit economy, we are talking gigantic numbers and far-reaching negative impacts on the economy if these national standards aren't maintained.

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Mr. **SHAYS.** Yes, sir?

Mr. **MURIS.** Just to make a brief amplification, the economy compared to the rest of the world, our economy has a few simple reasons why it is so much better than many other economies, and two of those reasons are our labor markets are so flexible, and another is our credit markets are so flexible. And I think that flexibility crucially hinges on having national standards in the credit markets.

Mr. **SHAYS.** I have had 13 years in the Statehouse, and I know the argument for states being allowed to pass its own laws and supersede what the federal government, and now I have had 16 years in the federal level. But it seems to me this issue is so crucial that we can get into the ideology of States' rights versus federal, and in the process we risk, frankly, putting our economy in danger.

I, Secretary Snow, want to just voice a concern about a lack of clarity on the Department of Treasury as it relates to Jesse's. And I want to understand what your position is as it relates to why we would allow Freddie Mac and Fannie Mae to not have the same kind of disclosures as any other Fortune 500 company. And I would like to know when this lack of clarity will be clearer.

Secretary **SNOW.** Congressman, that is an issue that we are reviewing right now, and in the context of the recent disclosures that have made the news at Freddie Mac. We have always articulated the need for disclosure, and have been in the forefront of pushing for the disclosure under the 34 act. And I am pleased that Fannie Mae has now done that and is submitting the 34 act information. And once you go into 34 you don't come back out.

Mr. **SHAYS.** Right.

Secretary **SNOW.** So they are permanently under 34.

Mr. **SHAYS.** But what confuses me is you have Alan Greenspan making it very clear he sees no reason why they also shouldn't be under the 33 act. And I am just wondering why there would be any argument that they shouldn't be under it.

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Secretary **SNOW.** Well, there doesn't seem to be any current difficulty with their issuances.

But clearly, there needs to be transparency, disclosure and good transparency, and effective regulation.

Mr. **SHAYS.** Well, I thank you all for looking at it.

Secretary **SNOW.** And that whole subject is, of course, being looked at by the Committee.

Mr. **SHAYS.** Thank you. Thank you, Mr. Chairman.

The **CHAIRMAN.** The gentleman's time has expired.

The gentlelady from Indiana is recognized. Ms. Carson? No questions?

The gentlelady from California, Ms. Lee.

Ms. **LEE.** Thank you very much, Mr. Chairman. And let me say I, too, am very happy to be able to listen to this testimony today and have many of the same concerns that many members, of course, on our side have raised.

One is I would like to ask Secretary Snow a little bit more with regard to the issue raised in terms of credit scoring, the proprietary information, and I think what Mr. Sanders indicated with regard to the fact that this is personal information, private information, that is now being packaged, really, and being sold.

One is do consumers really know that this information is now a commodity and that their entire private information is actually a product, and that this product is being sold? Is that information we know?

Secretary **SNOW.** You know, I don't know what percentage of the general public knows that. I would distinguish between the credit report, the data that is in the file that the credit bureaus have, which you should have access to, and which under the proposed proposal you would have access to, free access to. All you have to do is request it.

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But I would distinguish that, and this is clearly something people can argue about, that and the score. Your information is your information, it is your records, but the score, which really comes from somebody else, is their application of their methodology, it is their undertaking, it is what they have done to evaluate those records.

Now, we think people ought to understand more about how that is done, and how scores are set.

Ms. **LEE.** Sure, but Mr. Secretary, what I am asking is do consumers have a right to know that this, whatever this methodology is is a methodology that is being packaged as a product to be sold to make money?

Secretary **SNOW.** Yes, they absolutely should have the right to know that their records are, and they should have access to those records.

Ms. **LEE.** Access to the records is one thing, Mr. Secretary, but I am asking with regard to the right to know how this scoring information is being used in terms of the sale of it. Should they have a right to know that, and if they don't, then just, they don't.

Secretary **SNOW.** Well, they certainly have a right to know that people are putting scores on them.

Ms. **LEE.** But that the scores are being sold?

Secretary **SNOW.** And there is a market in these scores.

Ms. **LEE.** Sure.

Secretary **SNOW.** I mean, there are, these companies are selling these scores, and they will sell them to you, as an individual.

Ms. **LEE.** Sure, but do consumers know that? All I am asking is should, and does the Administration and under the bill——

Secretary **SNOW.** You mean, should there be a disclosure?

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Ms. **LEE.** Should there be a disclosure that this scoring——

Secretary **SNOW.** That there are scores, that scoring goes on?

Ms. **LEE.** That there are scores, and that the scores are proprietary information——

Secretary **SNOW.** I have no objection.

Ms. **LEE.**——and that this proprietary information is being sold?

Secretary **SNOW.** Well, I think if you read the newspapers, that is daily fare in the newspapers.

Ms. **LEE.** Well, Mr. Secretary, I really want to just know, do you think we should work on this a bit in this bill, and maybe tighten it up and make some——

Secretary **SNOW.** Well, I don't, I would not recommend mandating making the scores available for free. I would recommend, as we have, making available on request the records.

Ms. **LEE.** But making available the information that the scores are being sold to make a profit, should consumers just know that as they apply for credit? They may choose not to apply.

Secretary **SNOW.** Well, I think sure. I don't see anything fundamentally wrong at all with disclosure: The data goes into the compilation of scores.

Ms. **LEE.** Then we would like to work with you on an amendment, on a disclosure amendment.

And let me just ask Mr. Muris one thing with regard to adverse actions. With regard to multiple credit inquiries, oftentimes consumers attempt to find the best deal, the best rate, the best terms. I know for a fact many individuals have called and indicated to me that as they do this they are notified that there is an adverse action now because they are attempting to find the best loan. Why is it that multiple credit inquiries become ultimately a negative on your credit report when really you are trying to find the best product? And what can we do to correct for that in this bill?

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Mr. **MURIS.** Well, my understanding is this is an issue that only comes up—the credit's only concerned about if you are doing it a lot in a short period of time.

And I can understand their concern if that is true. If you are applying with several people or making inquiries with several people at once, that is something that creditors would want to be aware of.

Ms. **LEE.** So why would it be a negative when the consumer's attempting to find the best interest rate and the best terms?

The **CHAIRMAN.** The gentlelady's time has expired. The gentleman may respond.

Secretary **SNOW.** Mr. Chairman, can I clarify one——

The **CHAIRMAN.** Of course, sure.

Secretary **SNOW.** As I think we are in agreement on at least making available the scoring process. I mean, we support making available knowledge of the scoring process. So if you are asking do we want people to know they are getting scored, the data is being used to make scores, yes, we do. The only place that we may have a difference here is making the score itself available——

Ms. **LEE.** But also making available the information that that is being sold——

Secretary **SNOW.** Well, sure. Because what we are proposing to do is to make a free report available along with the knowledge of how the scoring process works, so you will be informed that there is a scoring process with respect to these records.

Ms. **LEE.** And that it is being sold.

Secretary **SNOW.** Well, sure, these people are in business.

The **CHAIRMAN.** The gentlelady's time has expired.

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Mr. **MURIS.** If I could respond?

The **CHAIRMAN.** The gentleman may respond.

Mr. **MURIS.** Because I think I—right before Secretary Snow responded—I think I misunderstood your question. I was thinking of multiple applications. If it is multiple inquiries, I think you are correct.

And I think the practice now is to treat multiple inquiries in a short period of time as one inquiry. If people are treating it otherwise, I think there is a problem——

Ms. **LEE.** I would like to work with you on that, Mr. Muris.

Mr. **MURIS.** Sure, and I agree with you.

The **CHAIRMAN.** The gentleman from Texas, Mr. Hensarling.

Mr. **HENSARLING.** Thank you, Mr. Chairman.

Mr. Secretary, we have heard lots of evidence at the subcommittee level about the fact that as Americans we enjoy the greatest access and the lowest cost of credit available. I am not really sure that anyone cares to debate that proposition today.

I have a specific question. Now, as a member of the subcommittee, I actually attended what I believed the Chairman described as the exhaustive six hearings, and actually learned something by attending these hearings. I heard evidence from the Hispanic Chamber of Commerce that 7 out of 10 small business in America are capitalized with less than $20,000, and that 45 percent of them use credit cards as a major source of financing for their capital formation or their capital for expansion. And so the question I have is, has Treasury seen similar data? And if so, do you have an opinion on the possible adverse impact on employment should we fail to reauthorize FCRA?

Secretary **SNOW.** Well, I am generally aware that credit cards play a critical role in the financing of small business.

And the virtue of these uniform standards is that they allow the pooling of information, which reduces the uncertainty of the credit furnisher. And that particularly helps those who have the most difficult time getting credit. Some small businesses would certainly tend to fall into that category.

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So I think the failure to extend these standards and I would hope make them permanent, the failure to do that, extend the standards, I think would have a differentially adverse effect upon small business, certainly, and Hispanic small business would probably fall into that category particularly, yes.

Mr. **HENSARLING.** Chairman Muris, a lot of folks on the Committee obviously have a concern about identification theft, as do many of our constituents. I am actually one of the members of this Committee who has been victimized by identification theft. Frankly, I was one of the lucky ones in being able to recover the losses and to ensure that my credit rating was not adversely impacted.

And although we have heard a lot of testimony, I think it really comes down to a critical question, and that is when it comes to the subject of ID theft are we better off with or without the reauthorization of FCRA? I am curious of your opinion and why you hold the opinion.

Mr. **MURIS.** Well, I certainly think in terms of the national standards we are better off. We are certainly better off with the ability of businesses to share within affiliates, for example, information freely. I think that helps in terms of identity theft.

I do think there are some provisions where we can strengthen the law within the context of the national uniform standards, and we and Secretary Snow have proposed several. I think they would help on identity theft.

There are things outside this bill or outside—criminal, increased criminal penalties, for example—we have supported, and I think that would help on identity theft as well.

It is a very serious problem. We are charged by the Congress with providing assistance to consumers. We have taken a lot of steps.

As a minor example, we publish a booklet that we can't keep in stock, because there are just so many people who request it: How to Deal with Identity Theft, How to Protect Your Good Name. We have recently just started publishing it in the last year or so in Spanish. And the consumer education is a very important part of what we do, but also the legislative proposals we have here, I think, will help on identity theft.

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Mr. **HENSARLING.** Although I am a veteran of six of these subcommittee hearings, I still find it a little challenging to get my arms around the number of inaccuracies that may be appearing in a consumer's credit report. I am curious about what data you may have, because there have been some accusations that a huge number of reports contain inaccuracies.

I am curious, Mr. Chairman, about what information you have on this matter. To the extent that these inaccuracies exist, is it mainly in the nature of a wrong telephone number or an address due to a fairly mobile society? What portion of the information may actually be used in an adverse action against a consumer?

Mr. **MURIS.** Well, I think the implication of your question is the materiality of inaccuracies is extremely important, and let me focus on that.

But first there have been some recent studies, and although I generally get along and am supportive of and supported by my many friends in the consumer groups, this is an area where I disagree with some of the recent studies.

What you have here are different companies with different standards, and if you pull a credit report on different individuals the information may be reported differently, there may be somewhat different information.

The key to the Fair Credit Reporting Act we think is in the adverse action notice, which is why we support increased use for new techniques of adverse action notices, because what I call the self-help feature is extraordinarily important.

The consumer needs to know when they are denied a benefit based on what is in their credit report, because then they are put on notice that if there is something wrong, you know, they say, well, there is nothing wrong with my credit, then they know that they should look at that report and dispute it.

That is the heart, I think, of the very ingenious system that Senator Proxmire set up over 30 years ago. But I think because of changes in credit, we need to expand the use of adverse action notices, and we have made that proposal.

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The **CHAIRMAN.** The gentleman's time has expired.

The gentleman from Illinois, Mr. Emanuel.

Mr. **EMANUEL.** Thank you, Mr. Chairman. Thank you for holding this hearing.

My colleague from New York, Congresswoman Kelly, talked about health information. I actually have an amendment that when we get to marking up the Chairman's mark and offering it. It is a bipartisan amendment that deals with, in fact, health information, which I think we need in the area of health information to provide consumers, I think, this safe harbor. And it gets beyond the issue of the opt-in and opt-out, but creates what I call a blackout as it relates to health information, particularly when it is in the credit granting process or in the selling of relevant financial information or services. Obviously, if it is relevant to life insurance, that is one thing, but it is not relevant—there should be a blackout on health information.

I think that is essential to giving some consumers in a changing environment that we have and the technology's that advancing, that safe harbor that that information that is relevant, that their health information not be used against them in the credit process.

And I know it wasn't in the Administration's bill of recommendations, but your openness to that, I think, is essential. We have a bipartisan amendment. I think it is based on common principles that your health information should not be used against you in this process.

Secretary **SNOW.** Congressman, I think I indicated in response to Congresswoman Kelly that we would be open to talking to you about that and working with you on that score.

But it should be looked at in terms of those criteria that I laid out. What does it do for the security and accuracy of information? What does it do for general credit availability?

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Mr. **EMANUEL.** To that standard is what does it do to help our consumers? Because my view is if you can't give the consumers in this changing world some sense of a safe harbor, it also has an impact.

This bill has been developed in a bipartisan fashion, we continue that effort here. It is one of the things that Ranking Member Frank and also Chairman Oxley have talked about the importance here. I think this amendment would go a long way toward doing that and meeting the standards that you have set out.

Secretary **SNOW.** We would look forward to working with you on that.

Mr. **EMANUEL.** Okay. The other matter is I also want to compliment you, although unrelated to this subject, is working with you on the Earned Income Tax Credit and the ability to deal with making it simpler so we get more people involved, reduce fraud, and simplicity. And want to compliment you and your agency and the people involved for working with you on that very important matter.

Secretary **SNOW.** That is another area where we want to continue to work with you.

Mr. **EMANUEL.** If this continues we are going to start singing Kumbaya at some point.

[Laughter.]

So with that, I have no other questions.

The **CHAIRMAN.** Don't push your luck.

Mr. **EMANUEL.** You know the words?

[Laughter.]

Do you think he knows the words, though? We give you a little cheat sheet on that.

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[Laughter.]

The **CHAIRMAN.** The distinguished Chairman of the subcommittee, Mr. Bachus.

Mr. **BACHUS.** Thank you, Mr. Chairman.

One of the ways to combat identity theft that we are using in this legislation—in fact, the Administration and the agencies have also talked about—the use of so-called red flags to detect or inhibit identity theft. And there has been a debate on this Committee as to how we best institute the use of these red flags.

We have seen cases where when we have too rigidly proscribed what the financial institutions will do that it actually inhibits their efforts to combat identity theft, because they don't have flexibility. You know, they have a lot of knowledge. They have a lot of experience in how to identify these things themselves.

And I notice that, Secretary Snow, many of your proposals rely on best practices approach or an approach that allows the regulators to come up with the use of red flags. But although it gives specific direction to the financial institutions, it provides them with flexibility to achieve the desired result.

What are the dangers of prescribing a rigid approach, as opposed to leaving flexibility in dealing with the financial institutions in exactly what they do?

Could it actually hurt our efforts if we are too rigid, or we prescribe too much?

Secretary **SNOW.** Well, that would be our view, Mr. Chairman. Because we need to be continually creative and find new and better solutions to deal with the creative people who are out there on the other side trying to engage in criminal behavior.

They are determined, they are smart, they are capable and they are ruthless, and the red flag idea should be embraced by the banking community, but improved upon.

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I mean, it seems to me they are the experts on the use of internal financial information and how best to use it to accomplish the objective they have in mind, and their consumers have in mind.

If somebody is likely to be a victim of this, spread the information quickly, raise the red flags, get it out there. And I think the banking institutions themselves are probably better at evolving the best way to

deal with that.

That has been a rule that was written at a point in time that can't by its very nature evolve. That would be our basic thinking.

Mr. **BACHUS.** Right. In fact, yes, I have heard from talking to some of the financial institutions, and actually some of the law enforcement community, that sometimes the law, if it is too structured, it is 20 years behind the criminals, or that they actually use the definition of, you know, if it is too carefully prescribed, and they know what that definition is, to get around it.

And I would hope that the Committee would give flexibilities to the regulators, and that you, in turn, would give flexibility to the financial institutions.

Secretary **SNOW.** That is very much where the Administration is coming from.

Mr. **BACHUS.** Thank you.

Chairman Muris, some have suggested that this 30-day time frame for investigating consumer disputes about accuracy of information contained in their credit reports is too long and should be shortened to 15 days.

Does the FTC have a position on such proposals? Are there any negative consequences to the uniform credit reporting system that might flow from truncating this reinvestigation process down from 30 days?

Mr. **MURIS.** Well, we have not taken a position on shortening. We are supporting the law as it is. My personal view is that there could be serious consequences from reducing the time, particularly by that dramatic of a reduction.

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First of all, this is a voluntary system.

And a second problem is that we see something called credit repair scams, and one of the things that these people tell you to do is to dispute everything in the hope that the clock will run out. And if we shortened the system that much, I think that might facilitate that sort of tactic, which doesn't do, you know, the majority of consumers who pay their bills any good at all.

Mr. **BACHUS.** I thank the panel.

I would like to say to the members, and to the panel, that the legislation as drafted, and I have discussed with Mr. Moore and Mr. Davis, as far as credit scores, it was the intention in drafting this legislation, that is the credit reporting agencies had credit scores that that would be revealed. Not only would the credit report go to the consumer, but also the credit scores. So there is some concern that has been expressed here earlier that the legislation may not do that.

It is an intent, and we will continue to work, because if the consumer is not given the credit score along with the credit report, much of the philosophy behind allowing consumers to be able to have, to be educated and improve their credit scores. If they don't know what their score is, it is pretty impossible to improve that score.

So it is our intention that they do receive their credit scores, and I will work with members on both sides to see that that is done.

The **CHAIRMAN.** Thank you. The gentleman's time has expired. The gentleman from Georgia, Mr. Scott.

Mr. **SCOTT.** Thank you very much, Mr. Chairman.

Secretary Snow, I would like to ask you a couple of questions on two of the points that I think have been sort of points of contention here, one, the scoring, and the other, the free credit report.

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First of all, we are all aware, and I think you mentioned in your remarks, the need for consumers to be educated about their credit scores. Chairman Bachus has just indicated the willingness to work on this issue a little more.

But I would like to call your attention to the fact that too often consumers are not even aware that they

have a credit score until that credit has been denied.

What efforts specifically can the Administration take to educate consumers and raise awareness about their credit scores before that credit is denied?

Secretary **SNOW.** Well, the proposal that we have very similar to what Chairman Bachus talked about, would give consumers the opportunity to review their credit reports for accuracy and for completeness. They would also be given more information about their credit scores and would be informed on what they can do to improve those scores, improve effectively their credit profiles. I am not sure where the differences are, if any, between where the Committee bill is the Administration on that, but I will look at that. I don't think we are very far apart at all on that.

We want people to know their credit reports. We want them to know that this information is being used to create scores. We want them to have a sense of how the scores are being created. We want them to have a sense of what they can do to improve their credit profiles. And it seems to me, you go to the identity theft issue, it is very important they have these records so they can correct them if they are wrong, and wrong information doesn't continue to be circulated in the credit system.

Mr. **SCOTT.** Let me ask you another question, because my time is slipping, and we have to go vote. But I want to ask you something about the expanded use of giving free credit reports, which is very important, we support.

But there is another side to this. There is some concerns. In my district we have Equifax. You are familiar with Equifax as a company, very reputable company in my district and a leader in this whole credit reporting industry. They have raised concerns with me, and I would hope that they have with you and, if not, I am sure that they will, but, I hope, we need to address that, about the potential cost of complying with the requirements as they are now drafted and written into the law, that there has not been an adequate benefit cost-analysis being given to that. And in order for this very important tool of accessing a free credit report, I think it has to be done within a way that the industry that is in this business can do it in a successful way.

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It appears to me right now that the regulations, or the way it is written, are rather loose, that not only would it make it somewhat difficult and problematic for those businesses that are in this business and make their business giving credit reports, put this requirement on them, but not do the job that we needed to be done, to do what needs to be done if the industry that has to give these free reports is not done in a way in which they can maintain their business as well.

And I would like for you to address that in terms of how the benefits might outweigh the costs, and specifically if you could address Equifax's concerns.

Secretary **SNOW.** Well, Equifax is one, as I understand it, one of these three major credit bureaus that do such a good job of collecting this information and then making it available to credit issuers. And they play a very important part in all of this.

Today, under a variety of circumstances, free reports are available. We are expanding some upon requests. How many requests will be made? I don't know. Certainly, if you have been turned down for credit, you can get it free today. Or if you failed to get a job because of a financial credit report on you, you can get it free today. We would propose expanding it. The Bachus bill would propose expanding it as well.

I don't think on a cost-benefit basis, Congressman, this will fail to be advantageous to the credit bureaus, because they have such a stake in accurate information.

And what the free reports will do is give anybody who has got a question about his credit report a chance to go back and look at it, understand how it was created and then try and get it corrected. I know there is some concern among the reporting agencies that this will be unduly costly. I would hope they would look at the benefits they would get, because they have the biggest stake of anybody, next to the consumer himself, in making sure these reports accurate.

The **CHAIRMAN.** Gentleman's time has expired.

The Chair would announce there are two votes on the House floor. It would be my intention to recognize two more members for this panel, then dismiss this panel and reconvene at 1:00.

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So we will now recognize the gentleman from California, Mr. Royce——

Mr. **ROYCE.** Thank you, Mr. Chairman.

The **CHAIRMAN.**——for four minutes, hopefully.

Mr. **ROYCE.** Appreciate that.

Welcome Secretary Snow. And I wanted to ask you specifically, I know from public statements that you and your team are studying the issue of government-sponsored enterprise regulatory reform.

Secretary **SNOW.** We are.

Mr. **ROYCE.** And with that in mind, I am not trying to get you to comment specifically on the topic before you all complete your study; however, I would like to know, in your view, what are the attributes of an effective world-class regulator in respect to GSE oversight.

Secretary **SNOW.** Well, Congressman, I think the attributes would be the ability to understand the risks in the enterprise, the ability to understand the business, a command of the facts of a business, a command of the facts with respect to the risks that the capital structure of a business poses, the ability to get at the information you would need to have to know that.

So transparency, disclosure, and as with all regulators, the ability to hold the attention of the regulatee, to bring sanctions for conduct that poses risks to the system, to the financial system. So ability to lay in credit standards, risk standards, capital standards, and then sanctions to see that the standards are observed.

Mr. **ROYCE.** The other question I was going to ask of you, I was pleased that the SEC recently approved the New York Stock Exchange and Nasdaq rules that require companies that are listed on those exchanges to obtain shareholder approval for stock compensation plans, for management or for their employees.

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Do you see the need for additional compensation reform, or do you believe that the new corporate governance rules are sufficient to protect shareholders from potential excess in the system?

Secretary **SNOW.** Congressman, you are now speaking generally, corporate America, right?

Mr. **ROYCE.** About corporate America in general.

Secretary **SNOW.** Yes. I think the issue of corporate compensation ultimately has to be a critical priority for boards, and particularly compensation Committees, because ultimately they have to make these decisions on how to retain, how to attract and how to motivate senior management.

So I would not be in favor of highly prescriptive set of rules, but I would hold boards of directors, and particularly compensation Committees, to very high standards of conduct.

The **CHAIRMAN.** Gentleman's time has expired.

The gentleman from Kansas, Mr. Moore.

Mr. **MOORE.** Thank you, Mr. Chairman.

Very quickly, Secretary Snow, the Administration proposal includes a direction to the FTC and bank regulators to make opt-out notices for pre-screened credit officers simpler and easier to understand. And I really appreciate the Administration's position on that.

Several of my colleagues, and I recently wrote a letter to the regulators asking them to create a simple, understandable privacy notice. Would you agree that it might be—can you agree that it might make sense to have both of these in simple English that consumers could understand and have an understandable right to opt out in both areas?

Secretary **SNOW.** Congressman, I am all for plain English.

Mr. **MOORE.** And I am a lawyer. So am I.

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Secretary **SNOW.** And we get too little of it, I think. So that people understand the rights and privileges that are being made available to them.

And I would be happy to look at what you have in mind, and give you my comments on it.

Mr. **MOORE.** Very good. We will do that. Thank you, Mr. Secretary.

The **CHAIRMAN.** I Thank the gentleman. The gentleman's time has expired.

Gentlemen, we most appreciate Mr. Secretary and Mr. Chairman for an excellent presentation, and the Committee stands in recess until 1:00 p.m., at which time we will take up the second panel.

[Recess.]

Mr. **BACHUS.** [Presiding.] I want to welcome you all back from the noon break.

At this time we are going to call the second panel. The Committee is meeting today, the Financial Services Committee, to hear testimony on H.R. 2622, which was introduced by Representative Hooley, Representative Biggert, Representative Moore and myself, and has 28 co-sponsors on the Committee: 14 Democrats and I think now 17 Republicans, so a balanced group.

I very much look forward to the testimony of our second panel. From left to right I want to identify the panelists. We have Mr. Mallory Duncan, Senior Vice President and General Counsel for the National Retail Federation; Mr. Michael F. McEneney, partner, Sidley Austin Brown & Wood. And you are testifying on behalf of the U.S. Chamber Of Commerce—we welcome you—Dr. William Spriggs, Executive Director of the National Urban League Institute for Opportunity and Equality; Mr. Stephen Brobeck, Executive Director, Consumer Federation of America; Mr. John C. Dugan, a partner in Covington & Burling, on behalf of the Financial Services Coordinating Council; and Mr. Stuart K. Pratt, President, Consumer Data Industry Association.

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I want to welcome all of you gentlemen. We have no ladies on our second panel. So I want to welcome each of you all.

And at this time, Mr. Duncan, we will start with your testimony.

STATEMENT OF MALLORY DUNCAN, SENIOR VICE PRESIDENT, GENERAL COUNSEL, NATIONAL RETAIL FEDERATION

Mr. **DUNCAN.** Thank you, Mr. Chairman.

My name is Mallory Duncan. And I am testifying today on behalf of the National Retail Federation, where I serve as Senior Vice President and General Counsel. NRF is the world's largest retail trade association. We greatly appreciate the opportunity to present our views on H.R. 2622, the FACT Act of 2003.

I would like to preface my discussion with a brief illustration of the credit underwriting process. The seven preemptions currently contained in the FCRA are the underpinnings of the modern credit granting system. If we have a clear understanding of the underwriting process, it is much easier to analyze the vital role of the policies contained in the FCRA.

For example, attached to my written testimony there are two simple revolving loan portfolio examples, each containing 100 loans of $1,000 a piece and each paid off within a year. One has an interest rate of 5 percent, the other a rate of 18 percent. If one loan in the 5 percent portfolio were to immediately default, whether because of identify theft, consumer bankruptcy or poor judgment on the part of the lender, it would take the interest payments from approximately 41 performing loans to compensate for that default. The credit granter can, if it has enough capital to make 41 new loans, and hope that they all perform, or the credit granter can live with a much lower rate of return.

If as few as three borrowers default, the credit granter is completely under water and will lose money even before facing the expense of maintaining those 97 other loans.

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If one loan in the 18 percent portfolio defaults, it takes the interest from 12-plus performing loans to compensate for that one default. Even if that credit granter gets it exactly right 92 percent of the time, no matter how well those 92 other consumers pay their bills, the credit granter is in serious trouble. That is why retailers expend so much effort to get it right.

Now, the complicated part in my example occurs when trying to fit the maximum number of borrowers in that continue of rate between 5 and 18 percent while keeping defaults to a minimum. Anything that enhances this process is obvious consumer benefit. Since 1996, the seven preemptions of the FCRA has enabled retailers and other lenders at a national level to take advantage of the technological advances to serve their customers while greatly refining their ability to fit the borrower to the right rate.

Mr. Chairman, as you indicated, in effect, the FCRA and the 1996 amendment have created an interstate credit superhighway that has done an outstanding job of delivering unprecedented volume of credit more cheaply and more quickly to more people at all income levels.

Is the system perfect? No. There are bumps, potholes and accidents along the highway, but very few overall, and especially so given the magnitude of the system and the speed at which it operates.

It seems to us that the policy question today is how much do we want to impede credit traffic flow and increase costs for highway users in hopes of further reducing the number of accidents and bumps? We have reviewed the provisions of H.R. 2622 with this in mind, along with the criteria suggested by the Department of Treasury. And I would like to just briefly make a few comments there.

The NRF applauds the inclusions in H.R. 2622 of the critically important amendment that makes permanent the national uniform standards under FCRA. The bill also includes a number of provisions to address specific scenarios that involve identity theft. For example, the bill imposes new obligations in connection with certain address changes, fraud alert and address discrepancies. The NRF supports efforts to address these issues and looks forward to working with the Committee to functionally strengthen these proposals.

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A common theme of our recommendations to these provisions centers on maintaining flexibility to address these potential identity theft scenarios. In particular, we are concerned, as you mentioned, that if the methods for addressing identity theft are rigidly specified in the bill, credit granters will be forced to devote resources to complying with those methods, even if they become ineffective or if more efficient alternatives become available.

Therefore, we recommend that the bill maintain its approach of specifying a particular method for addressing each potential identify theft problem, but also include new provisions that would enable credit granters to develop reasonable alternatives with guidance from the federal agencies. This is the approach taken in the USA PATRIOT Act, Section 326, designed to combat terrorism, at least as important a problem.

In short, we need to maintain the flexibility to change our method as rapidly as the criminals change their scheme.

Now, some examples where the bill would benefit from this approach include the provisions for investigation of change of addresses and those governing conflicts where consumer fraud is present. Retailers are particularly concerned if the bill's provisions do not inadvertently frustrate consumer's ability to use their existing accounts or open up the opportunity for unscrupulous credit people to manipulate the system, to the detriment of millions of honest consumers. We submitted suggestions to the Committee and look forward to working with them on this very important issue.

In closing, I would like to emphasize the retail industry's strong support for permanent reauthorization of the seven areas of preemption contained in Section 624. Without the extension of nearly uniform national standards, it would be harder to judge with any confidence the credit worthiness of each individual. It would slow the credit process and lending rates would rise. Consumers have come to expect instant access to credit when purchasing everything from automobiles to consumer goods, such

as furniture, appliances and apparel.

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In the final analysis, we in the retail industry have a real concern that a more fragmented approval process for credit underwriting would negatively impact consumers and, as a consequence, retail sales, ultimately costing jobs and hurting the economy as a whole.

Thank you again for this opportunity. Be happy to answer any questions.

[The prepared statement of Mallory Duncan can be found on page 148 in the appendix.]

Mr. **BACHUS.** Thank you, Mr. Duncan; and Mr. McEneney?

STATEMENT OF MICHAEL MCENENEY, PARTNER, SIDLEY AUSTIN BROWN & WOODS LLP, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. **MCENENEY.** Thank you, Mr. Chairman and members of the Committee.

My name is Mike McEneney, and I am a Partner at the law firm of Sidley, Austin Brown & Wood.

I am pleased to have the opportunity to appear before you today on behalf of the U.S. Chamber of Commerce. I would like to commend the members of the Committee for their efforts to protect the security of consumers' personal information and ensure access to credit at low cost. I would like to commend the sponsors of H.R. 2622 for their leadership in crafting an important foundation for addressing identity theft and FCRA issues.

The FCRA and its national uniform standards have provided a robust framework for the most advanced consumer credit and insurance markets in the world. Indeed, the benefits of the FCRA were highlighted in a recent information policy institute study, which found that the national uniform standards established by the FCRA have contributed significantly to the consumer benefits of the current credit marketplace.

The study concluded that the loss of the existing framework of uniformity would threaten the current consumer benefits and that Congressional action is necessary to ensure the continuity of our national standards.

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We applaud the sponsors of H.R. 2622 for taking such action. The national standards established by the FCRA are also an important component of protecting the security of consumers' personal information. For example, the national uniform provision under the FCRA ensure that financial institutions can have access to reliable credit report information for identity verification and other identity-theft prevention measures.

Although renewal of the FCRA national standards is an important step, we agree with the Committee that more can be done. The proposal legislation includes provisions to address a number of potential scenarios involving identity theft. The Chamber strongly supports efforts to address these important issues and appreciates the opportunity to provide comments on the legislation.

In general, we believe that there is a common theme that may be helpful in guiding consideration of provisions to combat identity theft. In particular, as Secretary Snow mentioned earlier, the methods used to address potential identity-theft scenarios should be flexible, allowing companies to utilize the most efficient means to thwart identity thieves.

We believe that this goal is embodied in several provisions in the bill. For example, the legislation includes a provision requiring federal banking agencies to develop so-called red flags for use in detecting identity theft. This provision relies inherently on recognition that a one-size-fits-all approach may not work.

The red flags presented by identity thieves will invariably change over time, and the tools used to combat the thieves should change as well. The legislation takes important steps in the direction of providing this flexibility, and we hope that this theme can be further explored.

The bill also addresses the important issue of a consumer's ability to access his or her credit report.

The Chamber welcomes consideration of how to make credit reports more available to consumers.

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We believe, however, that this issue requires careful study before next steps are taken. In particular, there should be a full examination of the cost associated with a free report in order to ensure that there are no unintended consequences, particularly for consumers.

Moreover, the frequency and volume of demand for free reports will be difficult, if not impossible, to predict since a widely circulated press report or e-mail could drive extremely high volumes in short periods of time. Given the inherent unpredictability, it is unclear how credit report companies would be in a position to adequately manage this problem. For example, even the most basic issues, like establishing adequate staffing levels, are difficult to address when you cannot predict the volume of the demand.

The Chamber is pleased that the bill includes the provision that would make it clear that companies can conduct investigations of wrongdoing in the workplace without the inappropriate application of the FCRA. Because of the difficulties in conducting an investigation while complying with the FCRA's requirement, the FTC interpretation on this issue deters employers from using experienced and objective outside organizations to investigate workplace misconduct.

While the FTC's interpretation affects all businesses, it is particularly damaging to small and medium businesses that do not have in-house resources to conduct these investigations themselves.

Once again, I would like to commend the Committee for its efforts to maintain the consumer benefits of our current financial marketplace, while also protecting the security of consumers' personal information.

The Chamber looks forward to working with the members of the Committee as the legislation moves forward, and I thank you again for the opportunity to appear before you today. I would be happy to answer any question you may have.

[The prepared statement of Michael F. McEneney can be found on page 195 in the appendix.]

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Mr. **BACHUS.** Thank you, McEneney. And Dr. Spriggs, we welcome your testimony.

STATEMENT OF WILLIAM SPRIGGS, EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE INSTITUTE FOR OPPORTUNITY AND EQUALITY

Mr. **SPRIGGS.** Thank you, Mr. Chairman. My name is William Spriggs. I am the Executive Director for the National Urban League's Institute for Opportunity and Equality.

The National Urban League is the nation's oldest and largest community-based organization dedicated to moving African-Americans to the economic mainstream.

We are very encouraged by the language in H.R. 2622 that seeks to ensure that consumers can get a summary of their credit score and information on how it was derived so that the score can be approved.

We applaud the Committee for that step. And I was very encouraged by your comments earlier in the first panel that you also meant the credit score to be available along with the credit report.

We would like to see the Committee go one step further, however. Credit scores have now dominated the way in which home mortgages are made. Home mortgage is, of course, important to home ownership, and home ownership is at a record level in the United States.

While 75 percent of white non-Hispanic households are home owners, for African-Americans that is only 47.7 percent, and for Hispanics it is 46.7 percent.

Part of that differential seems to be a persistent gap in access to home mortgage, and the loan denial ratio unfortunately has stayed constant for African-Americans, at around 2 to 1, and for Hispanics at 1.5 to 1, compared to whites, this despite the fact that in 1995 there was a mushrooming of the use of credit scores.

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Many people believe that credit denial took the form of differential treatment using credit scores everyone is now convinced has not just been for differential treatment, but we must remain on guard for differential impact.

So it is not just access to the scores; it is access for the Committee and for the FTC and for the American citizens, and to understanding the accuracy—not just the tendency, not just the averages, but the accuracy of the scores themselves.

We need to have transparency of the score creation in the same way that we have transparency with HMDA data. This has allowed us to look behind the veil at how home mortgages are done. We need to be able to look behind the veil of the credit scores, as well.

Now, the credit scores is a statistical thing, and it is subject to all sorts of statistical problems. I just want to mention a few of them. They really aren't race-specific, they really deal with consumers.

You have had a series of reports presented to you on levels of accuracy. All statistical models assume that the data is accurate. It is very difficult to deal with statistical models when you start with data that has measurement error in it.

It is important for outside researchers, it is important for Congress, it is important for the FTC to understand how the scoring industry treats this measure and error, because how that gets treated is very important as to whether there would be an introduction of bias into the system.

Missing data. You have also heard information presented to you at other hearings that for a number of reasons, either credit card information, or sub-prime loans in the mortgage industry, don't get reported to the credit bureau.

So how does the industry handle missing data? Again, there can be a great introduction of bias when it comes to what is the way in which missing data is handled.

Finally, there are omitted variables, variables that you would imagine ought to be in the model, things like employment, things like even regional variations in terms of the economy's performance.

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But they aren't in the model. And it is not possible for us to understand, for instance, if there is a slow-down in manufacturing in Illinois, as an example.

Are those workers' credit records really the same if they fall behind as an employed worker living in northern Virginia, where the unemployment rate is 0.1 percent, who falls behind?

Do they really present the same credit risk if we are looking forward? Probably not. But the way that the scores get treated if we don't understand the model means that we could have unexpected differences in credit scoring across the country that are unintended. But we need to be able to have access to that information.

Now, what is the importance here, as people would say that the credit scores now allow people to get credit? But it is credit at different prices. So accuracy matters. Just yesterday, when I was preparing, I looked at the Fair Isaac Web page. The difference between a 699 score, which is a decent credit score, not great, and 720 would be 0.66 points on your mortgage. That is enough everybody here would rush out and refinance their mortgage over 0.66. That is just 21 points different in your credit score.

So it is really important that the FTC, that Congress, that government have access, bring some sunshine to these models, and then provide us with a report card so that consumers, so that regulators have a better understanding of what has been going on.

In that respect, we have a series of things we would like to see the FTC report in this report card. We want to make sure that there isn't a disparate impact of the credit scores, and we have not liked the information that has been provided so far on that.

The issue isn't average tendencies, it is not just that, yes, the models will predict equally well the average tendency for default rates, it is the mean prediction error. Is it the same for all subgroups? And if it is not, why models have been considered, which ones ended up on the cutting room floor, which

ones ended up being the models that were used? And if we look at the mean prediction error of those models by subgroup, is it possible that some of the scoring methods that aren't used were better for some subgroups? We need to have that information.

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We need to have information on how errors were handled. We need information on the relative performance of the models that were rejected but not accepted. All of that needs to be in place so that we can understand what is going on.

The day has now changed. Getting your credit report doesn't tell you anything anymore. This credit explosion is really the result of the ability to use credit scores. And the credit information industry has in many ways now moved beyond the legislation. So giving information to consumers on what is on your credit report doesn't give them what they need. They need the credit score, and then we need the information on the accuracy of those credit score models.

And I will be happy to answer any questions.

[The prepared statement of William E. Spriggs can be found on page 248 in the appendix.]

Mr. **BACHUS.** Thank you.

Mr. Brobeck?

STATEMENT OF STEPHEN BROBECK, EXECUTIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. **BROBECK.** Thank you, Mr. Chairman.

Mr. name is Stephen Brobeck. I am Executive Director of the Consumer Federation of America. And my testimony today is on behalf of my own organization and Acorn, Center for Community Change, Consumer Action, Consumers Union, U.S. PIRG, and the low-income clients of the National Consumer Law Center.

At the outset, we want to commend the Committee for holding the comprehensive series of hearings on the Fair Credit Reporting Act. These hearings have established the huge and growing influence of credit reporting in the lives of Americans related to consumer access to affordable credit, insurance, rental housing, utilities and even to employment; to consumer vulnerability to socially unacceptable invasions of privacy involving medical information, as well as financial information; and to consumer vulnerability to the horrific experience of identity fraud.

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The extent, frequency and severity of problems in these areas, well documented in your hearings, must never be forgotten in seeking solutions that are considered by financial services providers to be inconvenient or even somewhat disruptive.

At the outset we also want to commend you and other sponsors of H.R. 2622 for including in your legislation important new consumer protections. For example, there is no question that measures designed to curb identity theft would reduce its incidence. While we believe these measures need to be strengthened, they would require credit bureaus and lenders to make more serious efforts to reduce this theft.

Similarly, the requirement that bureaus make available a free credit report annually would increase the ability of consumers to detect and correct errors.

While we believe more adequate government regulation of bureaus and lenders is also needed, the greater involvement of consumers in what is largely a self-regulated system would ensure a more accurate, fairer system that would benefit lenders in the long run, as well as consumers.

We also believe, however, that these protections could be improved in ways outlined in our written testimony that would further reduce abuses against consumers while not imposing unreasonable burdens on credit bureaus and lenders.

Let me give just two examples. It is not enough to give adversely impacted consumers free access to

their credit reports and scores through credit bureaus. It would not only greatly increase consumer access to the actual reports used by lenders, but would actually ease the burden on credit bureaus if lenders were required to provide to adversely impacted credit applicants the merged files and scores that served as the basis for their decisions.

Typically in the purchase of mortgage and installment loans, this would require nothing more than a loan officer handing to the applicant a copy of the file. In most cases, they would probably also help explain this file, urge the applicant to check for errors, explain how to correct any errors and perhaps even assist in this correction. After all, lenders would prefer to make, not deny, loans.

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Second, consumer remedies against inaccuracies and abuse need to be more effective. Certainly, regulators need to be given more responsibility and authority for addressing credit reporting abuses against consumers, but they cannot conceivably resolve more than a small fraction of individual problems. It is also essential to empower consumers to resolve their won legitimate grievances. That could be largely accomplished by giving them the ability to seek first, minimum statutory penalties of, say, $100 to $1,000 per violation and, second, injunctive relief to stop reporting agencies from spreading false information.

In our opinion, however, the greatest weakness of H.R. 2622 is its permanent limiting of the ability of states to pass needed protections. The states need this ability to address regional concerns, to respond quickly to new credit reporting problems, and to experiment with protections not contained in federal law. Any increase in efficiency, whose claims we believe to be wildly exaggerated by credit bureaus and lenders, is a small price to pay for the many benefits of the ability of states to remedy abuses. And we do not understand why the legislation would also make preemption permanent when it directs agencies to undertake studies that are intended to examine problems and remedies.

At the very least, the preemption should be sun-setted shortly after the completion of these studies. Principally for this reason, we cannot endorse H.R. 2622 despite its many merits, but we would urge its sponsors, as well as all members of this Committee, to reconsider this provision as well as the others that were the subject of our written testimony.

In conclusion, because both industry and consumer groups basically support the passage of legislation, Congress has an historic opportunity to reduce serious and growing abuses in the credit reporting system. It may not have this chance for many years to come.

Thank you for the opportunity to provide this testimony.

[The prepared statement of Stephen Brobeck can be found on page 119 in the appendix.]

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Mr. **BACHUS.** Thank you, Mr. Brobeck.

Mr. Dugan?

STATEMENT OF JOHN DUGAN, PARTNER, COVINGTON AND BURLING, ON BEHALF OF THE FINANCIAL SERVICES COORDINATING COUNCIL

Mr. **DUGAN.** Thank you, Mr. Chairman.

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

The FSCC strongly support H.R. 2622, which renews and strengthens the Fair Credit Reporting Act. We believe its core provisions strike the right balance in preserving the FCRA's uniformed national standards in adding strong new provisions to deter and remedy identity theft. Our member trade

associations pledge to work hard for the enactment of this critical yet measured approach to FCRA reauthorization.

While the FSCC recognizes that the legislation is still a work in progress, we believe it is imperative that it retains this balanced approach throughout the legislative process.

For example, we would strongly oppose addition of the types of restrictions, however well intended, that would substantially increase consumer costs without commensurate consumer benefits, or ones that would deter financial institutions from making the type of full and voluntary information submissions to credit bureaus that they do now. At the same time the bill's provision should preserve adequate flexibility for the industry to address legitimate concerns in the most efficient manner possible.

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In addition, our members have technical concerns with some of the bill's provisions that we hope can be addressed. Let me now provide detail about each of these points.

Title 1 of H.R. 2622 makes permanent the uniform national standards that underpin the FCRA. These standards make our extraordinary credit insurance markets truly national, which, in turn, have brought unprecedented benefits to Americans throughout the country. By virtually any measure, the 7-year experiment with uniform national standards has been a resounding success, stirring strong industry competition that has resulted in, among other things, more and cheaper consumer credit and insurance, a wider variety of consumer products and, most fundamentally, economic growth.

By improving the performance of the entire market, as described in more detail in my written statement, FCRA's uniform national standards have lowered the cost of credit and increased the numbers of Americans who qualify for credit.

Accordingly, the lynch pin of the FSCC's strong support of H.R. 2622 is the permanent extension of all of the FCRA's core uniform national standards.

Let me now turn to identity-theft provisions and other key provisions in the bill.

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

That said, the financial services industry has no illusions about the enormity of this problem. The FSCC fully appreciates why the Committee is now considering the identity-theft provisions in this bill, which are woven through the fabric of most of the title.

In addition, several of the bill's provisions provide consumers with greater access to credit report information and address related consumer protection provisions.

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Before commenting on these provisions that affect our financial institution members most directly, let me note that many of the bill's other provisions impose new responsibilities on consumer reporting agencies. While the indirect effect of these credit bureau provisions could result in significant new costs for our members, we believe the credit bureaus themselves, who are also testifying here today, are in the best position to address practical issues or concerns that are raised by such provision. We do implore the Committee, however, to recognize that none of these provisions, however beneficial to particular consumers, comes without cost. And these new costs must ultimately be borne by consumers.

The FSCC believes that, before taking action on any of these credit bureau provisions, the Committee should weigh carefully the expected all-end cost to consumers as well as expected benefits because, in some cases, the ultimate consumer cost may, in fact, be quite substantial.

Section 201 includes specific statutory procedures that require a credit card issue or that receives a request for an additional credit card within 30 days after receiving a notice of a change in address to notify the cardholder of the request. While FSCC supports the intent of this provision, one possible

improvement would be to delegate greater authority to the Federal Reserve to craft regulations to address the problem, which could be adapted to changing circumstances over times much more easily than could specific standards codified in statute.

Section 202 addresses fraud alerts, which the FSCC agrees are a critical tool for containing the magnitude of losses caused by identity theft. We believe the provision should be clarified, however, so that once a fraud alert is placed in a file, it does not require separate authorization each and every time a consumer uses a credit card, which we think would be unworkable.

Instead the provision should apply to the making of a new loan or a new credit account. Further clarification would also be useful regarding the duration of the fraud alert.

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The FSCC also supports Sections 203, requiring truncation of credit and debit card numbers, and 206 requiring regulators to issue red flag guidelines to identify possible identity theft.

In connection with the guidelines, however, the provision should be modified so as not to duplicate the account opening requirements imposed by the banking regulators under the USA PATRIOT Act.

The FSCC also supports Section 301, regarding coordination of consumer complaint mechanisms, and Section 303, which requires a study of investigations of disputed consumer information.

In both cases, we would urge more direct coordination and cooperation between the Federal Trade Commission and the federal banking regulators, and with respect to the study, we believe the financial services industry should be provided the opportunity to provide input before it is finalized.

Finally, Section 402 would prevent furnishers from providing information to a credit bureau where the furnisher knows or has reason to believe that the information resulted from fraudulent activity.

The FSCC remains concerned that the reason-to-believe standard, while seemingly sensible, would in fact be triggered too easily in some circumstances where a financial institution was truly acting in good faith.

We believe that is not the Committee's intent, and we hope to work with you and your staff in the coming week to see if there is an appropriate way to address this concern.

Indeed, since our credit reporting system depends on voluntary submissions of information to credit bureaus, it would be counterproductive to impose restrictions on furnishers that would make them more reluctant to provide information in the first instance.

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

And with that, thank you very much.

[The prepared statement of John C. Dugan can be found on page 135 in the appendix.]

Mr. **BACHUS.** Thank you. At this time, Mr. Pratt, actually as our witness representing the credit bureaus, and I hate to segment that testimony, but Mr. Pratt, you all have sort of been singled out for a lot of——

[Laughter.]

A lot of the burden of this legislation is going to fall on the credit bureaus. And, in fact, I think we are pretty far, pretty close to the line, if we are not over the line, on you being able to handle that burden.

But we do have votes on the floor, we have about three and a half minutes left, so we are going to dismiss the hearing at this time. we will come back and we will hear your testimony, and then we will have questions.

So at this time we are recessed, hopefully for about, let us just say until 2:15 p.m. Thank you.

[Recess.]

Mr. **BACHUS.** We welcome the second panel back.

And at this time we will hear the testimony from Mr. Stuart Pratt, who is the President of the Consumer Data Industry Association; to most people that means the credit bureaus. And as I said before the break, many of the burdens and requirements are going to fall quite heavily on the credit bureaus, and I know that there is quite a bit of concern there. So we recognize you for your testimony, Mr. Pratt.

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STATEMENT OF STUART PRATT, PRESIDENT, CONSUMER DATA INDUSTRY ASSOCIATION

Mr. **PRATT.** Mr. Chairman, Ranking Member Frank and members of the Committee, thank you for this opportunity to testify before you today on the subject of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.

For the record, I am Stuart Pratt, and I am President and CEO of the Consumer Data Industry Association. And Mr. Chairman, as you indicated, we do our represent what are sometimes called the big three consumer credit reporting systems in this country. We represent all of the major check acceptance system, all of the major mortgage reporting systems in this country as well. So a lot of different companies involved in this consumer credit marketplace, providing the information that has been in large part the subject of the many hearings that you held over the course of June. That was quite a marathon.

We join with everyone else who has applauded you and the Committee at large and those who have sponsored the bill for the introduction of H.R. 2622, and in particular for Title 1, Section 101, which does reauthorize and make permanent the national uniformed standards which are so essential to the continued success of our nation's economy.

Reauthorizing and making permanent these standards under FCRA ensures that consumers can continue to enjoy $30 billion in additional disposable income per year, due to increased competition and due to the availability of credit that we see today in the marketplace.

Your bill also looks at and takes a serious look at the question of identity theft. And we agree with many other panelists that identity theft is a serious problem. It is one that requires serious solutions. And we applaud a number of the ideas that are provided for in the FACT Act, including the idea that fraud alerts can be an excellent deterrence. We agree with that. Our members do administer fraud alerts, and we see value in that being codified on a go-forward basis.

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We do believe, like others, that the fraud alerts should be time limited on the file, because they should operate more like a red flag. They should operate during a period of time when there is a heightened sense of urgency, of concern. If they stay on the file in perpetuity, we begin to have a cry-wolf kind of effect, where they stay on forever and eventually a lender has to try to pull apart the wheat and the chaff, and that becomes progressively more difficult. So we suggest that there is a time limitation for fraud alerts if they are to remain on the file.

You suggest a summary of rights for consumers relating to, candidly, some of the changes you are making in this act and also relating to the Fair Credit Reporting Act and other acts as well. Consumer reporting agencies are always willing to deliver the right notices to consumers that explain their rights under, particularly the FCRA.

Some of the other statutes that were cited simply are not statutes that regulate us. If consumers were to receive a notice from us about those laws, our consumer relations folks just wouldn't know how to answer questions about those.

I think some of that may be covered under the FTC ID theft clearinghouse and the fact that they, too, provide a great deal of information. That might be a better solution for how some of the notices are

delivered.

Blocking information with police reports, I think, is a good idea. It is one that we can effectuate for the national credit reporting systems in our marketplace. It is an idea that works well for that type of consumer reporting system. You will find throughout our testimony and throughout our work with the Committee, there are times where consumer reporting agencies of various types don't fit as well with one duty or another duty. And that these duties will have to be custom fit to the type of consumer reporting agency that we really want to focus on.

Coordination of consumer complaint investigations in Section 301, again, makes sense for nationwide consumer reporting agencies. It allows us to allow a consumer to make a single phone call and to have fraud alert information, if you will, transferred between other nationwide agencies.

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Your bill does have some proposals in it. The bill does suggest some things that we want to visit with you about here today in the time I have remaining. In particular, two items under Section 5, Sections 501 and 501, propose free reports for consumers and a score disclosure requirement of sorts for consumers, as well. And I think there has been some discussion today of the intentions of that provision relative to scores. And let me just share a few thoughts on each one.

Free reports are provided widely today. In fact, 16 million free file disclosures are given every year in this country. The 1996 amendments to FCRA did address free file disclosures for a wide range of consumers who had particular need. And we think that that was the balance that was necessary then, and we think that is roughly the balance that is necessary now.

That law, in our mind, is working very well because, again, 16 million consumers every year are getting their files for free. The vast majority get it free of charge. Very few consumers seem to be harmed or impaired by the way the act is operating in that area.

Score disclosure concerns us because in fact, we don't own many of the scores that I guess consumers think we have or that others think we have. And in fact, in many cases, we would have to purchase scores from others if score disclosure was to take place. And that is one of the points of confusion.

That, plus in our testimony we do offer some context for how the marketplace seems to be providing consumers quite frequently to scores, access to advice, access to how scores are analyzed, credit history information and so on and so forth.

So you will find us looking forward to continue to work with you on the file disclosure issues, the score disclosure issues. And we applaud the fact that this bill does, again, make permanent and reauthorize those national standards under the FCRA. And we thank you for the opportunity to testify here today.

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[The prepared statement of Stuart K. Pratt can be found on page 224 in the appendix.]

Mr. **BACHUS.** Why, thank you.

With that, we will go to questioning. And I think my first question will be actually to you, Mr. Pratt. What I think Title 5 of the bill says is that if you have those credit scores, you disclose them. So, you know, if you have them, you would be required to disclose them. Obviously, I don't think we can require you to disclose something you don't have. That would be my interpretation.

We have heard from your members about their concerns about the cost of providing the free credit reports.

And I think, as you have said, the present law requires a broad range of free credit reports: people that have been denied credit, been denied a job, several other exceptions. Do you have any idea how much it would cost to supply these reports? And what if they were done online? What are some provisions?

Mr. **PRATT.** Two questions: Let me break that down, if I may, Mr. Chairman. We are still trying to run the numbers based on a whole range of factors that we tried to outline here in our testimony, but let

me go through some of those. Some of the factors are simply the fact that if free is free for everyone, National Media could create spikes of activity. By parallel example, today even with the opt-out number we use for prescreened offers of credit, an e-mail circulates every year. During any given year, the opt-rate spikes by as much as fourfold from what it is today.

We estimate that we might have as much as a fourfold increase in files disclosed for a range of reasons. Security breeches, which we have discussed in a hearing that, in fact, you co-chaired earlier this year. We talked about the fact that a single security breech cost our members each respectively about $1.5 million. I think we are approaching numbers that are a quarter of a billion dollars in incremental cost increase for the cost of file disclosures.

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Mr. **BACHUS.** How much?

Mr. **PRATT.** A quarter of a billion.

Mr. **BACHUS.** A quarter of a billion? Okay.

Mr. **PRATT.** And that is based on the information I have. I have been visiting with the CEOs of the major systems. And this is based on what we know are the unit costs for disclosure and the estimated number of disputes that would follow and the servicing and the requirements of law that we know that we must comply with today. And it doesn't entirely allow us—even that doesn't really tell us whether we are going to be successful.

If, for example, we have a rush of consumers who decide to make a phone call, and you can look at the parallel of the numbers of folks who have been trying to us the new FTC Do Not Call List——

Mr. **BACHUS.** Of course, that was a one-time——

Mr. **PRATT.** It was. And candidly, I guess, the question is, how often will we have that sort of one-time event to occur over and over again?

Mr. **BACHUS.** But maybe we could build something into the legislation to——

Mr. **PRATT.** Maybe so. Those are the kinds of issues I think our members—we are not trying to be arbitrarily against access. We are all for access of files.

Mr. **BACHUS.** You have been very cooperative. Your industry has been very cooperative in working with us on this legislation.

Mr. **PRATT.** To your other question, certainly delivery online is going to be vastly less expensive than the production of paper.

Mr. **BACHUS.** But would that hurt you competitively? For instance, if you could get that information online, some of the people that you now sell reports to, institutions, could they not go online and get those reports? Is there a danger of that?

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Mr. **PRATT.** You know, that is a good question. I don't know. I suppose large institutions tend to have very high-tech hookups between the national systems that are highly secured and encrypted. And I don't know that would happen.

Absolutely, some smaller institutions would probably think that maybe pulling a free file disclosure would be the way to go, and that would be perfectly fine for their credit lending purpose. And so, yes, that could poach on traditional business. That kind of idea would poach on the current, direct to consumer marketplace, and some companies estimate tens of millions of dollars in lawsuits from that as well.

Mr. **BACHUS.** Right.

Mr. Dugan, I think, you and Mr. McEneney have both mentioned idea of not too rigid of standards, flexibility built into the system. And I believe that is going to be a key to being able to modernize and keep up with the criminals in ID theft cases. I think if we adopt too rigid of standards, we really put our law enforcement efforts and our efforts to identify these people in a straight jacket.

And as you know, we have just addressed check truncation in this Congress, this session, even though the marketplace has probably been there for 20 years. So it is sometimes not encouraging how long it might get around to us if we put something in concrete, it might actually inhibit efforts.

Mr. **DUGAN.** Well, that is exactly our concern, Mr. Chairman.

And we know that in the provision that does the red flag guidelines, that does have quite a bit of flexibility and vision that you are not trying to proscribe those things at once. It will have to evolve, and you have given authority to the regulators to do that. That is the kind of thing in some places that we think is a useful way to look at things.

Mr. **BACHUS.** Your testimony, I think, has been very helpful in identifying areas that we need to address.

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You all have followed the hearing and where we are going on this, and we do get suggestions for provisions on almost a daily basis.

It might help one consumer in a particular circumstance, but when we run that down and we balance it, we find that the end result of that would be shutting down our national uniform credit reporting system as we know it now today.

And that would have a detriment on literally millions of consumers each day. In an earlier panel, and I think someone that needs bearing in mind, is that today in America you can walk in and you can get a car loan in an hour, or thirty minutes.

You can get credit extended in a matter of 30 seconds. In countries, in Europe particularly, where they have much more stringent requirements, credit availability, particularly to low-and middle-income citizens, is simply not there like it is here.

If it is there, it is at a much greater cost, and they may be able to get credit, but the result may be at a 1 or 2 additional percentage differences.

So we certainly want to establish some meaningful standards, but give the regulators, the financial institutions and even the credit bureaus flexibility to address these issues. One thing that I think we have seen from these hearings is the you all are very motivated to address these issues because they affect you, too.

Even when we have had our two identity theft witnesses, both said they had lost over $40,000. Now, when they said that actually a credit card company in both cases took 90 percent of the actually that $40,000 of bad charges, the credit card companies took those hits.

Now, they did have quite a considerable expense. It was a nightmare situation for them. But everybody took a hit. I mean, the institutions took a hit, the credit card companies took a hit, and they took a hit, so there is quite a bit of identity of interest there.

So I think that as we go forward you can help us to refine this approach, and then I would hope that we would maintain flexibility.

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At this time, we recognize Mr. Frank.

Mr. **FRANK.** Thank you.

Mr. **BACHUS.** I was hoping to recognize you before you were prepared to go home.

Mr. **FRANK.** That is okay. I was going to defer, I was going to be outside, but I will be quickly here. To Mr. Brobeck, and I apologize for not being able hear all the testimony, but I have made a point of reading it.

You address, what seems to me to be the biggest current weakness of the system now, which I believe generally works well. But there does seem to be this weakness.

You talk about the failure to guarantee the accuracy of credit reports. Now, the knowledge I have gotten from both from reading and talking is that people acknowledge that there are situations where you

the consumer learn that there is inaccurate information about you. And one of the good things about the bill, and there is a great agreement that we should give the consumer more information, so as a result the consumer is likely to be able to discover that there was inaccurate information.

The problem then comes is, okay, well, what can you do about it? And I am beginning to think in some of these cases from the peace of mind of the consumer she might be better off not knowing, because in some cases she just can't do anything about it.

And I am told that there are situations in which you the consumer learn, and I am working with the gentleman from New York and others, make the going even more quickly, that there is some inaccurate information about you, but that there are really no adequate means for you to combat that in every case.

That is, you can contest it, as I understand it, you contest it to the consumer reporting agency, and you can submit a lot of documentation, and the consumer reporting agency individual may have literally only a few minutes to review your information, then sends a two-letter code to, in some cases, the furnisher of the information. I must say, as I thought about that, various combinations of two letters came to mind to describe what was happening, but, then the credit furnisher, in effect, checks his or her own arithmetic and spelling.

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And if the credit furnisher determines that, yes, I did tell the credit reporting agency that, that is considered to be the reinvestigation, and that is where we stand.

Now, and I am told that in many cases the credit reporting agency will then accommodate the consumer by accompanying the negative information with the consumer saying, it ain't so.

Am I correct that there is not now in the system a way for you to document the inaccuracy and to show that even though they may have correctly reported what they had reported, that the underlying data was incorrect? And if that is true, what can we do? What is a way to break out of that?

As I said, I think it probably occurs in a fairly small percentage of the cases. But I would say to those on the industry side, the smaller the number of cases, the less you have to worry about it. The less the burden ought to be. But it just is unacceptable to say that the few individuals—of course, a few when you cover the whole country is tens of thousands, hundreds of thousands—won't have to pay that burden.

So, Mr. Brobeck, am I accurate in the facts? And what do we do about it?

Mr. **BROBECK.** Certainly, there are inaccuracies that are detected in a small minority of cases. We would argue that there are a number of inaccuracies that adversely affect consumers, who purchase sub-prime mortgages, other sub-prime loans, or are denied credit, who are not aware of these inaccuracies. And that that number is far larger than the number——

Mr. **FRANK.** Right. We now understand. With credit, it is not just either-or, but more-or-less, and that it has been a conceptual view that credit was an either-or situation, but we are now into a more-or-less situation.

Mr. **BROBECK.** So there is no question there is a minority, but we think it is a larger minority than most people assume currently. And it is true that even the minority have trouble getting redress. So how do we fix the problem?

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Well, there is no magic bullet. One way is a combination to give everybody the ability to access their credit report for free and if they find, in fact, that there are a large number of errors, that will basically create a pressure group for the industry to fix the problem. And if they don't, we will be back here in 7 years.

It comes down to, they have to make a sufficient commitment. That is to say, you have got to require them to do certain things, including spending enough money to correct any inaccuracies. We have heard estimates of what seems to me to be far too large an expenditure, but even that $250 million suffers in

comparison with the tens of billions of dollars——

Mr. **FRANK.** What is his number, $250 million?

Mr. **BROBECK.** It is $250 million to basically provide everybody with a free credit report. I can't believe that——

Mr. **FRANK.** In the context of all the great good that this does for the country, after all, the economy in the United States is, apparently, from what I read, substantially dependent on this. What was the gross domestic product? What percentage of the gross domestic product is $250 million? It seems to me we are talking about rounding errors.

Mr. **BROBECK.** Some mountain track will be socialized throughout the systems, and all lenders will pay a little bit. And then, consumers will end up paying a little bit. And nobody will really feel the difference.

So even if it is high, it is $250 million, always keep in mind the cost of tens of billions that consumers——

Mr. **FRANK.** I understand, but I really want to focus.

Are there things we can do in this bill that would mandate a better performance in the collection process?

Mr. **BROBECK.** Yes. Consumers need better, stronger individual remedies. And we would recommend a couple here.

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They need the ability to obtain injunctive relief. And instead of having to prove that there are damages, there should be statutory violations of relatively small amounts, $100 to $1,000, that would act as an important deterrent to the repositories and the lenders.

Mr. **FRANK.** Let me ask you. This would have to be in federal court. Right? Because this is a totally federal operation.

Mr. **BROBECK.** I am not certain.

Mr. **FRANK.** Part of the problem is that we don't have jurisdiction over the remedies. I almost wish we could create sort of a small claims court to deal with this. Because this is really what we are talking about. And that may frustrate us to some extent because the Committee on Judiciary would have jurisdiction over some of the remedies.

But I would be interested, from you or anyone else, and that includes people in the industry. Remember, I want suggestions for how to fix this. If the suggestions for how to fix it only come from the consumer groups, then the industry is going to say they are too harsh. So the way to deal with that is to send me your solution.

But I will fight very hard against allowing this bill to go forward if we don't do something to improve the ability of consumers to deal with this. We are doing a lot in the bill, I believe, and will do a lot better to inform consumers about the inaccuracies. And I don't think the inaccuracies are rife, but I do think that we need to tell people.

We give incentives. You give incentives for people to get the data a little bit right in the first place.

So I agree with you. This is the cost which when socialized throughout the entire economy, is bearable. And I would be welcoming of any specifics about how we improve the process by which corrections are made.

I don't know of any other place where I have been involved as a public official where I have been told, well, you have to tell people that the answer is "tough," that in the interest of the old system, there may be some inaccuracy about them, and there really isn't any way that they are going to be able to prove that it is an inaccuracy. But we will manage to tell people that they think it is inaccurate.

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I would not be content for it to rest that way.

Thank you, Mr. Chairman.

Mr. **DUNCAN.** Congressman, may I take a quick stab at that?

Mr. **FRANK.** Yes, sir.

Mr. **DUNCAN.** And that is if you look at the bill, there are really three things going on, the current and the FACT Act.

The first of those, of course, is that there is this dispute process you mentioned. The consumer can avail themselves of that, and many, many disputes are resolved in the consumer's favor.

The second thing is that as a retailer, we have multiple reasons to want to have someone shop in our stores. You do not want a situation——

Mr. **FRANK.** Multiple reasons?

Mr. **DUNCAN.** Multiple reasons. I mean——

Mr. **FRANK.** I was thinking of one, but it is a pretty big one: money.

You like their company? You are lonesome? You are there to make money. That is a good thing. Don't apologize.

Mr. **DUNCAN.** But the bottom line is that is you have someone as a credit customer, you also have them as a retail customer. And if that customer complains that there was something and they file a dispute, most retailers will put a thumb on the scale in favor of that customer because they want to keep that customer as a shopper in their store. So it is more often than not, it is going to be resolved in the customer's favor.

And then the third thing is this unusual "he said, she said" situation, which occurs very seldom as you mentioned. It is often the result of identity theft. One of the advantages of 2622 is that there is now a provision that would allow someone to follow the port and have that trade line blocked so that no one would get what they claimed to be that false information.

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So we think there really is a remedy right here.

Mr. **FRANK.** Well, I agree. But the fact that it is sometimes as a result of identity theft strengthens my view that we have to be very protective of the consumer.

Yes?

Mr. **PRATT.** My only addition was that the bill does require a study of the re-investigation process to make sure that it is working well.

Mr. **FRANK.** I have great faith in a variety of studies around here, but that is still not nearly as reassuring to me, as it apparently is to you.

Mr. **PRATT.** Well, I don't know if it is reassuring to us either, but I think the most important part of this that re-investigations can be complex, particularly in the situation that Mr. Duncan described. We think a study is the best place to try to look at that issue to try to pull it apart and understand the——

Mr. **FRANK.** The effect of a study is status quo.

Let me say. I might be willing to go along with a study if the extension of the preemptions was co-terminus with the period of the study. But if you get a permanent extension of the preemptions, then the study becomes less attractive because the leverage to enact the results of the study is attenuated.

So if you wanted to have a short-term extension of the preemption while we study this and decide what to do, okay. But a permanent extension of the preemption attenuates the value of a study because given the way this works—you know, people talk about, well, money is the most important thing in the legislative process, politics is the most important thing in the legislative process.

We don't talk about that inertia is the most important thing in the legislative process. And once these preemptions are made permanent, that is the end of the ball game. So the study doesn't do me any good at that point.

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Mr. **BACHUS.** I thank the gentleman.

One thing that, as Chairman, and I know Chairman Oxley is committed to continuing to work with you and with Mr. Ackerman and Mr. Sanders and others to try to come up with wording on improving—I think we can probably do that. I appreciate that. I think we will do that.

Our problem, I think Mr. Brobeck, you know, we have not been able to come up with that magic solution or the wording at the present time that doesn't impact the delivery of credit reporting, of reports and the free flow of information. So we are still searching for the solution.

Gentlelady from Illinois, Ms. Biggert.

Mrs. **BIGGERT.** Thank you, Mr. Chairman.

One of the questions that I had wanted to ask Secretary Snow when we had to adjourn, in a recent appearance he had said that "Another goal of the uniformed standards of the Fair Credit Reporting Act is to help consumers learn how to manage their credit to obtain the best outcomes for their personal finances. In the modern American economy, smart credit management is an elementary lesson in financial literacy."

And I would like to ask you if you think that the FACT Act does adequately address this issue? For anyone that would like to respond. Dr. Spriggs?

Mr. **SPRIGGS.** If I may, Congresswoman? That is my concern where the legislation doesn't go far enough in looking at credit scoring. Because the reality is that with consumers today, their score is so much more important than just the report. And as you heard just a moment ago, you are directing the credit bureaus, but they don't own the credit scores.

And earlier questions got to the issue of who owns the credit score, they get to sell them, et cetera. This is a portion of the industry that is not being adequately covered here.

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And for a consumer to make a difference in their home mortgage, as an example, the example I gave when I talked earlier, it means a 21 point difference in your credit score means a lot of money to a consumer. And so, I think we have to bring the credit scoring industry in the same way that we are very concerned about what the credit bureaus do.

And we have asked them to be accurate, but we have no data or measurement made public about the accuracy of the credit scoring mechanism. Some of the concerns about inaccuracy within the credit bureau data get magnified in ways we don't know within the scoring, because we don't know what the weights exactly are.

So I think if we want to educate consumers, we have to have a far more transparent scoring system so that consumer groups or that the government, so that others can talk about: What are the indicators? What are the real ways that you can clean up that score? Because the score has now become so much more important than the report itself.

The Consumer Federation of America's report points out—and I think some you have experienced this when you go to refinance your home—you can get three or four different credit scores on yourself and they are all over the place. So you know, different scoring companies will score you differently.

And without having the transparency, without the overlay so that you can talk about what do those differences mean. It is very hard for consumers to get that education to manage that.

Mrs. **BIGGERT.** Well, in the legislation then, how would you propose putting that in? Is that just elementary financial literacy for consumers? Or is there something that needs to make sure that an agency doesn't have to report a score or explain a score when they really don't have the proprietary rights over that?

Mr. **MCENENEY.** Congresswoman, could I——

Mrs. **BIGGERT.** Mr. McEneney?

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Mr. **MCENENEY.** Yes, if I could just make a comment here. This hearing is obviously to focus on the Fair Credit Reporting Act. But there is another statute here that I think is relevant, and that is the Equal Credit Opportunity Act, which prohibits discrimination in any aspect of a credit transaction.

And also has that same effect in the context of the use of credit scores. Any credit scoring model has to be developed in a way so that includes only factors that are neutral, don't include race or any other prohibited basis.

The banks that use those credit scores are examined for compliance with those standards. So the agencies are looking at these issues.

Also, you mentioned that it might be helpful to have a mechanism for consumers to understand how these scores affect them. Well, the Equal Credit Opportunity Act does that as well. One of the things it provides is that if a consumer is denied credit, that consumer is entitled to receive the principal reasons for the denial.

Now, if a credit score was involved in that denial, what that consumer must have access to under the ECOA are the principal reasons that went into that score that created the denial for the consumer. And the idea behind that is to focus the consumer in on the most important information, which are the principal factors that are holding back the consumer score.

Mr. **BROBECK.** Congresswoman?

Mrs. **BIGGERT.** Mr. Brobeck.

Mr. **BROBECK.** In terms of educating consumers, making available a free copy of a credit report will do more than just about anything that I can think of for two reasons. First of all, it would generate an enormous amount of media coverage, which people will have difficulty avoiding. It will also stimulate a great deal of consumer demand for information about the data in the credit report and scores. And if that is properly explained by the repositories, that will represent a very useful educating mechanism.

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And then we would also, as I indicated in our testimony, recommend that those consumers who are adversely impacted by a credit decision be given the file that is used by the lender and the score used by the lender. And in most cases, because lenders are interested in lending money, not denying credit applications, they will probably help the applicant to understand their credit file and perhaps even advise the applicant about how to improve the accuracy of that file.

Mr. **PRATT.** If I could just respond to the—we continue to talk about the file disclosure. And we have always agreed as the industry that access to files is important for consumers. It is part of how I learn about all the different—in fact, sometimes consumer discover they have more open lines of credit than they may have remembered just because some are less active and maybe not in their wallet as frequently.

We are still struggling with why the current approach that the law has in it is not working. We are giving away 16 million files a year to consumers. That is a good number of files for consumers. They are educating a lot of consumers. We think the educable moment is quite often, and Mr. McEneney referenced this to one extent, is the point I want to look at my file when something has happened, when there is a question that I have about what my record looks like.

What we seem to be losing track of is the literally tens of millions of transactions that go through successfully every year in this country. And the system does work well. And of course, all of us have a right of access to our file. And the fee is capped and determined by the Federal Trade Commission under the current FCRA.

There is a lot of free file disclosures that are available today. We are just still struggling with why free seems to be the panacea solution for all the ills that we seem to be suffering when it comes to financial literacy. We don't think that is the case because consumers certainly can have access to files and certainly can, in many cases, free and in some cases not.

Mrs. **BIGGERT.** Still the question that you had was the proprietary that is not right.

Mr. **PRATT.** That is more difficult, that is true. We can't disclose another company's score. And that is so important for the Committee to know that. Our members do develop scores ourselves. We compete in that marketplace. But we can't disclose another company's score, their intellectual property.

It is just the way the law works. I think and generally that is probably the right way for the law to work.

Mr. **SPRIGGS.** Excuse me, Congresswoman.

And again, that reiterates my point that that is the industry that is not brought to the table here and why the credit score access for consumers needs to be there. But if the FTC could issue a report card—it is not enough—unfortunately, the Equal Credit Opportunity Act doesn't get enforced properly on this issue of the credit score because of the issue of disparate impact.

A consumer who gets denied who may think that there was some racial bias on the score gets their report and is told maybe this is the key ingredient. But they don't get a report card that says if I look at the Fair Isaac model, if I look at somebody else's model and I see three different credit scores for myself, I don't get the objective view of someone like the FTC might be able to provide and say, look, if you look at how well this one predicts and how well this model predicts and these are the key elements and this is how they handle errors and this is how they handle missing data. That gives me a lot of clues as a consumer, and to you as policy makers, about well what do we think is wrong here and what can we improve.

Currently, because we don't have that on the table, we can't even really talk about some of those elements. So I think the first thing is that we need that report card from the FTC evaluating the score, the different score companies. And then if they sell my score in the same way that we stick it to the credit bureaus and say if someone looked at my report, they have to give me the report, then the scorers need to give me my score.

And that—and if I get that score with the FTC report attached to it, that is going to give me a lot of clues as a consumer about how my credit rating really works. Because, again, if I get that credit report and I haven't used five lines of credit in the last 10 years, I maybe got a credit card when I was in college and I left it open, I don't know about it. That hurts my credit score.

Now, as a consumer and I look at that and I say, well, I am not even using it. It has got a zero balance. What is the problem here? I don't see why I am being denied credit. Okay, I have got 10 lines of credit out there, but I am not using any credit cards.

As a consumer, I am not really being made intelligent enough about it until I see a credit score that says, boom, that is bad. You are being a bad boy. You don't need 10 lines of credit.

And so, that is why, again, you need to bring the credit score in, regulate them like you regulate the bureaus, if someone gets that information or uses the credit score, then they have to be as accountable as the credit bureaus and say, okay, you got denied because of the score, here is your score, here is the FTC report card with all the different scoring mechanisms, here is how these models work, here is how they predict, and that will inform the consumer.

Mr. **HENSARLING.** [Presiding.] The gentlelady's time has expired. The Chair now recognizes Mr. Sanders.

Mr. **SANDERS.** Thank you, Mr. Chairman. Let me ask, to start off, Mr. Brobeck, over the weeks we have been hearing an enormous amount of testimony from the industry, and today from the Secretary of Treasury, that Western civilization would collapse as we know it if states were given the full power to protect consumers in this area.

Do you think civilization would collapse, or do you think maybe consumers might get some benefit if we had attorneys general throughout this country, and legislatures and governors, who wanted to stand

up and pass a stronger consumer protection law than Congress is apt to protect? Can you comment on that, please?

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Mr. **BROBECK.** Mr. Congressman, I don't even think a small part of civilization would collapse. After all, before 1996 a number of states passed some very strong measures that were grandfathered into the 1996 law, and the sky did not fall, the industry adapted. In fact, they ought to be better able to adapt now because of technological improvements.

In the area of provision of social services, because of computers, we have dramatically lowered cost. I can't imagine that those cost savings are not available to the industry, as well.

And there is going to be a small cost here, some inefficiency, but I would urge this Committee to ask the industry whenever they allege that the sky is going to fall on them that they document carefully the cost of interventions by the States that they have already taken, that are enforced right now, and that they then compare those costs with the benefits that have accrued to consumers as a result of those interventions.

Mr. **SANDERS.** Now, what am I missing, Mr. Brobeck, when I think that if there are particular problems in a state, whether it is Alabama or Vermont or California that the legislatures and the Attorney Generals of those states might be able to respond more effectively and quicker at the statewide level than waiting for the United States Congress to move? What am I missing in terms of the needs of consumers?

Mr. **BROBECK.** We don't think you are missing anything. In fact, our federal system is wonderful because it gives the States an ability to respond more quickly, which they often do, because there are 50 of them, rather than just one U.S. Congress, to problems that arise.

Sometimes those problems are local or regional, so there is more interest in that state in responding to a problem than there is, say, in Washington.

But, I mean, where is the harm? We have, we have seen the macro-economic analysis that ascribes the growth in our economy in the 1990s to the credit reporting system.

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I would argue that there are many other far more important factors. One could even perversely argue that the credit reporting system is somehow related to the rise in consumer bankruptcies, because, after all, if consumers' scores are inaccurately high, then they are more likely to take on credit that will lead to default.

If they are inaccurately low, the creditors will turn around and charge them higher rates. In both cases, that will tend to drive borrowers into insolvency.

Mr. **SANDERS.** Let me take that statement and lead to a second question, and Mr. Spriggs, Dr. Spriggs, or anyone else can comment on it, but let me address it to Mr. Brobeck again.

I have been concerned about a scam which I call switch and bait, bait and switch, by which companies, credit card companies say, we are going to give you, Mr. Brobeck, 3 percent for a year.

You pay every month faithfully what you owe the credit card company, and lo and behold, after four months of paying on time, suddenly your interest rates have gone from the 3 percent they promised to 25 percent.

And the reason that they will explain to you is that you borrowed more money because your wife was ill, and so forth and so on. What do you think about that type of action, and what should Congress do to address it?

Mr. **BROBECK.** Well, we think that is unfair. What is driving that is that in a certain sense credit card markets have become more competitive, and the so-called traditional rates, they are basically tiered rates, the promotional rates being under 5 percent, typically, traditional rates, traditionally were 18 percent, but now they are as low as 10 or 11 percent.

And then you have the penalty rates. Well, competition in middle markets and upper markets basically drove the traditional rates down. That squeezed the margins of the creditors, so they looked for other income opportunities, and what they did is they raised the fees and they created this penalty rate category, and now what they are doing is figuring out clever ways to move people from the traditional rates into the penalty rates.

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And unfortunately, they are using credit scores as an excuse to do that, or other material in credit records.

Mr. **SANDERS.** Right. Dr. Spriggs, do you want to comment on that?

Mr. **SPRIGGS.** Well, I did, because it gets right back to the issue of the credit scores, because that drives the market so much more than just what comes out of the credit bureau.

And that intermediary effect is what gets you out of that, allows them their out, because probably in that fine print that you didn't observe.

It is not as unilateral as it may appear is something to deal with your credit standing. And the moment that extra loan came, your score changed. So they may not be making as unilateral a switch as it at first appears.

That issue is important because we don't know what is in the models. We don't know—maybe after you looked at the models, you might say I see their point, it looks valid. But you may also look at their models and say, well, if you modeled it different, and here is a different scoring company that models it differently, they wouldn't have scored me that way. Why does this model say that that is bad?

We could have that exchange. But we can't have that now, and so we need to get them out of that loophole by making this more transparent.

Mr. **SANDERS.** Does anybody have an idea—I am kind of curious, that when—we understand that about 5 billion applications, credit card applications, are sent out a year, which is an astronomical number. I would be curious to know if we have some figures on what percentage of people who sigh up for one promotion or another end up paying higher rates than was on the original promotional application. Does anybody have a guess on what percentage? I mean, if they come to me and they say, Mr. Sanders, you can have 3 percent for a year and they raise me to 20 percent, what percentage of the American people are in that box?

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Mr. **MCENENEY.** You know, Congressman, I don't know. But I just want to mention that I think there is a law on the books today that squarely addresses the issue that you raise in the context of the potentially bait and switch scenario. The Truth in Lending Act requires, pursuant to a recent Federal Reserve Board amendment to Regulation Z, that any credit card account that offers an introductory rate, that introductory rate has to be disclosed on those Schumer box disclosures and the penalty rate has to be disclosed as well.

Under those—and the circumstances under which the penalty rate may be imposed must be disclosed also.

Mr. **SANDERS.** Excuse me, let me just ask you for clarification. Is the penalty—if I borrow money from another source, is that considered now a penalty?

Mr. **MCENENEY.** Well, actually I think what you are referring to is risk-based pricing.

Mr. **SANDERS.** Yes.

Mr. **MCENENEY.** And what can happen in a risk-based pricing scenario is a creditor obviously has one view of a particular consumer's experience with that creditor. What it will do, in some circumstances, is go out to a consumer report to see if there is a more complete picture that gives a better understanding of that consumer's risk.

In some cases they may find that the consumer has defaulted on several other loans, therefore presents

higher risk. And the creditor at that point has a couple of choices. It can either allow the other consumers in the portfolio to pay for that consumer's risk or can price that consumer's product, so that that consumer pays for the risk that consumer presents.

Mr. **SANDERS.** Bottom line, let me ask you this, and then I will give back the mike here. Is that if I signed up with your credit card company and I faithfully pay you every month what I owe you, do you believe you have the right to double or triple my interest rates even though I have never missed a payment with your company?

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Mr. **MCENENEY.** Well, I can't get into the doubling or tripling.

Mr. **SANDERS.** That is what happens.

Mr. **MCENENEY.** But I am aware that what will happen is that when that introductory offer is made, what will be disclosed to the consumer is the fact that this rate, this introductory rate, may go away under certain circumstances. And under the Truth in Lending Act, the creditor has got to describe those circumstances before the consumer even applies for the account.

Mr. **SANDERS.** But sometimes those—that language is written in very, very tiny writing, is it not?

Mr. **MCENENEY.** Well, actually, these disclosures, under that recent Federal Reserve Board amendment I mentioned, have to be in a certain type size.

Mr. **SANDERS.** Thank you, Mr. Chairman.

Mr. **PRATT.** Mr. Sanders, if I could just respond to one comment that was made about the credit reporting industry as though it was somehow responsible for bankruptcies in this country. And I just can't leave the record void on that.

That literally 2 billion consumer reports are sold every year in this country. Sixteen million consumers look at their files every year in this country. Less than half those consumers ever even call the credit bureau back, although they have toll free numbers and access to live personnel. And for us to be left with the impression here on this hearing record that somehow whole cloth credit reporting systems are vastly inaccurate and somehow contributing to bankruptcy is just a falsehood.

Mr. **SANDERS.** Well, I think Mr. Brobeck was attempting to do what some in industry have done and suggest that if we give the States the right to protect consumers, somehow this will be causing devastation. He was being a bit hyperbolic, I guess, is the word, right.

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Mr. **BROBECK.** I was trying to analyze the last 7 or 8 years and suggesting that was one plausible explanation for the rise in consumer bankruptcies. One of many.

Mr. **SANDERS.** Okay. Thank you very much.

Mr. **GILLMOR.** [Presiding.] We will go to Mrs. Kelly.

Mrs. **KELLY.** Thank you, Mr. Chairman.

Gentlemen, I, in my subcommittee, held two hearings on this. This is now the sixth hearing that we have held on this topic in this subcommittee. The problem—it is obvious that this is a pretty sticky wicket. And I would like to address something that was just said.

One of the problems is that the public does have access to a lot of information right now. The problem we, I believe, have is that we have a financially illiterate population in the United States of America. I think we need to also ask you all to go back and do everything you can to teach people to protect themselves with regard to some of these issues.

This is a very sticky wicket with people who want to have credit. They want to get life insurance. They want to get mortgages. And to do that, they are going to have to give up some information.

But one of the interesting things here that Mr. Sanders was just talking about was the fact that we need more transparency. We need it in A, B, C. We need it so that people can read it, understand it and grab hold of that information and use it in the way it should be used.

My concern here goes to the other part and that is the blocking of a certain amount of information. I believe that when you order a credit report, there ought to be a way that we can block certain specific things. One of them is the medical information.

And I would like to ask you, Mr. Pratt, because I am concerned about that, if, for example, if an employee okays the information being delivered.

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And that employee's investigation goes on into the credit history by the employer. I would like to know what you think about the trade lines for the health care providers that were showing up, like a cancer center, or a substance abuse clinic, don't you think that could create a possibility of discriminatory treatment here?

And don't you think it would be possible for us to encode things like that, so that, on the trade line report, so that it gets the information that is necessary with regard to financial information, gets there, but we are able to encode on the trade line report the names that get provided to the users other than the consumer?

Mr. **PRATT.** I think we share your concern about making sure that information like that doesn't end up easily displayed on a credit file today.

Very few health care providers are reporting any kind of regular information to credit bureaus. The majority of data that might have some medical information on it, I suppose, would be through debt collection.

Even there, we provide advice to all data furnishers in the marketplace about how to make sure that they do not give us information that would otherwise be an indicia of some sort of treatment that consumers, you and I both individually, would prefer not to have on a credit report.

We also have tables of key words that are used to scan incoming data to strip out data like that, so, for example, psychiatric, cancer, and those sorts of tables are used today to strip data out of the credit reports, which I think tells you that we, in essence, share your concern about trying to make sure that a credit report is for the decision at hand, but that the medical aspect of it is not relevant, in our opinion, either.

It would be up to lenders to decide how else they might need to use medical information, but that would not be found on a credit report, the way our credit reports operate today.

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Mrs. **KELLY.** Having once in my very far distant past started out programming on computers, it seems to me that there are possibilities, we can do things with that type of information as it is transferred around to help get the amount of information to the people who need it without indicating certain things about people that they would rather not have known.

And I would like to work with you, if possible, on some wording that I think might very well solve this problem. I think that words are a nice thing, but I think there may be a way that my concern also attends to the liability of who is doing the reporting, and I want to make sure that we have very clear indications of that liability, as well.

So perhaps you would be willing to work with me on some language. We have some, and perhaps you would review it for this.

Mr. **PRATT.** We would be happy to work with you to see——

Mrs. **KELLY.** I thank you very much. I really appreciate this panel being here. Your testimony has been very interesting. It is, as I said, a sticky wicket. I hope we can get there. I think we have a pretty good bill here, it perhaps needs a little more tweaking and this is one area where I would like to do that.

Thank you. I yield back the balance of my time.

Mr. **GILLMOR.** The gentlelady yields back. The gentleman from New York, Mr. Ackerman.

Mr. **ACKERMAN.** Thank you very much, Mr. Chairman. I have a quick question, I think, for Mr.

Pratt. Under the Fair Credit Reporting Act, the credit bureaus are required to remove inaccurate information from a consumer's credit report, the word is in the law, promptly.

Mr. **PRATT.** That is right, sir.

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Mr. **ACKERMAN.** Is there a definition for promptly?

Mr. **PRATT.** Not that I am aware of. In other words, case law might give you some indication of promptly, if there was case law in that area. I just don't have that information at my fingertips to be able to give you a more, a finer point, if you will, on what that means.

But promptly means promptly. You need to get it into the file, obviously, in order to ensure that the consumer's file is brought back to a correct standing.

Mr. **ACKERMAN.** And you would be amenable to putting some kind of reasonable definition in the law on what promptly might mean?

Mr. **PRATT.** We would be happy to have that discussion with you in order to understand how that would work.

Mr. **ACKERMAN.** If promptly meant taking it out as promptly as the average for putting in negative information, you would be in favor of that?

Mr. **PRATT.** Promptly for us means taking inaccurate information out of the file in a timely manner in order to ensure that the consumer's file is brought back to accuracy.

Mr. **ACKERMAN.** If somebody reports negative information and that gets reported to the credit bureau and is made public through the agency within a matter of two weeks or 60 days or 30 days, and that was the average, it is pretty prompt to get it in there, would it be fair to say that we should be taking it out if it is inaccurate——

Mr. **PRATT.** Well, I think the law——

Mr. **ACKERMAN.**——within that same time frame?

Mr. **PRATT.** Well, I think the law sets the outer limit. We have got to get this done in 30 days. That was something that was done in 1996, because prior to that——

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Mr. **ACKERMAN.** So you would be in favor, if 30 days was not the outer limits for promptly, you would be in favor of 30 days, at least?

Mr. **PRATT.** I think it is the wrong place for me to be negotiating the details of an amendment, but if you are saying, are you interested in looking at the issue of promptly, and is there something better than the word promptly, we are happy to have that discussion. But I can't start negotiating an amendment here.

Mr. **ACKERMAN.** We will schedule it promptly, then. On the FICO and other related scores, this is for the whole panel, I don't know if anybody here can help me, I don't know if anybody wants to, but it is still very perplexing as to what goes into this, and why people are interested in it from other agencies, such as the Transportation Security Administration.

I am in the process of refinancing some properties, and was told that my FICO score was in the, let me just say, the high-700s, and my wife's was in the mid-700s.

I don't know what went into my score that is different than her score, because basically everything is, but this has caused a lot of family tension, and she thinks I am holding out on her.

[Laughter.]

And I don't know what is in her report that is not in my report, but everything is joint, and all that kind of stuff. And if it is the same formula by the same company, it gets confusing to a lot of people, and to make her a better consumer she would like to know what she would have to do to, because she is very competitive, to at least have the same score that I have, and nobody can tell me; although you can tell me the ingredients, you can't tell me the exact recipe.

The use of the FICO and other scores like that by the transportation people to make determinations as to who are better risk to put on the transportation system is baffling.

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I don't recall any question of it being asked when I applied for a credit card or a mortgage or a car loan or anything like that that would give away whether or not I ever hijacked a plane or derailed a train or committed an act of piracy on the high seas. I don't know that you put down that I was late in paying for my latest shipment of nerve gas or something. I could understand that being a clue to those people.

But what is it in your reports, or the reports? Is it just that people who are not as economically or financially dependable are greater risks for terrorists? What is in—to be terrorists? And if my score was so high, can I get upgraded to first class? I mean, you know, what is their interest in this?

Mr. **SPRIGGS.** If I can, Congressman, I mean, what people have done with the scores is the scores, in many instances, have replaced the credit report. It is viewed as an objective way of summarizing the information and taking away the discretion that some people felt, maybe even me, was discriminatory in the way that people might have evaluated that information. In that sense, they may be putting a lot more into the score than what deserves to be in the score.

The fact that it is proprietary, to me, again, if not excuse enough, we need to have transparency. We need to have the FTC scoring the scoring cards. Maybe if they understood it over at TSA, they would rather have the credit report and not have the credit score, because again, the credit score is going to include judgments about whether in the future you would default on the loan, which may be different than the type of reliability, responsibility that was implicit in——

Mr. **ACKERMAN.** We are in total agreement. I just don't know what people think is in there, and I don't know what is in there because nobody is really telling me, that would indicate that a person might be a greater risk to be a terrorist if he missed a payment on his car loan.

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Mr. **SPRIGGS.** And the score may not be telling that at all.

Mr. **ACKERMAN.** Darn, I missed that—they repossessed my car, I think I will go blow up a boat.

Mr. **SPRIGGS.** But again, the score may not be even telling you that you missed a payment. Your score can be lowered for a number of factors dealing with how that model predicts your total outstanding liabilities to your income whether you access that credit line or not.

Mr. **ACKERMAN.** You cited before the Equal Credit Opportunity Act and that prohibits discrimination. Now, why can—if that is the case, why can the federal air transportation security people discriminate against somebody with a low FICO score?

Mr. **SPRIGGS.** Well, again——

Mr. **ACKERMAN.** Is somebody going to, you know, make me take my shoes off again because I missed a mortgage payment this week or something?

Mr. **SPRIGGS.** The problem is I don't think that—given we don't ask the right information of these credit scorers, I don't think that we know whether they comply with the Equal Credit Opportunity Act. Because the issue isn't just do they on average not discriminate and have an average disparate impact, to measure whether they have a real disparate impact, you would have to know the mean prediction error by each subgroup that is protected under the Equal Credit Opportunity Act.

And we don't have that kind of information. We don't have information on how they use missing data. Many credit cards, many mortgages aren't being reported.

Mr. **ACKERMAN.** Well, you and I are on the same wavelength. There is a complete lack of transparency. But the people who are looking into terrorism and, you know, blowing up planes and things like that seem to think that there is a message in that score for them. And I don't know that they just think that poorer people or people with less credit or people who can't meet their financial obligations as quickly are more predisposed to be terrorists. I have not seen that study.

And you know, maybe those people who know what is in the report here can tell us what the indication is that they are looking for. What is it that helps them?

Anybody?

Mr. **DUNCAN.** Congressman, I cannot speak on the use of the scores by the TSA. And it is quite possible that they are misusing scores. But the broader issue is what is a score? And I think Ms. Kelly was on the right track when she said we need broader information and broader education for consumers.

Now, one way that might be accomplished is similar to methods used in California, is to come up with a composite score and explain how that composite score is developed so consumers can get a sense of what the factors are they should be looking at in seeing those scores develop and how your wife, for example, might drop one of the credit lines that is in her name and not in yours, and that might change your score.

But we don't need to have the specifics of each and every score that is developed in order to provide general information any more than we need to have each college that admits people go into great detail about the factors they use in making a decision as to whether to weight your grade point average versus your SAT versus your outside academic activities.

So a general education is needed, but not this great specificity.

Mr. **ACKERMAN.** Without beating this issue to death, it would seem to me you are absolutely right. And we are not getting a lot of help from the industry as to how one might improve that score, as far as educating the public. I would like to know, and I think this information that can be provided by some of the people here, how many files of scores have been actually requested and turned over to the Transportation Security Administration?

You probably don't know that, anybody, off the top of your head. But could I ask those of you who have access to that information to provide it to the Committee? Not just FICO, but any of the like kinds of scores.

Mr. **MCENENEY.** I can say that we would absolutely be willing to follow up. I am not aware that TSA has access to any of these scores, but be happy to follow up and see what we can learn on that and get back to you.

They have interpreted the PATRIOT Act as allowing them not just to access banking financial information, which was the intent, but to go to any agency that does any kind of record-keeping. And the Transportation Committee staff has been briefed. And unless their member was on both that Committee and this, they are much more in the dark about FICO scores. They didn't even know what it meant.

But the answer to your presumed question is yes, they say they have the authority under the law. They have found that loophole. And being that the briefing took place, it is presumed by us that they have made the request.

And my request to each and every one of the panelists is to go back, find out what has been requested. We don't need the names or any of the specific details, but how many files actually were turned over.

I know that we can buy that list. If I wanted to get everybody that was 65 or over, you probably will sell it to me, with the names and addresses.

Mr. **GILLMOR.** The gentleman's time has expired.

The Chair will recognize himself for some questions.

I want to deal with one area. And that is something which surprised me and, I think, a lot of other people when I learned it. That your score is lowered if somebody makes an inquiry about your credit.

I guess to me, I see no relationship between somebody making an inquiry about credit and the likelihood of repaying. Could somebody explain to me or justify or condemn, as appropriate in their view, why that happens and what is the justification?

Mr. **MCENENEY.** I would be happy to respond.

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There are, I think, questions about the circumstances under which an inquiry will result in an impact on a credit score. And there are variations in terms of how scoring models look at those developments. But let me give you one example of how this can be relevant to someone's credit history.

If a creditor has a relationship with a consumer, obtains a consumer report on that consumer, and learns that the consumer is applying for a variety of different credit accounts in fairly rapid fashion in a short period of time, that may indicate that the consumer is overextending himself or herself and thereby presenting a risk to the creditors.

That is one situation where that can occur. Now in the past, there have been concerns about issues that might occur with somebody shopping for a home mortgage, for example. In a home mortgage context, I may go to three or four or five different lenders in a short period of time. And those lenders may make inquiries to the bureau, separate inquiries to the bureau.

What is happening today, as I understand it, is that creditors are identifying those multiple inquiries of the type I just described, that happened quickly, and treating them as one, recognizing them for what they are, somebody shopping around for the best deal, treating them as one and not creating that adverse, potential impact on somebody's credit score that might happen in other situations where the multiple high velocity of inquiries suggests a risk.

Mr. **SPRIGGS.** Again, Congressman, because the models are not transparent, neither you nor I can say with certainty what they are really doing. And that is the problem.

If we saw their model and saw the explanation, then we might agree with the explanation we just heard, that this is a risk factor because this is someone who is trying to extend their credit.

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We might look at their model and go, You are kidding me?

But without the data to analyze the model and see whether the introduction to that variable adds anything measurable or not and what is the bias of that? Does it affect all subgroups in the same way? Does it affect first-time home buyers as folks who already have mortgages who are out refinancing?

We need that transparency. We need the FTC to have the specific scores. It is not enough for consumers to get a general process. I think most consumers can get the general process quickly. But because of the type of question you just asked, a lot of consumers will do some things like that because they don't know specifically what is in the model. And you may look at your credit score and go, I pay my bills on time. How did this happen?

Because maybe it took you five months to look for a house, and so it didn't clump. Maybe you had three inquiries here and three there and three there, and suddenly you found your score lowered.

Without the transparency, we can't have that kind of debate. It would be the same as if the credit bureaus were being asked, just to say, we got a report on you, and it was blank. That would be the equivalent.

Well, the answer to the question was that it would only apply if those inquiries were bringing out evidence of other things, which is multiple application for credit. But we don't have any assurance that that is true. It may be just somebody inquired, or that different people inquired.

Do you want to respond to that?

Mr. **MCENENEY.** There are different types of inquiries. One inquiry, for example, occurs when a consumer's file is accessed for pre-screening. Another inquiry is an inquiry is registered when an existing creditor, for example, obtains a consumer report on the individual, not at the consumer's initiation, but because the creditor wants to assess risk with respect to the consumer.

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Those two types of inquiries are set aside. The consumer has access to those. But other creditors or

other users of the consumer report don't. So they do not impact in any way the consumer's credit score or credit history. But obviously, the consumer is entitled to see who is looking at the account.

So that leaves, in large part, the types of inquiries that I talked about where the consumer initiates some contact with someone is seeking to obtain some financial product or service. And that organization, after being contacted by the consumer makes an inquiry on the consumer.

Mr. **GILLMOR.** But you cannot ensure me that in arriving at these scores that nobody is just taking an innocent inquiry and lowering the score, can you?

Mr. **MCENENEY.** If I understand the question correctly, is it possible that there are some out there who have scoring models that when I go and visit one consumer, one creditor, rather, and that creditor pulls a single report? If what you are asking me is might it be the case that another creditor looking at that single inquiry might have a scoring model that treats that single inquiry as risky, I can't assure you that that doesn't happen. I am not aware of it happening. I would be happy to look into it and see if we can't find whether that is the case.

Mr. **GILLMOR.** Well, suppose somebody wanted to—didn't like you or somebody else and the orchestrated multiple inquiries just to drive your credit down? You can't assure me that wouldn't be successful, can you?

Mr. **MCENENEY.** Well, actually, I think the existing law provides strong assurances that that doesn't happen. Under the FCRA, a person is entitled to obtain a consumer report only for limited permissible purposes. And the example you described clearly would not be a permissible purpose. That would be someone obtaining access to a consumer report without permission and there are significant penalties under the FCRA for doing so.

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Mr. **SPRIGGS.** But again, Congressman, your question is no point. If I am searching for a job and my employer, as we heard about TSA, requires a credit report on me and it is not clear whether the modeler is being fine tuned enough to say, you know, here is a company making a credit request on this person. They got five out there because I am looking at five different potential employers. We don't know whether the modeler is discerning those credit inquiries differently than they would any other credit check on me.

So again, we have to have the transparency. We don't let the credit bureaus give us blank reports, and we can't really let the scoring companies give us the blank reports that they give us. We have to have an understanding of is that what you did? Is that in your model?

And then we could get into an agreement or a disagreement with as to whether enough added reduction in error from adding that variable was present so we could feel comfortable that maybe we could live with the one or two times that might happen. Maybe we might look at their model and say for the increased accuracy of adding that, we think there are so many more costs that we don't agree with why that is in your model. That is why we have to have the transparency.

Mr. **GILLMOR.** My time—over my time. I will just follow up with one thing. Just very briefly, how would you assure that transparency which you describe?

Mr. **SPRIGGS.** I think to give some respect to the proprietary nature of the data, that the FTC was required to run their model, was required to give us a report card and let us know which variables were in, how those variables were treated, what they do with missing values, what do they do with discrepancies, if they get a report that says that the delinquency was being disputed.

If we could get a report card so that we would have enough information on the various models that are out there, how they were making their decision, then we could be able to have a better discussion about what would need to be regulated about that industry.

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Mr. **GILLMOR.** Yes, I think nobody has any problem with really relevant information. But when

you have a bad score partly dependent on irrelevant information, it is a real injustice.

The gentlelady from Texas.

Ms. **LEE.** Thank you, Mr. Chairman.

And I would like to follow up with that line of questioning. I don't want to be redundant, but I want to continue to pursue this whole issue with regard to credit scoring, and I guess it also could speak to financial literacy in terms of the public, one, knowing up front that credit scoring is proprietary information and that in fact this is a product for sale.

Now, those who are financially literate may know that. But I think that it is very important that somehow as we move forward that those disclosures are somewhere on credit applications so that a consumer who may or may not know this may or may not want to apply for credit.

I mean, I would like to get, I guess from Mr. Pratt, your feedback on that because certainly this is a business. Some of us know this, many don't. And when you have such personal, private information that is packaged for sale, certainly minimally the consumer, I think, should know that it will be sold.

Mr. **PRATT.** Well, I think we are going to probably revisit some of the ground we have covered previously, but only because I want to make sure I am answering the question properly along the way.

The credit file that you and I have in the credit reporting systems has all the information about how I pay my bills and I suppose, how I don't pay my bills if I happen to be somebody who chose to do that. And the scoring model is this mathematical algorithm over here. And Dr. Spriggs has talked quite a bit about how he would like to see or understand more about that model.

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And so when a lender orders a credit report and a score, or orders a score, the score—the credit file data—is run through the scoring model and a score then pops out on the other side, if you will. That is sort of the layman's version of it, which is good enough for me.

So the score itself doesn't contain personal information about you. It just looks at your credit report and looks at risk factors, statistically validated risk factors, and says this is the level of risk we think you have with this consumer based on the credit report.

Ms. **LEE.** But it is a formula that provides that information.

Mr. **PRATT.** Well, the formula doesn't—the information that is in your credit file, so in that sense, you have transparency. You can look at your file, you have the right to. We know that, we have it under law today. You can access your file and you can see it and you can look at it and dispute it and correct it and so on.

If you wanted to look at them, the mathematical model is just that, it is just a formula on a page, or on pages and pages, depending on how complicated it is.

It wouldn't tell you, you may be a mathematician, it wouldn't tell me a lot, because it is just a mathematical formula which is used to then analyze the data.

Ms. **LEE.** Yes, I understand that. All I am saying is that we need to go one step farther, and at least provide information to consumers that, in fact, this score is being sold. It is a product.

Mr. **PRATT.** Or being used. Is your interest in the use of it, meaning a lender using a score, or——

Ms. **LEE.** Well, how does the lender get the score? It gets the score, it pays for it, right?

Mr. **PRATT.** Well, lenders may have scores on their own technology platforms that they built themselves, lenders may buy what might be called a credit bureau score, a credit score from a bureau.

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The bureau actually doesn't own that score in all cases, sometimes that is a score developed by Fair Isaac.

Ms. **LEE.** Who owns the score?

Mr. **PRATT.** Fair Isaac, for example, would build a score, and the credit bureau would, it would be built based on credit history data, but FICO, the common term for the company, owns the intellectual

property, which is this mathematical formula.

And so, every time the bureau a file is ordered, the credit bureau, in order to use that score, actually pays a royalty to Fair Isaac.

Ms. **LEE.** All I am saying is don't we have a right to know that? Don't consumers have the right to know that? Or shouldn't they know that?

Mr. **PRATT.** I think the idea of making sure consumers understand scores are used in the marketplace seems like a good——

Ms. **LEE.** Yes, that is all I am saying.

Mr. **PRATT.** I don't, you know, we are working hard at this to get there, but——

Ms. **LEE.** Yes, that is all I am asking. I would think that people——

Mr. **PRATT.** Using scores are very common, and having consumers understand that scores are used is very common. In fact, there is a whole marketplace of Web-based, you know, scoring systems where I can go and I can learn about a score and I can——

Ms. **LEE.** So a notation saying that your credit score will be, could possibly be, sold is very sensible.

Mr. **PRATT.** I don't——

Ms. **LEE.** Okay. What prevents the sale of credit reports that are really faulty? I mean, how——

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Mr. **PRATT.** Well, the Fair Credit Reporting Act does two things. I mean, the FCRA has always said that a consumer reporting agency must employ reasonable procedures to assure the maximum possible accuracy of the report.

And that would be the liability, if you will. That is the duty, and hence the liability for the credit bureau. In 1996, the Congress enacted a new section of law which said that the data furnisher, the company that provides data to the credit bureau, and this would be the basis for your credit report, those companies, too, have a liability for the accuracy of the information.

Ms. **LEE.** So can a consumer seek injunctive relief now? Can they go to court?

Mr. **PRATT.** Well, they do have private rights of action under the FCRA for willful and negligent standards, and states attorneys generals all have enforcement rights under the federal FCRA, as well. And the FTC has enforcement.

Ms. **LEE.** Mr. Brobeck, let me ask you, what is your response to that in terms of consumers seeking injunctive relief through the court system for the——

Mr. **BROBECK.** My understanding is that they have to prove damages, and that is very difficult to do in many cases. And so it doesn't happen. And as a result, there are massive amounts of inaccurate information that is distributed, despite the best efforts of the repositories.

Ms. **LEE.** Okay, and finally, Mr. Chairman, let me just close with regard to going back to the multiple applications, or multiple inquiries. I know there is a difference between multiple applications and multiple inquiries.

But in terms of adverse actions, again, Mr. Spriggs, I understand what you are saying in terms of transparency, and I certainly think we need to get there, but I also think we need to know sooner or later, I mean, before, because this is going to take a while, but I think very soon, and maybe with this bill we should at least provide the consumer the ability to understand the fact that if they do apply three or four times within two weeks they are going to get an adverse action on their credit report. Or how do we make sure that people know that they will get dinged if, in fact, they are trying to find the best interest rate, the best terms, if, in fact, they do apply to Visa, Discovery, MasterCard, to see which credit card company has the best terms?

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I mean, that is a reasonable way to live. You are, I mean, right now, it is assumed that the consumer, it is on the negative, they are overextending themselves, they may be a risk, without giving them the

benefit of the doubt.

I mean, this gives the credit card company, or the financial institution, the benefit of the doubt. And so I am trying to figure out how we can make sure that in this bill we change that.

Mr. **SPRIGGS.** The language currently asks for a credit score with the waits and the explanation of how you might improve the score. And if the language gets, I don't think you want the language to get too specific, because these models do change.

The Fair Isaac model today isn't the Fair Isaac model 5 years ago, so I don't know that I want to have you get too specific. But you may want to get a little more specific as to what you mean by waits and what the consumer could do to improve their credit score.

Now, the other problem you have, though, is that, as Mr. Pratt pointed out, they don't, the credit bureaus, don't always own the score. They don't own the FICO score.

And so I think you may want to look for a provision that said, if a negative action was taken because of the score, and you have to get creditors to, try to get lenders, to be more honest about whether they were looking at the credit bureau report or whether, as many of them are doing now, getting much more mechanistic and looking at the score, if a negative effect was taken on the score then you got to give me the score——

Ms. **LEE.** But I am not talking about——

Mr. **SPRIGGS.**——and tell me what were the waits and what do I need to do. Because if they did that, then when I get my report I would see these are negative factors, applying too many times for credit, having too many balances, even if they are zero balances, even if you pay them all on time you have too many balances out there.

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I mean, those types of things should be with that score to the consumer, so I just don't know how specific I would want you to get in that language.

Ms. **LEE.** But that is after the fact, after a consumer has been denied. What I am saying is, on the front end, Madam X wants to apply for a mortgage from financial institution A, B, C and D, to see which financial institution provides the best rate and terms.

By the time Madam X gets the to financial institution four, financial institution five that she is getting ready to apply to says, Oh, you have already, you know, put in four applications, and so you are a credit risk.

And at that point I would have to——

Mr. **SPRIGGS.** If the FTC gives us that report card sooner rather than later, we can have that information out there.

Mr. **MCENENEY.** Congresswoman, I actually think the level of detail that Dr. Spriggs is talking about could, if you give it to the consumer, be counterproductive, but I hear exactly what you are saying, and I think the key is educating consumers.

Now, there are a variety of ways to do that, but if you look at the protections that exist under the FCRA, the consumers actually are empowered today to do almost everything you are talking about.

They can go and whenever they want gain access to the information the credit bureaus have on them, and it is that information that forms the basis for the credit scores.

So they can look at that. There are products out there that help educate consumers on what a score means. Today, and I know this is after the fact, but today if a consumer gets denied credit, and it is based on a score, the creditor has to make available to that consumer the principal reasons that went into the score, so that the consumer can do two things, one, figure out whether there is any discriminatory issue that resulted in the decline, but two, in this context focus on those aspects of their credit history that are causing the score to decline.

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And just to use your example, if one of the reasons that the score failed to enable the consumer to get credit was too many inquiries, the consumer would have to be told that.

Ms. **LEE.** That is after the fact. They have been denied.

Mr. **MCENENEY.** Absolutely, so then I think the key is——

Ms. **LEE.** The purchase of a home would be put on hold.

Mr. **MCENENEY.** I agree with you, Congresswoman. The key is educating consumers on what tools they have under the FCRA today, because I think it gets them pretty much where you want them to go on this under existing law.

Mr. **GILLMOR.** The gentlelady's time has expired.

Mr. **BROBECK.** Could I——

Mr. **GILLMOR.** Very briefly.

Mr. **BROBECK.** I am going to address your question, as well, Congressman.

There is a fundamental issue here, and that is the actuaries are really interested in establishing strong correlations, not causal relationships. And though it may be beyond the scope of the legislation, and we have had this debate in the insurance area for decades—we need to establish the principle. That there needs to be causation before a factor is considered to be a risk factor that affects pricing.

Ms. **LEE.** Thank you.

Mr. **GILLMOR.** Thank you.

The gentleman from Texas?

Mr. **HENSARLING.** Thank you, Mr. Chairman.

As a veteran of the subcommittee, I have sat through six different hearings and this full committee hearing will be my seventh. I have heard a wide range of testimony as we consider the reauthorization of FCRA. Obviously the Committee is focused on a number of consumer protections.

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Paramount to me is the consumer protection of having a competitive market place for the extension of credit. I think the testimony has been overwhelming that we do enjoy the greatest access to credit at the least cost of any nation in the world.

That one principally seems to be off the table.

Another concern we have obviously is identification theft. I have said before that I am a member of this Committee who has actually been victimized by this. It is something I take very seriously.

But at least at the subcommittee level we have heard testimony from a number of different law enforcement officials, as well as the Federal Trade Commission, all who seem to be of the unanimous opinion that we are better off with the reauthorization of FCRA as a tool to combat identity theft. Perhaps there is still some debate on that.

That really leaves us to the questions of accuracy and privacy. I would like to focus, Mr. Pratt, as representing the credit reporting industry, on one of the questions I asked at the subcommittee level. I am still grappling with this somewhat, but you hear a variety of opinions on the extent of inaccurate information contained in these credit reports.

And so from the credit reporting industry standpoint, what measurement do you have?

Mr. **PRATT.** We actually recently have looked at a couple of different measurements. Let me share those with you. And if you would like me to provide more information in writing, we can do that for the record or in some way that you might like.

We recently asked one of our resellers or several of our resellers who are in the mortgage reporting area to look at credit reports as they went through their systems, because they are in fact in this situation where there is greater involvement with the mortgage broker, the realtor, the loan officer. It is more labor intensive. It is a different system, although maybe more mechanistic than it has been historically.

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And we had—we asked the reseller to do two things. One was to say, How often are you dealing with the file because something is accurate that needs to be updated, versus, how often is it really wrong because it was just reported wrong in the first place? The account never should have been on the file or the balance was never right, or I never missed a payment, according to the consumer?

Out of the 500 and some odd files that were reviewed, about 32 percent of the time there was an update of information that the reseller was engaged. And I think that speaks well for our reseller members in our association, who provide a valuable service of making sure in the mortgage lending process data is as updated as possible.

But it also—in only 1 percent of the cases was there an actual identified inaccuracy.

We then went back and looked at several populations of consumers, because similarly the consumer groups have often said, Well, let us sit down with consumers and have consumers look at reports and see how those reports look. And let us try to identify what is right or wrong with those. And in this case, we picked out several sets of data, gathered one over a 24-month period of time. And these were consumers who, at the rate of 100,000 a month were in fact ordering credit files, their file disclosures, because they were concerned about fraud. And we asked the question, How many ever contacted us afterwards?

In other words, these are consumers who really looked at their files. That is a good measure. And only 10 percent of the consumers ever called us back, even called us back, not necessarily disputed something, but called us back to ask a question.

We looked at another population of consumers, 180,000 consumers. And we asked the same questions and we said how—they got their files. They literally ordered them. They were not adverse action oriented. In other words, these aren't consumers who got a negative notice saying that, You are getting this file because of adverse action.

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And again, we asked the question, How many of you called us back? The rate was 5 percent.

Now we drill down and look at the rate of disputes and then you can—there is a lot of other data. And I don't now how far you want me to go into this. We aggregated those several sets of data to begin to get a better sense of what accuracy really means. And we did it from a market perspective with mortgage reporting. We did it from a consumer's perspective, using populations of consumers who literally order their files, exercise their rights under FCRA and looked at their file.

They had access to toll-free numbers. They had access to live personnel. It was not a complicated process for them to have disputed information. And again, the percentage response rates were quite small in these two populations.

Mr. **HENSARLING.** Mr. Duncan, you represent the National Retail Federation, which I assume has countless, countless members across the nation. My assumption would be that those who use credit reporting services, have an interest in those reports being accurate. Do you perceive that there is has been competition among the players in the marketplace, in the credit reporting services?

In other words, would a company that consistently produced inaccurate information to your membership, would they be punished by the marketplace?

Mr. **DUNCAN.** There is actually quite a bit of competition in the marketplace for accuracy of scores. And you are absolutely correct, the major bureaus come to our members all of the time arguing that their reports are slightly more accurate than the next guys report, or much more accurate than the next guys report.

And there is quite a bit of competition. And our members in fact will sometimes pull two or three and compare them and run models themselves to determine which might be more accurate. And they may find that that varies slightly from area to area within the country.

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Mr. **HENSARLING.** So the people who are using these reports, like your membership, have an

interest in accurate information as well as the people who produce the report, assuming they are logical profit-making ventures.

And assuming the consumer wants to receive the credit that he feels he is due, he has an interest in seeing that there is accurate information in the system. I guess I am trying to figure out who has the incentive to put a lot of inaccurate information in the system?

I see that my time is just about to run out. Let me ask one more question.

And that is to you, Mr. Pratt. The issue of offering free credit reports has arisen. And I believe you gave testimony that, if I heard you correctly, the vast majority of credit reports that are issued today already are free. Did I hear you correctly?

Mr. **PRATT.** Yes, sir. About 95 percent of the 16 million files that are given to consumers each year are given free of charge.

Mr. **HENSARLING.** Well, I certainly have an open mind on the issue, but I am just curious, if that is indeed accurate data, if this is maybe a remedy in search of a problem, considering we already have 95 percent of the credit reports being issued for free, in the first place. Obviously, identity theft is a very serious matter, but increasing the cost in the system that would raise the cost of our credit or make it less accessible is still an open question in my mind whether this is a good method by which to attack that problem.

And with that, I will yield back the balance of my time, Mr. Chairman.

Mr. **GILLMOR.** The gentleman yields back.

The gentleman from Washington.

Mr. **INSLEE.** Thank you.

Just following up on what Mr. Ackerman brought up a while back about access to credit reports for use by the Transportation Safety Administration for deciding who gets on airplanes, I just want to tell you at least one member has a real concern about that because the whole TSA system is broken. And we are keeping people off airplanes right now because of the failures in our system?

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We had a city administrator and a police chief from a little town, Bothell, Washington, where I am from, couldn't get on a airplane because the computer system is so fouled up with the TSA and the airlines cannot guarantee the correct identity of the decision whether to let you on an airplane or not. And if you happen to have the name of somebody who is under suspicion, you have had an identity theft and a sort of travel theft by the U.S. government.

So I want to tell you there is real sensitivity about this. And we are—at least I am going to try to work to make sure that we don't allow this system to get out of hand as it is right now preventing people from getting on airplanes.

But I want to ask you a deeper question and that is whether the fair credit reporting system is really just going to become a nullity, give the consolidation in the industry? And the reason I ask you that question is that we have substantial rights for consumers that are guaranteed by this act as long as there are not affiliates involved in interpreting or scoring their credit or providing their services.

But where we have—and which I believe we will now have very significant consolidation in the industry where we have affiliates both involved in lending and selling insurance and providing securities and a whole host of other services, we don't have that same level of protection, or any of those protections for consumers, either from the sharing of transactional experience amongst affiliates, which consumers can't stop even if they wanted to, under federal law. And the situation where they are going to get opt out notices that nobody can read or understand.

And basically, all of the protections that all of the 60 members of this Committee that are assiduously trying to protect aren't going to exist for a significant number of our consumers once they become customers of a consolidated industry.

Essentially, basically, what we have told consumers is you don't have these rights vis-a-vis any credit authorizing or granting organization that has affiliates as to transactional experience. And as to all of

your other experience, unless you are smart enough to read a five page disclosure opt-out statement to opt out of that, you won't have any rights in that regard.

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So we are really going to a two-tier system of consumers in this country. Those who deal with non-affiliated credit authorizing and issuing organizations, they have certain rights under the statute. But those who deal with other consolidated parts of the industry do not in real life.

Now, is that a valid concern? And if it is not, why not? And if it is a concern, how do we move to a situation where the general thrust of the whole credit reporting protecting system will include those consumers who deal with what I believe are efficient systems of consolidating these multiple organizations?

It is a big question. I will just throw it open to the panel.

Mr. **MCENENEY.** Congressman, if I may provide some feedback on that.

First of all, I don't see a situation where affiliated entities would ever be in a position to forego the information that is provided by credit bureaus. And the reason I say that is even the largest affiliated entities only have limited contact with their customers. They need, for risk assessment purposes, including identity theft and credit control purposes, to access the other portions of a consumer's record which they don't have. And the source of that information is the credit bureaus.

So I don't see it being at risk for consolidation where those with affiliated entities can forego the products that are subject to the protections of the FCRA.

In the context of affiliate sharing, though, it is clear that in 1996 Congress set up a mechanism where affiliates could share information amongst themselves about individuals so long as they gave those individuals certain rights, namely the notice and opt out right that you mentioned.

Now, the FCRA notice and opt out right is a simple one. I understand that there have been some complications as a result of other disclosure requirements that perhaps have reduced that simplicity. But in at least one respect, consumers in an affiliate sharing context have a more powerful tool than exists for them with respect to more traditional FCRA situations. And that is the tool to opt out, to say, affiliated entities, you may not share these types of information at all with your affiliated entities. It is a very powerful consumer protection tool.

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The other thing I would point out is that the whole reason for affiliate sharing is to try and enhance and expand customer relationships. And so these affiliated entities have very powerful incentives to make sure that the way they use this information meets those goals. And I think that is a significant impediment to the sorts of problems arising that might arise in other contexts like where you have a credit bureau that doesn't have customer relationship with the individual.

Mr. **INSLEE.** Let me—since you volunteered for this duty, let me just ask you a follow-up question. What do we tell consumers—I have just read some testimony in the Senate Banking Committee by a particular financial group, I won't name them here. And it says that "It is able to use the credit information and transaction history that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit."

Now, I understand what they are saying is that they are able, if I understand the testimony, they are able to create internal credit scores and models that determine credit worthiness and whether or not to issue certain products, whether to actually make a solicitation for a product, without being subject to the protections to consumers that are outlined in this act.

And I suspect that that will increase over time with the further consolidation in the industry. If that is true, shouldn't we be concerned to somehow expand these protections to this increasing, what I understand to be, internalization of this credit worthiness in the recording system?

Mr. **MCENENEY.** Well, I am familiar with the testimony of which you speak. And my

understanding of how that works is as follows.

Yes, it is possible to use this information, shared among affiliates, to develop models, for example, to decide who you may want to market to. Now, the decision of whether or not to solicit somebody for a product typically is not viewed as adverse action. In fact, there are some consumers out there who may view not being solicited as a positive thing.

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I am also aware that what typically happens in the affiliate sharing context is once the solicitation goes out, there has been information that may be shared amongst affiliates. And a consumer responds. Typically, what happens is a credit report will be pulled from the credit bureau to make a fresh assessment as to whether or not the consumer meets the risk profile based on the consumer's entire credit history, not just what was had by the affiliates up front.

And of course, under those circumstances, all of that information in the credit report is subject to full protections under the FCRA. And if that credit report results in adverse action, the consumer receives an adverse action notice indicating that the report was used for the adverse action and tells the consumer the consumer's got the right to a free report by going to the credit bureau that furnished the report.

Mr. **GILLMOR.** The gentleman's time has expired.

Mr. **BROBECK.** There is a risk that among these large financial institutions that they will try to identify sub-prime borrowers, and they will use their own credit scores that may not be accurate as a basis for targeting customers to try to sell them high-priced loans. And then, if they do not utilize the credit scores and the information in the repositories, the consumers will not have the right to that information that is in the repositories and they will not know that, perhaps, the reason that they were only offered a sub-prime loan, is because of inaccurate information within that large financial institution.

Mr. **GILLMOR.** Mr. Dugan.

Mr. **DUGAN.** The premise of the question is that it is somehow a bad thing to share information from one affiliate to another to offer another product to the consumer. And I think that is the thing that our industry would take issue with.

Mr. **INSLEE.** I am not saying that.

Mr. **DUGAN.** Well, I guess the kind of thing that we see is someone has a loan with a bank, for example, and realizes that if they share that information with their mortgage lending affiliate, based on the information that they know about their consumer, they could put them into a loan, a home equity loan, say, at a lower interest rate that is tax-deductible, that is in the consumer's interest. And that is exactly the kind of thing that affiliate sharing allows. It is a good thing.

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And the distinction between the bank and its affiliated mortgage bank is not one that we think the consumer is aware of, thinks is a meaningful distinction, treats it all as one entity, and is appropriate. That is the reason why diversified companies are able to offer those sorts of products. And we think it is a good thing, not a bad thing.

Mr. **DUNCAN.** If I may amplify on just one point that Mr. McEneney made. And that is typically retailers use affiliate sharing to extend their reach to the customer, to expand on the services offered.

I am aware of one retail creditor, a traditional retailer who has credit in the back operation. They have an affiliated catalogue operation. What they will do is that if a consumer who doesn't quite have a high enough score to qualify for a credit card with them, they will look at their affiliated entity, in this case the catalogue operation, and say, This is someone who has been shopping with us regularly through the catalogue. This is someone we would like to have a long-term relationship.

And they will give them a few extra points so that they will qualify, thus bringing more people into the credit market and more people into the system.

The goal in affiliate sharing is to become closer to your customer, certainly for retailers and I know it

is true for others in the business as well.

Mr. **INSLEE.** Sir, can I make one brief comment.

I respect all you said about the benefits of affiliate sharing and the marketing incentive that folks have. I just think there is a valid concern here while the combination of greater use of transactional information together with what I consider sort of a defective process of opting out will not assure the consumer that the correct information is used in credit, life insurance and other decisions. And I just think there is some fat process we need to go into to assure that.

Thank you.

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Mr. **GILLMOR.** I thank the gentleman. The gentleman's time has expired. All time for this panel has expired.

And I want to thank all of our panelists for your very helpful testimony. And we will proceed to the third panel.

I would like to welcome panel three. And without objection, all of your written statements will be a part of the record. And you will be recognized for five minutes to summarize your testimony.

Mr. Joe Belew?

STATEMENT OF JOE BELEW, PRESIDENT, CONSUMERS BANKERS ASSOCIATION

Mr. **BELEW.** Thank you, Mr. Chairman.

In the interest of time, I am going to drastically shorten my testimony.

Mr. **GILLMOR.** All will be very grateful and appreciative.

Mr. **BELEW.** My name is Joe Belew.

Mr. **GILLMOR.** And give your testimony much more weight because——

[Laughter.]

Mr. **BELEW.** I thought it might be taken more seriously.

My name is Joe Belew. I am President of the Consumer Bankers Association here in Washington. Our members include most of the nation's largest bank holding companies, as well as regional and super-community banks. Those members collectively deliver about two-thirds of all bank-issued consumer credit in the United States.

Thank you very much for the opportunity to testify on the importance of extending and improving the Fair Credit Reporting Act. This is one of CBA's top priorities, if not the top priority this year.

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We do have numerous suggestions for improvements in the bill to refine it. But the authors and co-sponsors really are to be congratulated for the incredible amount of time and effort that has gone into this so far. They are also to be congratulated for trying to move this piece of legislation which is so critical because of the sunset provisions.

The two most important items for us are that the bill recognizes the need for an efficient, nationally uniform credit reporting system, and it also provides new tools to fight identity theft. We also are pleased that the bill addresses the ways that disputed credit information is handled, the accuracy of credit files and the issue of credit scores. We should note that we have also written a letter to Speaker Hastert asking that he be on the ready to provide floor time in a speedy fashion when the Committee has, with all due process, considered the legislation and hopefully passed it out.

Let me talk for a moment just about national uniformity and rules governing credit information and procedures, because they truly are essential. They ensure that lenders have consistent information about consumers throughout the country that can be used to make fair and equitable credit decisions on highly competitive prices and terms. Without preemption, the States could establish different rules for the reporting of late payments, defaults or other information in a well-intentioned, but mis-directed, effort to protect their consumers.

Lenders today can rely on the accuracy of reports, and that is why we have record rates of home ownership and greater access to credit by all sectors of society. This is especially true for low and moderate income borrowers.

I do want to go on the record as pointing out that far from being a "grab of power" by the federal government, there is no new preemption. We are simply extending the status quo. There are no new restrictions on the States.

Secondly, thank you very much for addressing the issue of identity theft. CBA and its members have been actively working with the Treasury Department, the banking agencies and other industry groups on this critical subject. We would remind the members that we have financial concerns, as well as altruistic ones, since our members must absorb the losses from these frauds. We also want to spare our customers the serious problems that follow ID theft. And regrettably, we also must make sure that the solutions we end up with don't actually aid the fraud artists.

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The bill's formalized system for fraud alerts on credit reports is an important part of any solution. They will warn financial institutions and other lenders of past identity theft and we endorse this concept.

Again, however, there is a cautionary note. Consumers must be forewarned that fraud alerts are serious and they should only be used where it appears that ID theft has actually occurred. These alerts will likely impede the consumer's ability to get the fast credit that they have become accustomed to. Still, we support the concept.

The bill helps consumers keep fraudulent information from being placed in their file, which is good, through Section 205. Again here, CBA members have one caution. We also must acknowledge the existence of unscrupulous so-called credit repair clinics that try to delete accurate but unfavorable information in credit files. This area may need still more scrutiny.

We support and encourage the development of best practices and especially enhanced efforts for consumer education. CBA in particular has been in the forefront of tracking and encouraging financial literacy efforts by financial institutions. And in this regard, the Federal Reserve Board should also be recognized, along with the FTC, for their good work to date.

Third and last, we would ask that particular attention be given to coordinating this bill with existing law and with the banking regulators' roles. For example, one section directs the federal banking agencies to establish procedures for banks to spot possible identity theft. We really need, as has been mentioned earlier today, to coordinate that with Section 326 of the PATRIOT Act.

And I will offer one other example: in Title 3, banking regulators, and not just the FTC, should be charged with developing model procedures for consumers to contact creditors and agencies regarding fraudulent information in their files.

Mr. Chairman, as you know, we have a great number of other comments. They are in the written record. But we congratulate you and the Committee and will certainly take questions when it is appropriate.

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Thank you.

[The prepared statement of Joe Belew can be found on page 102 in the appendix.]

Mr. **GILLMOR.** Thank you.

Ms. Kayce Bell?

STATEMENT OF KAYCE BELL, CHIEF OPERATING OFFICER, ALABAMA CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION

Ms. **BELL.** Thank you, Chairman Gillmor.

Good afternoon. And as did Mr. Belew, I will strive for brevity.

It is an honor to be here to present testimony for you today on the Fair and Accurate Credit

Transactions Act of 2003. I am Kayce Bell, the chief operating officer of Alabama Credit Union in Tuscaloosa, Alabama. I am here on behalf of the Credit Union National Association, which represents more than 90 percent of the nation's 10,000 credit unions and their 84 million members.

My written statement submitted earlier addresses most of the provisions of this important legislation in full detail. But because of time constraints, I would like to address only certain portions of the bill.

CUNA and America's credit unions wholeheartedly support Title I of H.R. 2622, which makes permanent the reauthorization of the expiring uniform national standards of the Fair Credit Reporting Act. If the broad set of preemptions that apply to the seven key provisions of FCRA are not reauthorized, consumers will be subject to a confusing and overwhelming patchwork of requirements.

Consumer's personal information would be less accurate and secure in a Balkanized, patchwork national system. And there could be proportionately greater harm by lack of access to credit for those of low to moderate incomes and for small business owners.

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CUNA therefore applauds the Committee's efforts to make the uniform national standards permanent. We also commend the sponsors of this legislation for addressing the very serious problem of identity theft. We support the identity theft provisions of H.R. 2622 in general and think that they will significantly reduce the occurrence of identity theft. With regard to some of the specific provisions, the Section 201 investigation of changes of address will be a sound identity security practice. However, we will need some time to change our systems and would recommend 1 year before this provision would become effective.

Section 202 requires the consumer reporting agencies to include a fraud alert in the consumers file, when requested, and to notify all users of the existence of that fraud alert. We support this provision because it provides protection to consumers.

However, we would like to draw your attention to the fact that Section 202 does not address under what circumstances and procedures the fraud alert would be removed and the users would no longer be subject to Subsection 3.

Section 203 calls for the truncation of credit card and debit card account numbers, and we feel this is another sound security practice.

Section 205 calls for the blocking of information by the consumer reporting agencies resulting from identity theft. We support the provision, but we are concerned that some consumers may file bogus police reports to either remove or correct derogatory information on their credit report to obtain credit.

We recommend that the consumer reporting agency also be required to notify the furnisher of information when the agency declines or rescinds the block under this section.

Section 206 requires the establishment of procedures for depository institutions to identify possible instances of identity theft, i.e. red flag guidelines.

The red flag guidelines will be a very useful tool, but we request that there be a good-faith standard in any compliance requirement imposed on depository institutions to protect against unwarranted liability.

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Section 301 requires the FTC to prescribe rules for the coordination of consumer complaint investigations. We think this idea is an excellent one, particularly if it results in a system whereby the victim need only report the identity theft to a single entity.

We support Title IV, as well, pertaining to accuracy of consumer records in general. Section 402 provides that furnishers may not report information to CRAs if the furnisher knows or has reason to believe it resulted from fraudulent activity, including identity theft.

While we certainly understand the intent, we are concerned that the reason-to-believe language is problematic and may well result in an interpretation that leads to more lawsuits and/or enforcement actions.

We support Title V in general, too, and commend its sponsors for providing consumers, upon request, with a credit report and credit scores, including a summary of how the scores were derived and how the consumer can improve the scores at no charge and on an annual basis.

We fully recognize that providing consumers upon request with the aforementioned information will result in indirect costs. We believe, however, that such costs will be significantly outweighed by the benefits to our members in terms of a better understanding of their credit status.

In conclusion, CUNA strongly supports the permanent extension of the preemptive provisions of the Fair Credit Reporting Act. In that regard, we also welcome the Administration's support of this important goal, as well as several of their ID theft suggestions.

Although the consumer groups do not support preemption, their testimony does include several suggestions worth serious consideration. But making these national standards permanent is a critical claim in assuring that our nation's consumers have easy access to credit, and to ensure that they receive fair and appropriate protections of their financial information, is extremely important to us.

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And nearly as important are the provisions to provide greater protection to our consumers against identity theft. Our economy depends on it, and our citizens deserve it.

Thank you, and I will be happy to answer any question of the Committee.

[The prepared statement of Kayce Bell can be found on page 111 in the appendix.]

Mr. **TIBERI.** [Presiding.] Thank you. Mr. Hilary Shelton, thank you.

STATEMENT OF HILARY SHELTON, DIRECTOR, NAACP, WASHINGTON BUREAU

Mr. **SHELTON.** Thank you. Thank you for inviting me here today, Chairman Oxley, ranking Member Frank, ladies and gentlemen of the Committee. As you mentioned, my name is Hilary Shelton, director of the NAACP's Washington bureau.

The NAACP is our nation's oldest and largest and most widely recognized civil rights organization in our country. Over 2,200 membership units across our country, 500,000 card-carrying members and branches in each of the 50 states in our nation.

Credit and the ability to obtain credit is crucial to our nation today. Thus, I was especially pleased to be invited by the Committee to talk to you about the unique problems faced by racial and ethnic minority Americans in obtaining and maintaining a solid credit rating.

Despite years of civil rights progress, laws and education, racial bias and discrimination are still crucial problems in the United States today.

It is in our nation's financial arena that this is especially true. Race, national origin and gender continues to control the type and terms of credit availability to any individual.

Unfortunately, there seems to be a quiet acknowledgment and acceptance on the part of credit report providers that credit scorers, the lenders and the regulators that racial and ethnic minorities on average have significantly worse credit reports and lower credit scores than their Caucasian counterparts.

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This, in turn, means that lenders today disproportionately reject racial and ethnic minority applicants, or on the whole racial and ethnic minority Americans end up paying more for credit.

In the spring 2000 edition of the Federal Reserve of Boston's newsletter, Peter McCorkell, the executive vice President and General Counsel of Fair Isaac and Company, was asked if credit scoring resulting in higher rejection rates for certain racial and ethnic minorities than whites.

His response was, yes. He then went on to justify this response by stating that, unfortunately, income, property, education and employment are not equally distributed by race or national origin in the United States.

Since all of these factors influence a borrower's ability to meet financial obligations, it is unreasonable to expect an objective assessment of credit risk to result in equal acceptance and rejection rates across

socio-economic or race, national, origin lines.

This assumption, that low-income and racial and ethnic minority Americans are less likely to meet their financial obligations, is simply wrong.

Studies have shown that the majority of low-income people pay their bills on time, and that, in fact, low-income Americans have lower default rates on their loan and credit card bills than their wealthier counterparts.

This acceptance of the existing racial bias furthermore also failed to recognize the fact that many middle-and upper-class income Americans are subject to predatory lending at a higher rate than low-income white Americans.

When racial and ethnic minority Americans are blocked out of receiving loans or are charged more in interest, they have less to invest and their wealth-building capacities are diminished.

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Thus, not only is the current system blatantly unfair to racial and ethnic minorities, but it is self-perpetuating, as well.

In my written testimony, I have provided just a few of the many reasons that we can identify that are behind the racial and ethnic disparities that exist in credit reporting and credit scoring.

For the sake of time, I will not repeat them here. But I hope that all of the members of this Committee will take the time to review my written submission.

In summary, let me just say that disparities in credit reporting and credit scoring is becoming more and more problematic as credit reports and credit scoring are being used increasingly for more than mortgages. They are also being used now to determine if homeowners or automobile insurance will be underwritten and at what rate, for car loans, house or apartment rentals, utilities and in some cases, even hiring decisions.

Lastly, while I was invited here today to primarily discuss the impact of credit reporting and credit scoring on racial and ethnic minority Americans, as well as some of the reasons behind the unfairness, the NAACP would also like to make a recommendation for improving the process.

It has long been the contention of the NAACP that openness, transparency and sunlight help us understand what we are up against. It also intends for companies to be more sensitive to the needs of racial and ethnic minority communities.

The NAACP would love to see the process behind credit reporting and credit scoring more open, better regulated and better understood by the American public, the people being rated and scored.

Specifically, the NAACP joins other groups such as the Center for Community Change in recommending that the Congress establish an effective federal oversight process of all statistical scoring systems. Such oversight should be conducted on a regular basis, and should focus on fairness and the validity of all systems. We also support any and all initiatives that create credit reports making them more available to individuals on a consistent basis.

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If we are a nation—if we as a nation are going to meet our full potential, we need to ensure that the opportunities are made available to all Americans regardless of their race, national original, gender or age.

Ensuring that they have access to credit would be a big start.

I would like to again thank the Committee for the opportunity to be here with you today and to discuss the impact that credit reports and credit scoring has on racial and ethnic minorities.

I join with the leadership, the staff and the general membership of the NAACP in offering my assistance to develop national policy that will help all Americans regardless of their race, age, gender, ethnic background or other to obtain a solid credit rating.

I also thank you for the opportunity to be here today, and welcome the opportunity for questions.

[The prepared statement of Hilary O. Shelton can be found on page 238 in the appendix.]

Mr. **TIBERI.** Thank you, Mr. Shelton, for your testimony.

Mr. Taylor?

STATEMENT OF D. RUSSELL TAYLOR, CHAIRMAN, AMERICA'S COMMUNITY BANKERS

Mr. **TAYLOR.** Yes, good afternoon. Thank you, Mr. Chairman. And thank you to the Committee.

My name is D. Russell Taylor. I am the President and CEO of a state-charted mutual savings bank located in New Jersey, a $431 million state-charted mutual savings bank located in Rahway, New Jersey, and have the privilege today of testifying on behalf of America's Community Bankers, serving this year as its chair.

I would like to thank you for the opportunity to testify today on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. ACB wholeheartedly endorses H.R. 2622 and urges Congress to pass this legislation expeditiously.

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First and foremost, ACB supports Title I's permanent reauthorization or the FCRA's uniform national consumer protection standards. The preservation of these uniform national standards is imperative to maintain the efficiency of consumer credit markets and the competitiveness of the economy as a whole.

FCRA is too often evaluated in the context of large financial institutions. This does not paint the whole picture. For example, the Rahway savings family of companies includes both the bank and an insurance agency. We are by no means a large financial institution. Yet FCRA's uniform national standards helps small and medium-sized companies like mine better serve our communities.

As both a bank executive and also a victim of identity theft, I also appreciate the tools provided in Title II for banks and consumers to address the growing problem of identify theft. We are concerned, however, about the new legal liabilities Section 202 would place on the users of credit reports.

Credit reports currently include an alert facility allowing consumers to indicate they have been victims of identity theft and to caution lenders that credit applications could be fraudulent.

Because their alerts have a variable degree of accuracy or completeness, lenders should not be bound by specific instructions found in the fraud alert.

Instead, lenders should be permitted to use whatever reasonable and practical measures are appropriate to verify the identify of the person, rather than blindly adhering to specific instructions found in the fraud alert, which may or may not be complete.

Section 202 should also be clarified such as the new penalties apply only to credit fraud, and not to legitimate credit applications.

ACB understands that the accuracy of credit report information is the foundation upon which our national credit reporting system is built.

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It is in the best interest of all parties that information be as accurate as possible, errors be corrected quickly and consumers identified theft claims be handled in an efficient and timely manner.

We believe that title four will help improve the accuracy of credit information.

The continued integrity of the national credit reporting system demands that credit reports be as accurate as possible. In our June 12 testimony, ACR supported empowering consumers to proactively manage their credit information by providing them access to free annual credit reports. Such access is already available in six States, including my home State of New Jersey.

We are pleased that this bill will offer this to all Americans as well as provide consumers with information on how a credit score is derived, and how their credit score may be improved.

ACB also believes that H.R. 2622 should include a general effective date of 1 year following the bill's enactment. For provisions of the bill requiring the issuance of regulation, the effective date should be 1 year after the regulations are issued. The removal of the sunset provisions in Title I of the bill should

take effect immediately.

Given that the FCRA's uniform national standards for consumer protections are scheduled to expire by the end of the year, we sincerely hope that consideration of other issues will not slow down or threaten the passage of this legislation.

One subject the Committee will likely consider is an issue previously raised by Congressman Gary Ackerman. ACB and others in the industry have significant concerns about the impact this amendment would have on paperwork burden, operational costs, and the continuing commitment of furnishers to provide accurate credit report information.

We continue to work with members of the Committee to resolve the concerns on both sides.

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ACB believes that provisions in the bill, such as access to free annual credit reports and the threat of stronger penalties on both users of credit reports and furnishers of credit report data, will help address the concerns raised by Representative Ackerman.

In conclusion, ACB believes that H.R. 2622 strikes the appropriate balance of protecting consumers and properly regulating information sharing practices. We commend the authors of this legislation for crafting a fair, balanced and effective bill to improve FCRA and our nation's credit system.

ACB strongly endorses H.R. 2622, and urges the Committee in the 108th Congress to pass this measure as expeditiously as possible.

Again, we thank you for the opportunity on behalf of ACB to be able to testify today, and we look forward to your questions.

Thank you.

[The prepared statement of Hon. D. Russell Taylor can be found on page 253 in the appendix.]

Mr. **TIBERI.** Thank you. You get bonus points for finishing for under five minutes.

Thank you very much.

Mr. Hoofnagle?

STATEMENT OF CHRIS JAY HOOFNAGLE, DEPUTY COUNSEL, ELECTRONIC PRIVACY INFORMATION CENTER AND MR. L. RICHARD FISCHER, VISA U.S.A.

Mr. **HOOFNAGLE.** Thank you, Mr. Chairman, for extending us the opportunity to testify today on H.R. 2622, the FACT Act of 2003.

My name is Chris Hoofnagle, and I am deputy counsel with the Electronic Privacy Information Center. We are a Washington-based research group that was founded in 1994 that concentrates on privacy and civil liberties.

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Our written statement for the record today has been endorsed by the Privacy Rights Clearinghouse, Junkbusters Corporation, Computer Professionals for Social Responsibility, Privacy Times, Consumer Action, Privacy Activism, the Electronic Frontier Foundation and the National Consumers League.

We are unified today in stating that the FACT Act does not go far enough to address the problems identified in the House and Senate hearing records. The record shows that there is a widespread public concern about the relationship between information sharing and identity theft, that there is a desire amongst the public for real protections for privacy, and that there is a renewed concern that credit scores undermine the openness principles of the FCRA.

We believe that the Congress can address these problems and urge the Committee to go farther, to create more protections in 2622.

First, we recommend that Congress should not tie up state legislators by preempting State law. We strongly believe that the case has not been made for permanent preemption. As was pointed out by previous witnesses this year in the hearing record, the 1996 amendments themselves create an uneven State landscape. The 1996 amendments specifically exempt three States from some requirements. And

they also allow the settlements of the attorneys general to stand.

There is not a nationwide standard for credit reporting. We should not pretend that it exists. Nor should we pretend that creating a nationwide standard promotes consumer protection principles.

We have heard a lot of talk about this issue today, but I would point out that there are seven separate provisions that are going to be preempted if this bill passes. And there hasn't been an analysis of all these seven provisions and whether or not all of them are appropriate for preemption.

Take the example of pre-screening, it would be very easy to comply with an uneven landscape, where different states made an opt-in standard for pre-screening. However, representatives of the industry have made it sound like compliance with an opt-in system would be impossible. And that is simply not the case.

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We have also heard that the industry would like flexibility and that they don't want a one-size-fits-all solution for identity theft. But at the same time, they are asking consumers to accept a one-size-fits-all standard for affiliate sharing and for other preempted provisions.

They get flexibility whereas consumer protections are cut off on their procrustean bed. Eliminating States' ability to develop additional safeguards for privacy is a dangerous precedent, and it has only occurred in a few privacy statutes.

By and large, federal privacy laws operate and allow states, the laboratories of democracy, to develop innovative safeguards as required. Accordingly, we strongly recommend the Committee remove Section 101 from the bill in its entirety.

Second, substantive privacy protection should be added to the FCRA to protect individuals against identity theft. H.R. 2622 does not include these protections. Let me suggest some just briefly.

If credit grantors were required to spend just a little bit more time before granting credit, evaluating accuracy of the application, a lot of identity theft would be prevented. Beth Givens of the Privacy Rights Clearinghouse estimates that, perhaps, the majority of identity theft could be prevented if credit grantors were simply required to inspect credit applications more carefully and make sure that there are not inconsistencies with information on the CRA file.

We also strongly recommend that consumers receive notice whenever suspicious activity occurs on their report. Suspicious activity includes multiple inquiries in a short period of time or when negative information is furnished to the CRA. Giving notice to the consumer will allow the consumer to take proactive steps to protect privacy.

Our third recommendation is to make substantive improvements to the credit reporting systems to minimize inaccuracies. Documents obtained by EPIC under the Freedom of Information Act indicate that the number of consumer complaints to the Federal Trade Commission regarding the credit reporting agencies is increasing dramatically.

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In 2001, the FTC received over 8,000 complaints. Last year, it received over 14,000. We received these documents just a few days ago, and we request they be placed in the hearing record.

In our written statement, we detailed the frustration that consumers face when dealing with the consumer reporting agencies. In sworn statements before courts that we have included in the record, former employees of the CRAs claim that they were required to handle 100 consumer files a day. That means that they only had four minutes to dispose of each consumer's case file.

Clearly, investigation and reinvestigation cannot be done in four minutes. We think that there is an opportunity in the FACT Act to improve reinvestigation duties.

As I am running out of time here, let me conclude by urging the Committee to carefully reconsider the record based on this debate. We think that the FACT Act fails to even mention many of the problems raised by the public interest community. It simply tends to require studies, rather than the creation of

new rights and responsibilities. Consumers deserve and need more to protect themselves from identity theft, to protect their privacy and to ensure accuracy and fairness in the credit reporting system.

[The prepared statement of Chris Jay Hoofnagle can be found on page 175 in the appendix.]

Mr. **TIBERI.** Thank you.

Mr. Fischer.

STATEMENT OF L. RICHARD FISCHER, VISA U.S.A.

Mr. **FISCHER.** Good afternoon. The last panelist in the last panel.

My name is Rick Fischer. I am a Partner in the law firm of Morrison and Foerster. I am pleased to be here on behalf of Visa.

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Visa is the largest consumer payment system in the world. There are more than 1 billion Visa branded cards in use. And at the present time, Visa transaction volume now exceeds $1 trillion annually.

I have submitted a very detailed statement, so that I am not going to repeat it here. What I am going to do is focus on two or three points and then comment on some of the things that I have heard in this panel and other panels very briefly.

First of all, Visa supports the Committee's important work on H.R. 2622, particularly Title 1, which we think is essential, the reauthorization of the uniformity provisions of the FCRA, for the many reasons stated earlier, which I won't repeat.

Also, Title II establishing workable identity theft prevention measures is critical. Visa has long been active in protecting consumers from ID theft. You will see that set forth in the statement and the attachment. And obviously, Visa applauds the Committee strongly for its efforts in this area.

The fraud alerts, in particular, I think can be very helpful in this regard. But I do want to post one warning in that respect, because of the expectation that credit grantors will not grant new credit if a flag is posted without first talking with the consumer about it, or contacting the consumer in some way.

I think that that is perfectly appropriate with respect to new loans and new accounts. But with respect to existing accounts, it really is impractical.

For example, currently, Visa handles as many as 4,000 transactions a second, every second of every day. And while Visa successfully employs sophisticated neural networks to detect fraud, and in fact, many of you probably received calls at merchants or thereafter checking on fraud, it is simply not possible to check fraud alerts and to contact consumers in some separate fashion, certainly not 4,000 times a second.

Finally, in this respect, it is very important that the rules established under Title II be uniform across the country. It is simply not possible to have multiple rules dealing with fraud alerts, customer notices, locking of accounts. If we really want ID theft to be effective, then there has to be one set of rules.

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Now, in terms of comments by others, I want to actually reemphasize a point that Mr. Hoofnagle raised just a second ago when he said that the FCRA is not uniform nationwide. And I applaud him, frankly, for saying that. That is absolutely right.

The point here, though, is that there are seven key areas of uniformity. Those are the ones up for reauthorization. I think it is critically important that they be reauthorized. And there still is plenty of room for the States to act in other areas, enforcement, score disclosures, additional notices beyond the seven areas. So there really is much room for the States left by the federal government.

Now, also, Mr. Shelton mentioned a Pete McCorkell study. I am familiar with that study. It is actually a statement that was made by Mr. McCorkell that was published on the Web site of the Federal Reserve Board—Federal Reserve Bank of Boston, I should say. I think it is very important that the Committee consider that report in its entirety.

The principal focus of the report was whether credit scoring is accurate even for minorities. And went

into great detail to establish the fact that it is. And that, I think, is the critical factor here.

What is also important is what we heard earlier from Secretary Snow, and that there has been on the increase in the availability of credit for minorities. You have heard that repeated. There are also studies by HUD and the Federal Reserve Board that go to this point directly, which I think are very important.

But Mr. Shelton said one point that is very important. And that is we have not done enough. And that frankly, I believe is true. He focused on predatory lending. And I would like to correlate predatory lending with ID theft, because they both get to the same point.

You both have wrongdoers. The predatory lender, the ID thief, they both hurt consumers. They both impact on consumer's credit bureau files. And therefore, they both impact adversely on credit scores. But I think the goal here really should be to get to the evil: the predatory lenders and the ID thieves and not really to focus on credit scoring as a wrong in this context, because, in fact, it is accurate.

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Until we get at that, we won't get scores, that are equally appropriate for all. In this context, for example—and there have been questions that have been raised about who is looking at the credit scores in this particular context—I think the primary answer to that are the regulators. That the banking regulators, at least for financial institutions, will look at them regularly.

Thank you.

[The prepared statement of L. Richard Fischer can be found on page 157 in the appendix.]

Mr. **TIBERI.** Thank you for your testimony, last but not least.

Mr. Fischer, expand on something that you have in your written testimony. And you say that, in your written testimony, that banks have "an adequate incentive to prevent identity theft." Don't banks just internalize the cost of identity theft? Can you expand upon that?

Mr. **FISCHER.** I would be happy to.

Without any question, if a bank suffers a loss, then it must absorb that loss. So in that sense, they are going to internalize the loss. And for example, Visa has a zero liability rule. If there is fraud on credit cards or debit cards, zero liability. And that was mentioned earlier today. So banks are going to suffer those as well.

But to suggest that ID theft and fraud losses are acceptable because they are a cost of doing business, I think is not correct. And that is one of the reasons, for example, Visa strongly supports Title II. There are two victims. In fact, Chairman Bachus mentioned this, as did Chairman Oxley, the banks and the consumers. In this case, the banks need Title II as much as the consumers do.

Mr. **TIBERI.** I apologize for coming late to this hearing. Mr. Fischer, just one more question for you.

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Past hearings we have heard from witnesses somewhat—and this is about the evils of affiliate sharing—can you comment on your perspective of affiliate sharing? How it might be evil and how it might be harmful if we eliminate the ability to affiliate share?

Mr. **FISCHER.** I would be pleased to.

First of all, I will give you just a couple of examples. Obviously, given the industry that I represent, it is not surprising that I support affiliate sharing, and, in fact, support it strongly.

The example that I will give you is a client, of course that I will not name, that came to me many years ago with the ultimate program that they had set up for a single unit within the holding company that would service customers from all of the companies and then could cross market at the same time.

Consumers called in and one unit could handle it on behalf of all.

And of course to do that they would need information from all of the organizations. And I said, Well, I am sorry, but it doesn't work. This was in 1992. It doesn't work—this was before the 1996 amendments—because either you are going to take all of this information and use it only for permissible purposes under the FCRA, and therefore you can't use it for marketing, or you can't have the information

at all.

And I think one of the wonderful things, the benefits of the 1996 amendments, is the customer management, relationship management systems that exist today that could not exist otherwise.

In terms of possible evils, I think most of those were addressed in the 1996 legislation itself. There was a concern that people would not be told if decisions were made, adverse decisions, based on information from an affiliate. And that was corrected in the legislation. There is a notice requirement in that respect.

And the concern that perhaps information in those files might become stale over time—and I think that that was addressed in part in the last panel by the fact that financial institutions know that—to the extent that they have this information, they can make initial decisions about someone's possible qualification. But they really can't make decisions at all until they go back, get a new credit report or credit score, to make that decision.

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And so I think the combination of possible evils, if you will, or problems that might develop have been addressed.

Mr. **TIBERI.** Thank you.

Mr. Belew, I am sorry I missed your testimony. Can you kind of, expand upon the issue of your companies—your member companies interest in fighting identity theft?

Mr. **BELEW.** On what?

Mr. **TIBERI.** Identity theft, fighting identity theft.

Mr. **BELEW.** Identity theft, indeed.

To amplify what Mr. Fischer just said, it goes beyond just the cost of doing business. Our members oftentimes are in the position of trying to help their customers, their good customers, get through this. We have been very interested in finding additional expedited procedures, both through our member banks using the credit bureaus and the entire system.

I have here something I would be happy to give you for the record. We did a little survey, certainly not statistically accurate, but a summary of some of the major banks' efforts. They have undertaken work in three areas: prevention, serving the customer needs and monitoring inside the bank.

In prevention, they are looking at all of their authentication practices and looking at record destruction. For the customers, they are doing ID theft awareness kits and remedial and preventative advice. And then they are also even doing what they call footprinting, which is fencing off employees on a need-to-know basis, almost like the Central Intelligence Agency.

There is a lot going on out there. We take it very, very seriously.

Mr. **TIBERI.** Thank you.

Final question for Ms. Bell. We have credit unions throughout the Hill complex here. If a member of a credit union today, if I went to apply for a car loan, my understanding, and I haven't done that here, my understanding is I could get it pretty quickly done if my credit was okay.

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What happens for a typical credit union member if we don't extend the preemptions past the end of this year? If they expire and I go in and get a car loan, or try to get a car loan? Can you talk me through the process?

Ms. **BELL.** Unfortunately, it will delay that process.

Mr. **TIBERI.** By how long?

Ms. **BELL.** For example, just as you maintain a permanent residence in another state, so do many of our other members. The credit union then would have to have a relationship with credit reporting agencies, that could be up to three credit reporting agencies in that state, plus any other states where you may have conducted business. Unless you disclose those states to us, it may suppress important

information that we need to use to make a credit decision, or credit pricing decisions.

So although the loan would still be obtainable, it could slow down your opportunity to buy the car that you just saw that you would really like to have for the weekend, or to take advantage of a cruise that you would like to give to your spouse for an anniversary gift. It slows the process down. It could be extensive.

Mr. **TIBERI.** How long does it take for an average credit union member to get a car loan today?

Ms. **BELL.** They can occur instantaneously. Our Internet lending site, for example, returns a response in as few as 15 seconds.

Mr. **TIBERI.** That is pretty quick.

Ms. **BELL.** We strive to be fast. Our members ask us to make credit available to them quickly and inexpensively.

Mr. **TIBERI.** Thank you.

I had more questions. I ran out of time and I am going to yield five minutes to the gentleman from New York.

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Mr. **ACKERMAN.** Thank you very much, Mr. Chairman.

I have a question for Mr. Taylor, actually, who referenced the likelihood of an amendment that I would be offering to the bill next week, and the likelihood is very good that I will be doing that.

And I am sorry I missed your presentation, but I did read your testimony. Could you be specific as to what the concerns are that you have that you can——

Mr. **TAYLOR.** Certainly, Congressman.

To begin with, let me say we think that you have identified an issue. So it is not to suggest that the issue doesn't exist. It is a concern that is raised about how we might deal with the issue.

To begin with, for example, within the FCRA, there is the provision that consumers would have access to their credit reports. We are seeing that happen in New Jersey over the last few years. And we recognize that that has worked quite well. We feel it has worked quite well in New Jersey. When consumers have the ability to look at that credit report and judge whether or not anything——

Mr. **ACKERMAN.** We are on the same track there. But specifically, what are the problems in——

Mr. **TAYLOR.** Okay, specifically on that would be that there are certain operational issues within different institutions which may not allow that easy implementation. For example, I may have some loan products that I do not send out a monthly statement on, so I may not be able to provide that without additional costs or additional operational setup.

I may have another mechanism. Example, in my institution, not meant to be representative of the industry, but I would send out a late notice, perhaps, which I do, in letter form. In that letter I can certainly advise the consumer, and I already do, that what they are doing with their loan by not paying it on time could adversely affect their credit.

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So it may be the mechanism or the manner in which consumers get that information that we just would like to deal with you and your staff on and talk a little bit more about it.

Mr. **ACKERMAN.** Let me in return say that you have identified, as well as others in the industry, some concerns that we did not anticipate in the drafting of the amendment. And we greatly appreciate the cooperation we have been having from various parts of the industry that have been sitting down and meeting with us. And as a matter of fact, Mr. Davis of your organization has been a part of that ongoing discussion, Bob Davis, and expressing what those concerns are.

And I think we have basically come to a point—and it is good that we are in the same room at the same time today because maybe we can come to a better understanding of where we are on this—the point you raise in your written testimony is the paperwork burden, the operational costs.

And I think those are the two.

Mr. **TAYLOR.** Yes, those are the main issues. Just that——

Mr. **ACKERMAN.** Let me just tell what we have done on that and where we are. And we are just waiting for a sign-off from you and a couple of others on specific language that would be suggested to be reported.

We have obviated the necessity of any costs of mailing other than the mailings that are currently done. And we have basically said in the legislation as contemplated, the amendment as contemplated, that in the statement prior to notifying the credit bureaus or even within 30 days after the credit bureaus have been notified, if I were on the business end of this, on your end, or on Mr. Fischer's end, and he was sending out a statement to somebody he wasn't getting paid from, that last statement, then I would even put it under the last three statements, leading up to the final time that I am about to report you to the, you know—if we don't get payment, and if you are not in compliance by such and such a date, we will report you to the credit agency.

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I look at this not as punitive, but as a businessman. I used to be on that side of the table. But as businessman, you have got to be bottom line focused, and not say, The son of a B didn't pay me and I am going to get him somehow.

But the object is to get my money. And if you put in a statement in there that I am about to turn you over, people get into compliance a lot quicker knowing that there is a date certain. And they all know the rules and regulations. They all know it is going to affect their credit. They all believe somehow you are not going to pull the trigger on it.

So if there is some kind of a statement, which clearly I put it in a neon sign in the biggest light that I could shine on it, and even on the envelope saying, On August 2, we are turning you over to the credit bureau if we don't hear from you.

And the worst thing that is going to happen is you are going to get paid.

It is the same effect of putting a police car on the side of a highway that has ongoing traffic. Everybody gets into compliance. You know it is about to happen.

So additional mailing is necessary. Put it on the same statement. Not even an additional piece of paper.

The entire statement is computerized. They program it; you know how late the guy is. There will be a statement there in some form where people will see it that says, Hey, you ain't going to pay this bill, good things are not going to happen next week.

But we have taken care of the cost of all that, the paperwork, et cetera. And it is just a computer function that gets done automatically just as everybody's individual interest and payment, the number and what they do is report it.

Mr. **TAYLOR.** I couldn't agree with you more. It is a good business decision and one that we practice in my institution to make sure that those concerns are alerted. The only thing we wish to bring up with that was to make certain that there wasn't a mechanism in place that put some at a disadvantage, i.e., those that might not do a monthly statement. They may do something that alerted the consumer, but make sure that we weren't in a technical non-compliance situation——

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Mr. **ACKERMAN.** If you send out statements every two months, it could be two months, that could before—I would do a countdown, three months before, two months before. You know, Your time is up, buddy.

Mr. **TAYLOR.** Right.

Mr. **ACKERMAN.** You know, we are turning you over. You know, the idea is for you on the lending end is to get your money out rather than secretly turn the guy in——

Mr. **TAYLOR.** Absolutely.

Mr. **ACKERMAN.**—to somebody that is not going to help you, because he is not going to pay it if he doesn't know you have reported him, and probably believes half of the time that he is getting away with it.

Mr. **TAYLOR.** Yes.

Mr. **ACKERMAN.** So I think that you will find that very helpful, like the insurance people now who fought second opinions before going for surgery now won't even let you do anything until there is a second opinion, because they discovered the bottom line is helped tremendously by that which was forced upon them at a time.

But I thank you and others in the industry who have brought all of these kinds of concerns to the table that we didn't anticipate. We want this to be as quest free as possible, and as bottom line productive as it can be.

Mr. **TAYLOR.** Thank you.

Mr. **ACKERMAN.** Thank you very much.

Mr. **TIBERI.** Thank you, sir.

The Chair notes that some members may have additional questions for this panel which they may wish to submit in writing.

Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

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I would like to thank all six of you for patience and for your testimony today. And we begin next week marking up this bill in subcommittee.

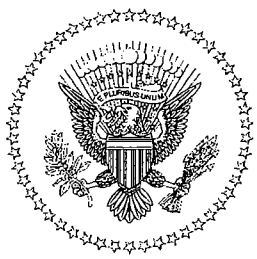
But for this day, this hearing is adjourned.

[Whereupon, at 5:05 p.m., the subcommittee was adjourned.]

3

Weekly Compilation of

Presidential Documents



The President's Radio Address

November 29, 2003

Good morning. On Thursday, I was honored to travel to Iraq to spend Thanksgiving with some of the finest men and women serving in our military.

My message to the troops was clear: Your country is thankful for your service; we are proud of you; and America stands with you in all that you are doing to defend America. I'm pleased to report back from the frontlines that our troops are strong. Morale is high, and our military is confident we will prevail.

Many members of our Armed Forces, Guard, and Reserve observed Thanksgiving in places far from home. In Afghanistan, Iraq, and elsewhere, our military is confronting the terrorist enemy so we don't meet that enemy in our own country. They're serving the cause of freedom. They're helping millions of people in newly liberated countries to build lives of dignity and hope. They are protecting the lives and security of the American people. All of us can be grateful to live in a country that has produced such brave men and women who stand between us and the dangers of the world.

This holiday weekend is also a time when many proud military families are also feeling separation and worry. Long deployments in dangerous places have added hardships in military communities across the country. Many parents are dealing with the burdens of raising families while praying for the safe return of a loved one. Our whole Nation respects and appreciates the commitment and sacrifice of our military families.

Americans are also thinking of the military families that must face this holiday with sorrow of recent loss. It is the nature of terrorism that a small number of people can inflict such terrible grief. Every person who dies in the line of duty commands the special gratitude of the American people. And the military families that mourn can know this: Our Nation will not forget their loved ones and the sacrifice they made to protect us all.

The courage of our soldiers and their families show the spirit of this country in great adversity. And many citizens are showing their appreciation by helping military families here at home. Members of the VFW have started an Adopt-A-Unit program, so veterans and their families can support military units in Iraq and Afghanistan. Volunteers from a group called Rebuilding Together have repaired homes for military families while their spouses are deployed.

Citizens interested in finding volunteer opportunities to support our military should visit the USA Freedom Corps web site at usafreedomcorps.gov.

Our Nation owes a debt of gratitude to every member of the United States military and to their families. It was a privilege to offer that gratitude in person to some of our troops serving in Iraq. May God bless them all, and may He continue to bless the United States of America.

Happy Thanksgiving, and thank you for listening.

NOTE: The address was recorded at 9:55 a.m. on November 28 at the Bush Ranch in Crawford, TX, for broadcast at 10:06 a.m. on November 29. The transcript was made available by the Office of the Press Secretary on November 28 but was embargoed for release until the broadcast. The Office of the Press Secretary also released a Spanish language transcript of this address.

Remarks at a Bush-Cheney Luncheon in Dearborn, Michigan

December 1, 2003

Thank you all very much. Thanks for coming. I appreciate you joining our campaign. You know what this means? It means we're laying the foundation for what is going to be

As well nations in the neighborhood must take responsibility. The King and I have spent a lot of time talking about this subject. He understands fully what I'm talking about. I want to remind you that it was in Jordan where His Majesty hosted us. I stood up with His Majesty as well as Prime Minister Sharon and then Prime Minister Abu Mazen and made a public declaration that we were prepared to work together for the creation of a Palestinian state. Abu Mazen has since been shoved aside, and the process stalled. What the Palestinians need is leadership willing to remain committed to the aspirations of their people and bold enough to stand up and fight off the terrorists' organizations. And His Majesty and I will be glad to work with such leaders as they emerge.

Geneva Accords

Q. This is a productive process, the Geneva Accords and Secretary Powell's meeting?

President Bush. Well, I think it's productive, so long as they adhere to the principles I have just outlined. And that is, we must fight off terror, that there must be security, and there must be the emergence of a Palestinian state that is democratic and free.

And it's—the position of this Government is clear, and it's firm. We appreciate people discussing peace. We just want to make sure people understand that the principles to peace are clear.

Thank you all for coming.

NOTE: The President spoke at 10:07 a.m. in the Oval Office at the White House. In his remarks, he referred to Prime Minister Tony Blair of the United Kingdom; Prime Minister Ariel Sharon of Israel; and former Prime Minister Mahmoud Abbas (Abu Mazen) of the Palestinian Authority. King Abdullah II referred to Prime Minister Ahmed Korei of the Palestinian Authority. A tape was not available for verification of the content of these remarks.

Remarks on Signing the Fair and Accurate Credit Transactions Act of 2003

December 4, 2003

Thank you all for coming. Please be seated. Thanks. Good morning, everybody. Thanks for coming to the Roosevelt Room. Today we're taking important steps to ensure that all Americans of every income and background have fair access to credit.

For our economy, reliable access to credit and capital is essential to growth and prosperity. For individuals, a chance to get ahead and to make a better life often depends on building credit. So many decisions, like buying a home or financing a car or owning a small business, are made easier by good credit. The bill I'm about to sign will help make sure that hard-working, law-abiding citizens are treated fairly when they apply for credit.

This bill also confronts the problem of identity theft. A growing number of Americans are victimized by criminals who assume their identities and cause havoc in their financial affairs. With this legislation, the Federal Government is protecting our citizens by taking the offensive against identity theft.

I appreciate the fact that I'm joined up here by the Secretary of the Treasury, John Snow, and Tim Muris, who is the Chairman of the Federal Trade Commission. Muris is responsible for writing the regulations to make sure that the intention of the Congress is met.

And speaking about the Congress, I want to thank the Members of the Congress, both Republicans and Democrats, who are here to join in the bill signing, good, honorable Members who have worked hard to protect our citizens. I appreciate Senator Paul Sarbanes for joining us today. I'm honored that Senator Bob Bennett has joined us as well, as well as Maria Cantwell and Elizabeth Dole. Thank you, Senators, for coming. Thanks for your good work on this. I also want to thank Richard Shelby for his good work. He's not with us today, but Shelby gets some credit. [*Laughter*] From the House—[*laughter*]—Congressman Oxley—I appreciate you, Mr. Chairman—Paul Gillmor, Spencer Bachus—thanks for coming, Spence. I appreciate you sponsoring this piece of legislation. Steve LaTourette and Darlene Hooley are here. Thank you all for coming.

Again, I want to again congratulate the Congress for working on this important piece of legislation and exceeding expectations, I

might add. At least you've exceeded the expectations of the administration on this bill. [*Laughter*]

The legislation, the Fair and Accurate Credit Transactions Act of 2003, carries forward the progress this Nation has made in recent years to help qualified Americans get fair access to credit. Before 1996, there were no uniform rules on borrower information and credit reports. Lenders did not always have consistent and full information about potential borrowers. Lenders too often made broad assumptions and decisions about categories of people rather than looking at individuals and their personal credit histories.

Too often, lenders assumed the worst. And therefore, people with lower incomes and immigrants with little or no credit history, people who lived in certain neighborhoods had a more difficult time getting affordable loans. And that's not fair, and it's not right, and it does not reflect the spirit of this country.

And so the Congress wisely acted. In 1996, Congress set uniform national standards on credit reporting. Credit histories are now more complete and thorough, and the lending process is fairer. Many Americans have been able to obtain loans that they would not have had otherwise, and that's important. According to estimates, over the last 7 years, more than 1 million men and women have obtained new or refinanced mortgages that would have been denied if there had not been a fair national standard.

One of them is here today. I appreciate Shonelle Blake coming. She's got the toughest job in America. She's a single mom. She has two 4-year-olds, mom of twins. I know something about twins. [*Laughter*] In the early 1990s, Shonelle set herself two goals—she set high goals. One was to buy a house, and the other was to start a business. She made sure her credit was in order. She went to the HOPE Center in Los Angeles—I know something about there since I've been there myself—to help get a downpayment on a home. One year later, she got another loan to start her own insurance business.

Shonelle is building a life of independence and success, in part because a loan was given to her based on her own merit. Because we had a national standard, she was able to get a loan. Because Congress did the right thing in 1996, this entrepreneur and mother was able to realize a dream. The national credit standards that help ensure that the lenders considered each applicant on her merits are what made the loan possible.

John Bryant, who's with us—and it's good to see you again, John—of Operation HOPE, he's what we call a social entrepreneur, by the way. [*Laughter*] He has heard the call to help people like Shonelle realize her dreams—said this: He said, "Shonelle would have been rejected. She wouldn't have been a homeowner, and she wouldn't have been a businessowner." That's what John said. And so the fair standards are important. The national standard was an important act that you all did, and I want to thank you for working on it in 1996.

See, the bill I sign today will make the national fair credit standards permanent. Those standards were set to expire, the '96—the good of the '96 act was going away. And then the Congress stepped up and acted for the sake of the Shonelles of the world. And now the credit standards are a permanent part of the legislative history of the country. And I want to thank you for that. It's the right thing to do, and I appreciate your leadership. See, we're ensuring that lenders make decisions based upon the full and fair credit histories of each person and not on the categories that can lead to discrimination.

And as we help people gain access to credit, we're strengthening the protections that help consumers build and keep a good credit history. That good record is ruined when criminals steal identities and run up purchases under stolen names. Like other forms of stealing, identity theft leaves the victim feeling terribly violated, and undoing the damage caused by identity theft can take months.

Michael Berry is with us today. Thank you for coming, Michael. In January of 2002, Michael was applying for a credit line increase. He'd always paid his bills in a timely manner. He's a good citizen. But his application was rejected. They told him that he had taken out too many credit cards recently. It came as quite a surprise to Michael, since it wasn't true. He discovered that someone had stolen his financial identity. He made countless calls

to credit bureaus and tracked down credit card purchases he had not made. He even found the address of the person who had taken out the cards. He closed the credit card accounts as fast as he could, but applications for more credit in his name were being made every day. And many were getting approved. He had to call every credit card company to get each card canceled before it was issued.

Nearly 2 years later, Michael is still fighting the effects of the fraud. The system was broken. Michael is living testimony to what I'm saying when I said the system was broken, and Congress acted. I want to thank you all for stepping up and doing the right thing here.

See, in an age when information about individuals can be found easily, sold easily, abused easily, Government must act to protect individual privacy. And with this new law, we're taking action. First, under this law, we're giving every consumer the right to get a copy of his or her credit report free of charge every year. That's important. The credit report is more than a record of past actions; it has great influence over a person's financial future. People should be able to check their credit report for accuracy and to challenge any errors. The bill does just that.

Second, this law will help prevent identity theft before it occurs, by requiring merchants to delete all but the last five digits of a credit card number on store receipts. Many restaurants and merchants have already adopted this practice. All will now do so.

Won't they, Tim? [*Laughter*] Just making sure he was awake. [*Laughter*]

Chairman Muris. Always. [*Laughter*]

The President. Slips of paper that most people throw away should not hold the key to their savings and financial secrets.

Third, this law will create a national system of fraud detection so that identity theft can be traced and dealt with earlier. Up to now, victims of identity theft have been left to manage the problem themselves—ask Michael—by calling all their credit card companies to shut down each of their accounts. And then the victims must call each of the three major credit rating agencies to report the crime and to protect their credit rating. Under this legislation, victims will only have to make one phone call to receive advice and to set off a nationwide fraud alert. It's an important reform. I appreciate you all for putting this into law. Credit bureaus will then take immediate measures to protect the consumer's credit standing.

And fourth, this law will encourage lenders and credit agencies to take action before a victim even knows an identity crime has occurred. In many cases, identity thieves follow predictable patterns. Bank regulators working with credit agencies will draw up guidelines to identify these patterns and develop methods to stop identity theft before it ever happens.

These practical steps will help consumers protect their credit and their good name. People work hard to build up good credit histories and rely on their credit to move forward in life. Today we're helping to make our credit system fair, fair to all, and to better protect those—better protect people from those who would abuse it.

I'm pleased to sign into law the Fair and Accurate Credit Transactions Act of 2003, a good, solid piece of legislation.

NOTE: The President spoke at 11 a.m. in the Roosevelt Room at the White House. In his remarks, he referred to John Bryant, chairman and chief executive officer, Operation HOPE, Inc. H.R. 2622, approved December 4, was assigned Public Law No. 108–159.

Remarks on Lighting the National Christmas Tree

December 4, 2003

Thank you all very much. Welcome to the Christmas Pageant of Peace. This evening we continue a tradition in Washington as we gather to light the National Christmas Tree. Tonight and throughout the Christmas season our thoughts turn to a star in the east, seen 20 centuries ago, and to a light that can guide us still. Laura and I are so pleased to join you in this ceremony, and we thank you all for being here.

It's always good to see Santa. I know you've got a lot of commitments this time of year. [*Laughter*] We also know how Santa gets around: He travels in the dark of night; he arrives unannounced—[*laughter*]—and

BACHUS, Spencer T., III, 1947-

BACHUS, Spencer T., III, a Representative from Alabama; born in Birmingham, Ala., December 28, 1947; B.A., Auburn University, 1969; J.D., University of Alabama School of Law, 1972; National Guard, 1969-1971; lawyer, private practice; member of the Alabama state senate, 1983-1984; member of the Alabama state house of representatives, 1984-1987; member, Alabama board of education, 1987-1991; chairman, Alabama Republican executive committee, 1991-1992; elected as a Republican to the One Hundred Third and to the five succeeding Congresses (January 3, 1993-present).

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With Shelby at Senate Banking Helm, Privacy Protections Will Be Center Stage

By Keith Perine, CQ Staff

Even before privacy advocate Richard C. Shelby took the gavel of the Senate Banking, Housing and Urban Affairs Committee, the use of personal financial data was bound to be an issue on Capitol Hill this year.

The financial services industry fervently wants Congress to extend an expiring provision of the Fair Credit Reporting Act (FCRA) that overrides state regulation of credit information.

The battle pits banks, insurance companies and credit card issuers against consumer groups and privacy advocates, as before, but will occur under somewhat unusual circumstances this time. Business lobbyists, who normally find themselves working to head off action on privacy issues, are now on the side of pushing for legislation to extend and expand their industry's protection from tougher state regulation. Because it is generally easier to block legislation than to pass it, privacy advocates are confident they can prevent any weakening of federal privacy law.

Shelby, a co-founder of the Congressional Privacy Caucus, told a Dec. 5, gathering of consumer advocates that he will steer the Banking panel into the same kind of broad examination of financial privacy issues that complicated enactment of a landmark 1999 financial services modernization law. The Alabama Republican is not satisfied with that law's privacy protections. "Individuals should have greater control and choice in how their financial information is used and sold," he said.

Oxley, left, supports continued federal pre-emption of state regulations on credit reporting. But Shelby may use renewal of expiring provisions as a vehicle for tougher privacy rules. (CQ PHOTOS / SCOTT J. FERRELL)

Shelby indicated that he will not support extending the federal pre-emption provided earlier by the credit reporting law unless an extension is coupled with broad new privacy safeguards. If he holds onto the position he outlined in December, the chairman could use the financial services industry's desire for an extension and expansion of federal pre-emption as leverage to enact tougher federal privacy rules.

House Financial Services Chairman Michael G. Oxley, R-Ohio, has not disclosed his plans for examining financial privacy issues. He favors extending the pre-emptions of state law, but remains tight-lipped about whether he will embark on a broader privacy review.

Two of the financial services industry's most powerful allies during the 1999 debate, former Senate Banking Chairman Phil Gramm, R-Texas (House 1979-85; Senate 1985-2002), and former House Commerce Chairman Thomas J. Bliley Jr., R-Va. (1981-2001), have retired.

Broad Privacy Agenda

Technological advances have made it much easier for banks to process individuals' financial data and use it in marketing products and services including pre-approved credit offers. Marketers say technology and information-sharing help them better serve the public by targeting their pitches. Financial services lobbyists say the flow of financial information among companies and across state lines that makes such marketing possible would be impeded if their firms faced multiple sets of state ground rules.

But privacy advocates want to give consumers more opportunity to restrict the use of their personal information. Increased public concern about identity theft — including the fraudulent use of information such as Social Security numbers to obtain credit — has caught the attention of lawmakers and has given privacy advocates new ammunition.

"We can't allow Congress to extend or expand the . . . pre-emption," said Edmund Mierzwinski, consumer program director at the U.S. Public Interest Research Group.

Another issue closely related to the federal pre-emption of state credit reporting law is whether Congress should re-examine the broader financial information provisions that were a major issue in the debate that led to enactment of the 1999 financial services law (PL 106-102).

That law is known as the Gramm-Leach-Bliley Act in honor of its principal authors, including former House Banking and Financial Services Committee Chairman Jim Leach, R-Iowa. It places federal restrictions on sharing of financial information but allows states to enact more stringent privacy provisions. *(1999 Almanac, p. 5-3)*

Privacy advocates consider the Gramm-Leach-Bliley privacy protections too weak. Among other things, they complain that policy notices that financial institutions are required to distribute to customers are often confusing.

Shelby and privacy advocates want to require companies to get explicit permission known as "opt-in" from customers before companies can share personal financial information with other companies, including the financial institutions' affiliates and joint marketing partners.

Not surprisingly, financial firms' concerns about the law come from another direction. They would like Congress to change Gramm-Leach-Bliley to prevent states from going beyond a specified level of privacy regulation.

Earlier Provision Expiring

The federal pre-emptions of state law that expire next Jan. 1 were included in a package of financial services provisions added to the fiscal 1997 omnibus appropriations law (PL 104-208) to amend and

expand the 1970 credit reporting law (PL 91-508).

One of the provisions involved allows affiliated companies to share with one another their customers' credit information, including credit applications and reports. *(1970 Almanac, p. 624; 1996 Almanac, p. 2-43)*

The broader Gramm-Leach-Bliley law allows banks to share personal financial information freely with their affiliates and with third parties with which the banks have joint marketing agreements. But consumers can forbid their banks from sharing their personal data with other, unaffiliated entities by notifying the bank that they wish to "opt-out."

A large-scale lobbying effort by banks, insurance companies and credit card issuers has already begun. Banks and credit card firms argue that unless Congress sets national privacy standards, they will have to comply with a patchwork of state regulations. That, the companies warn, could mean less access to credit and higher interest rates for consumers, and less protection against identity theft.

"The health of our economy is dependent on Congress acting swiftly," said David Liddle, a spokesman for the Financial Services Roundtable. "The economy will not work if you have 50 different sets of privacy laws. The wheels will come off."

The Direct Marketing Association, which represents telemarketers, warned of a "slippery slope" on which direct marketing would become "the target of endless legislative and regulatory 'privacy' reforms."

California Battleground

As is the case with many issues that come to Capitol Hill, California is shaping up as a bellwether state on consumer privacy.

Democratic state Sen. Jackie Speier is trying for the fourth time to push a privacy bill through the state legislature. She would allow Californians — by opting-out — to prevent banks from sharing data with affiliates or business partners, a privilege not afforded consumers by the 1999 federal law. Her bill also would require financial institutions to obtain consent from customers before sharing personal data with third parties who are not business partners.

Financial services firms spent $5.5 million during 2001 and the first half of 2002 to lobby against the previous version of Speier's legislation, according to California Common Cause. "I've worked in the state legislature for over a decade and I've never seen [that] kind of lobbying," said Robert Herrell, Speier's staff director.

Meanwhile, California privacy and consumer advocates are preparing an effort to gather the 373,816 signatures they need to put an initiative on the March 2004 statewide ballot that would allow financial services to share personal data only after receiving a customer's consent, or opt-in.

The coalition has financial backing from an unlikely source: Chris Larsen, chief executive officer of E-LOAN Inc., an online provider of consumer loans. He has pledged $1 million.

White House Sees Opening

If a stalemate develops between pro-business lawmakers such as Oxley and privacy hawks including Shelby and the Banking Committee's top-ranking Democrat, Paul S. Sarbanes of Maryland, the Bush

administration could be a wild card.

Wayne A. Abernathy, assistant secretary for financial institutions, said the Treasury Department favors extending the FCRA pre-emptions of state credit reporting laws, but would like to see Congress take steps to prevent identity theft, apprehend perpetrators and make it easier for victims to restore their credit ratings.

The Federal Trade Commission received 161,819 consumer complaints about identity theft in 2002, up from 86,198 in 2001.

"The context gives us a great opportunity to do some things that are important for the financial system," Abernathy said.

Abernathy reserved judgment on whether Congress should revisit the broader Gramm-Leach-Bliley to standardize financial privacy regulations nationwide. But he said the administration agrees that improvements are needed in the current system of privacy notices and consumer options.

"I think this will either all come together or there will be a lot of screaming and shouting and nothing will be achieved in the end," Abernathy said.

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Amendments Expected to Help Financial Information Bill Sail Through House Committee

By Siobhan Hughes, CQ Staff

When Rep. Gary L. Ackerman applied for credit not long ago, the New York Democrat received bad news: His application was denied. Someone had ordered phone service in Ackerman's name and then failed to pay the bill, staining the lawmaker's credit record.

Ackerman is not the only member of Congress who understands that identity theft is a growing problem. And that awareness has resulted in amendments that should help a once-controversial bill (HR 2622) on sharing personal financial information sail through the House Financial Services Committee and ultimately the full House.

"It will be a pretty smooth markup," predicted Rep. Spencer Bachus, R-Ala., the sponsor of the bill and chairman of the House Financial Services subcommittee that approved it 41-0 on July 16.

BoxScore

Bill: HR 2622 — To prevent states from passing more stringent financial privacy rules than the federal government.
Latest Action: House Financial Services Financial Institutions and Consumer Credit Subcommittee approved, 41-0, on July 16.
Next Likely Action: House Financial Services Committee markup the week of July 21.
Reference: Background, CQ Weekly, p. 206.

"All love and kisses," is how House Financial Services Chairman Michael G. Oxley, R-Ohio, described his expectations for the planned full committee markup.

Federal Authority Prevails

The bill represents a victory for banks, credit card companies, retailers and other businesses that had sought to make permanent some expiring provisions of the Fair Credit Reporting Act (PL 104-208), which decreed that federal laws governing personal financial information override state laws. *(1996 CQ Almanac, p. 2-47)*

The fair credit law is scheduled to expire Jan. 1.

Business groups have employed armies of lobbyists to push to make these provisions permanent, saying such laws have helped speed the flow of credit and have propped up consumer spending and home sales, the main pillars of support for a sluggish economy.

Opponents want Congress to let the law's information-sharing provisions expire.

They argue that the states could help prevent consumers from being harmed by corporate information-sharing practices.

But provisions to protect against identity theft and to improve consumers' control over their credit reports were enough to win the support of many Democrats.

Rep. Darlene Hooley, D-Ore., earlier this month joined Bachus as a cosponsor of the bill, which will incorporate identity fraud measures that Hooley has backed for years.

The identify theft measures would:

• Ban companies that accept credit cards from printing more than the last four digits of the card.

• Prevent credit bureaus from reporting charges, late payments or other information that is the result of identity theft, as long as a consumer has filed a police report and provided proof of his or her identity.

The House Financial Services Subcommittee on Financial Institutions and Consumer Credit adopted by voice vote an Ackerman amendment that would require credit card companies to notify consumers in writing about any plans to file a negative report about the consumer with credit bureaus.

The Credit Score

A popular amendment sponsored by Bernard Sanders, I-Vt., also won subcommittee approval.

It would require credit bureaus to provide consumers with a free copy of their credit score each year upon request.

Consumer advocates say people need to know their credit scores because the better the score, the lower the interest rates they may be charged. However, Treasury Secretary John W. Snow has said credit scores represent proprietary information that should be purchased by consumers.

Before the amendment was adopted, the legislation had provided for a free copy of a consumer's credit report, but that report does not always include the score.

The free credit score element of the legislation is being closely watched in the Senate, where Banking Committee Chairman Richard C. Shelby, R-Ala., is intent on ensuring that people have greater control over how their personal financial information is used and sold.

Shelby's views carry significant weight, because it generally is easier to block legislation than to pass it — especially because opponents would need to muster only 41 votes to block floor action.

Shelby plans at least two more hearings on the Fair Credit Reporting Act before Congress adjourns for its August recess.

He intends to use the recess to work on credit and privacy legislation that probably will be unveiled in September, said spokesman Andrew Gray.

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House Panel OKs Financial Information Bill

By Siobhan Hughes, CQ Staff

The House Financial Services Committee on July 24 overwhelmingly approved a bill that would let banks, credit card companies and other financial services companies continue to use and exchange consumers' financial information without being subject to new state regulations.

The bill (HR 2622), approved 61-3, would make permanent the provisions of the Fair Credit Reporting Act (PL 104-208) that are set to expire Jan. 1.

Those expiring measures, put into law in 1996, say federal law overrides state laws in governing how companies use, distribute and share personal financial records.

BoxScore

Bill: HR 2622 — To make permanent the expiring laws that prevent states from imposing new restrictions on how financial institutions share consumer information.
Latest Action: House Financial Services Committee approved, 61-3, on July 24.
Next Likely Action: House floor debate in September.
Reference: House subcommittee, CQ Weekly, p. 1840; background, p. 206.

The bill also gives consumers new access to financial records and new protections against identity theft. "We can accommodate the legitimate needs of the market . . . and, at the same time, do those things which have to be done for the public sector," said Barney Frank of Massachusetts, the top Democrat on the committee.

The bill could face a tougher road in the Senate, where Banking Committee Chairman Richard C. Shelby, R-Ala., is intent on ensuring that consumers have strong privacy protections.

The House committee vote represents a victory for the banks, credit card companies and other businesses that had lobbied for the bill, saying that without it, the strength of the nation's credit reporting system would be undermined by a patchwork of conflicting state laws.

However, consumer groups wanted the states to be allowed to enact tougher consumer protections, and argued that the consumer protection provisions in the bill were insufficient.

"There were marginal improvements to the bill, but the overarching problem of pre-emption remains," said Edmund Mierzwinski, consumer program director at the U.S. Public Interest Research Group.

Maxine Waters, D-Calif., voted against the bill after her amendment, which would have allowed the state law pre-emption provisions to expire, failed 6-56. "States should have the right to adopt additional

protections," she said.

Still, many Democrats and Republicans praised the new consumer protections in the bill.

One provision would let consumers ask for a free copy of their credit report once a year from each of the three national credit bureaus — Equifax, Experian and TransUnion. An amendment introduced by Richard H. Baker, R-La., left regional credit bureaus exempt.

The bill was sponsored by Spencer Bachus, R-Ala., who built bipartisan support by adding several identity-theft protections long sought by Darlene Hooley, D-Ore. The version of the bill that was approved reflected a substitute offered at the start of the markup by Chairman Michael G. Oxley, R-Ohio.

The approval of this substitute version, known as the chairman's mark, capped a 12-hour markup, punctuated by several breaks, in which lawmakers debated 22 amendments.

The panel voted, 22-44, against an amendment by Bernard Sanders, I-Vt., that would have limited a credit card company's ability to switch a customer's interest rate for failing to pay other bills on time. Instead, the committee adopted by voice vote an amendment by Paul E. Gillmor, R-Ohio, that would require credit card companies to disclose that they may switch a consumer's rate.

Sanders and Barbara Lee, D-Calif., also voted against the bill.

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California Consumer Law Puts Pressure on Congress

By Siobhan Hughes, CQ Staff

A California law that blocks financial institutions from sharing information with an outside company without specific customer permission has put Congress on notice.

The California measure, signed into law by Gov. Gray Davis on Aug. 27, also permits consumers to "opt out" of information sharing arrangements among affiliates.

Currently, financial institutions may share information with affiliates without customer permission — or the threat of state regulation.

Ten financial services trade groups joined forces in late August to urge House Speaker J. Dennis Hastert, R-Ill., to bring to a vote a bill (HR 2622) to make permanent some expiring provisions of the Fair Credit Reporting Act (PL 104-208), which bars states from imposing tougher consumer protections on financial institutions than does the federal government. *(Privacy, p. 2081)*

Without congressional action, states will be able to enact their tougher data-sharing laws.

Consumer groups oppose extending the expiring provisions of the law, saying banks and other financial institutions have too much freedom to share information, posing the risk of identity theft.

Underscoring that point, the Foundation for Taxpayer and Consumer Rights said it paid $26 for addresses and Social Security numbers of Attorney General John Ashcroft and CIA Director George Tenet.

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Bank-Friendly Credit Reporting Bill Passes House; on Fast Track in Senate

By Siobhan Hughes, CQ Staff

Senate Banking Committee Chairman Richard C. Shelby has long wanted to give Americans more control over how their credit information is used and sold, putting him at odds with lenders who view the sharing of customer credit information as necessary, efficient and profitable.

Now, Shelby is trying to reconcile his own strong privacy views with pressure from the White House to quickly advance banking-friendly legislation.

"He wants to be a good soldier, but on privacy, he's not a Republican," said one Democratic Senate aide.

BoxScore

Bill: HR 2622— To permanently block states from enacting laws to protect the accuracy and privacy of consumer credit reports.
Latest Action: House passed the bill, 392-30, on Sept. 10.
Next Likely Action: Senate Banking, Housing and Urban Affairs Committee markup week of Sept. 15.
Reference: 1970 Almanac, p. 624; 1996 Almanac, p. 2-43, CQ Weekly, pp. 1840, 1206.

Shelby on Sept. 12 released a draft credit reporting bill that would allow Americans to block solicitations from the multiple divisions operated by financial conglomerates such as Citigroup and Bank of America. If enacted, it would be the first time consumers had the legal right to "opt out" of such marketing arrangements since a 1996 law (PL 104-208) permitting affiliate data-sharing arrangements went into effect.

That feature distinguishes Shelby's proposal from broader credit reporting legislation that passed the House on Sept. 10. *(House Vote 499, p. 2264)*

It is also what gives Shelby, the co-founder of the Congressional Privacy Caucus, a way to stick to his own beliefs while giving his party the legislation it wants, to permanently block states from enacting financial privacy laws that are tougher than the federal government's.

Pressure to pass such legislation is mounting because seven major provisions of the Fair Credit Reporting Act (PL 104-208) expire Jan. 1.

The expiring parts of the law block states from imposing certain restrictions on how banks share and use consumer credit information. The result: limits on states' ability to go further than the federal law to protect consumers.

The financial services industry wants Shelby's committee to quickly advance the House-passed bill (HR 2622), and its promise of maintaining a single, uniform national standard. The House bill, which passed

392-30, and the Shelby proposal both would continue to permit only federal laws to govern the accuracy and privacy of consumer credit reports.

Shelby has his bill on a fast track, scheduling committee action for the week of Sept. 15. The rush to a markup suggests that Shelby believes he can count on the support of colleagues on the Senate Banking Committee. He also may have laid the groundwork for a Senate-House compromise: Before unveiling his bill, Shelby discussed the legislation over breakfast with House Financial Services Committee Chairman Michael G. Oxley, R-Ohio.

Consumer groups and privacy advocates oppose permanently blocking states from regulating the credit-reporting industry, and are sure to be disappointed with some portions of the Senate bill. Lenders say the ability to share information free of state regulation has made lending more efficient, lowering consumer costs and speeding their access to credit.

In the House, both Democrats and Republicans have fallen in line with the financial services industry. Many said during the Sept. 10 floor debate that they feel credit has become widely available in the United States in part because credit bureaus, banks and merchants have been allowed to share consumer financial data free of state regulation.

Like the House-passed bill, the Shelby proposal would give consumers the right to a free copy of their own credit reports once a year. Both versions also would require mortgage lenders to disclose to applicants the credit scores used to determine the terms of a loan offer.

Shelby's draft also comes close to resolving the concerns of Sen. Barbara Boxer, D-Calif., who has complained that renewing expiring provisions of the Fair Credit Reporting Act would wipe out portions of a recently passed California law.

In an August letter to Shelby, Boxer wrote that "at the least, you should include a provision to ensure that California's law is not pre-empted by federal action so that this widely supported and popular legislation can be fully implemented."

The California law would permit consumers to opt out of affiliate-sharing arrangements, although it takes a somewhat different approach than the one outlined in the Senate bill.

Shelby also has been hearing from Banking Committee senators from states where large banks are based. Robert F. Bennett, R-Utah, along with Thomas R. Carper, D-Del. represent states where banks and credit card companies tend to incorporate because of business-friendly laws.

That industry may be able to come around to the Senate approach, although it likes the House version better.

The House-passed bill, "which ensures affordable access to credit for millions of Americans through a uniform national standard for credit reporting, is one of the most important pieces of legislation that has been considered this year," said Steve Bartlett, president of the Financial Services Roundtable, which represents 100 of the largest financial institutions in the United States.

That tracks with the sentiments of House Republican leaders, as well as Oxley, who ushered the bill through the House with bipartisan backing.

"Can you imagine going back to a time when you could only get a credit card from a local bank, mortgages and car loans took weeks to approve, and high interest rates made credit unavailable and unaffordable for many Americans?" Oxley said.

Both the Senate and House bills would give consumers the right to request a free annual copy of their credit reports — but not their credit scores — from credit bureaus including Equifax, TransUnion and Experian. The goal is to give consumers a chance to check their records for accuracy. Under current law, consumers may receive a free copy of their reports only if they have been denied a loan or employment on the basis of their credit histories.

Both bills also would require mortgage lenders to disclose credit scores to applicants. They would require credit bureaus in most cases to black out medical information when consumer files are accessed by lenders and prospective employers. And they would force retailers to truncate credit card numbers on printed receipts, one of many measures aimed at blocking identity theft.

No Pressure

By voting to permanently override state law, lawmakers are in essence removing pressure on Congress to address credit reporting standards again in the future. During the House vote, Rep. Paul E. Kanjorski, D-Pa., tried but failed to include a "sunset" provision that would have caused the law to expire within nine years. His sunset amendment was rejected, 112-310.

In contrast to the Senate bill, the House vote also represented an endorsement of the cross-marketing practices that are prevalent at the biggest banks. For example, under the bill, Citigroup, the world's largest financial services company, with 200 million customer accounts around the world, would be able to continue marketing its Citigroup investment services to its Citibank banking customers.

The House bill also would leave intact a practice known as risk-based pricing, in which credit card issuers raise the interest rate charged on a credit card even when payments have been received on time. Credit card companies do that on the rationale that late payments on any account suggest that a consumer poses a new risk that needs to be factored in.

"The anger of the American people toward ripoffs is only going to grow greater," predicted Rep. Bernard Sanders, I-Vt., whose amendment to curb such tactics was rejected, 142-272.

The vote comes at a time when credit records are increasingly being compromised by identity theft. A Federal Trade Commission report said that 27.3 million Americans had been the victims of identity theft in the last five years, leaving businesses on the hook for some $48 billion and resulting in $5 billion in out-of-pocket expenses.

That trend was behind some of the provisions in the bill designed to help consumers prevent fraudulent credit card use. One of those would give consumers the right to place a "fraud alert" in their reports, requiring lenders to check with the consumer before extending a loan.

The bill also would prevent credit bureaus from releasing potentially damaging information that was the result of identity theft. Consumers would have to file a police report to become eligible to activate such a block of their records.

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Bill Threatens California Privacy Law

By Siobhan Hughes, CQ Staff

A statehouse victory that consumer groups and privacy advocates scored in Sacramento seems to have spurred the financial services industry to get a national fix on the books as fast as possible.

On Sept. 10, the House voted overwhelmingly, 392-30, to pass a bill (HR 2622) that would nullify part of a new California law intended to protect the privacy of personal financial information.

The state law that Gov. Gray Davis signed in August permits consumers to say no to banks and other financial institutions that want to share their personal financial information with affiliated companies.

The state law anticipates Jan. 1, when a federal law called the Fair Credit Reporting Act (PL 104-208) expires, freeing states to enact tougher credit reporting protections than the federal law provided.

The House-passed bill would reinstate and update the federal law, essentially undoing California's new statutes by extending the pre-emption barring state laws from regulating credit reporting bureaus.

"These groundbreaking, popular, hard-won protections which were negotiated with our financial institutions in California are threatened because of this bill," said Barbara Lee, D-Calif., during the House debate.

"Important California protections will just basically be wiped out."

The House-passed bill also would override at least seven other laws that California enacted since 1996 in an effort to combat identity theft.

Republicans point out that some of the targeted provisions are similar to those in the House-passed bill, but Californians stood their ground.

"I made lot of inquiries about whether or not post-1996 legislation or laws were protected," said Maxine Waters, D-Calif.

"I was led to believe that they were protected, but now I find that they were not protected, and what we stand to do is literally undo or pre-empt much of the good consumer legislation that has been produced in my state."

A Consumers Union study concluded that the House bill would provide less protection to California credit card users and bank customers than the state's current laws.

In the Senate, however, a little more of California may be rubbing off. Senate Banking, Housing and Urban Affairs Chairman Richard C. Shelby, R-Ala., on Sept. 12 unveiled a draft bill that picks up on one new Golden State protection: It would allow consumers to block solicitations from affiliates of the financial services companies where they do business.

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Financial Privacy Legislation Approved by Senate Committee After Shelby Changes Course

By Siobhan Hughes, CQ Staff

When Senate Banking Chairman Richard C. Shelby circulated a draft of his long-awaited financial privacy bill, he put banks, retailers and other companies on notice that the legislation they sought would come at a hefty price.

The financial services industry wants Congress to block states from regulating credit information, ensuring that businesses would be covered by a single, nationwide privacy standard. Shelby indicated that he would go along, but only if consumers were given significant new powers to restrict the marketing practices of large companies that have many lines of business.

But just as his bill was about to be marked up, the Alabama Republican backed away from that position. Under a new version of his draft bill, consumers would have the right to ban unwanted telephone or mail solicitations from so-called affiliates only when opening an account with a new company. The provision would not apply to consumers already doing business with a financial services company with multiple affiliates.

BoxScore

Bills: HR 2622 (H Rept 108-263), draft Senate bill — To block states from enacting laws to protect accuracy and privacy of consumer credit information.
Latest Action: Senate Banking, Housing and Urban Affairs Committee approved the bill by voice vote Sept. 23.
Next Likely Action: Senate floor action in October.
Reference: House passage, CQ Weekly, p. 2228; House committee, p. 1915; House

The Banking Committee approved Shelby's bill by voice vote Sept. 23. It would renew expiring provisions of the Fair Credit Reporting Act (PL 104-208) and ensure that federal credit reporting laws override state laws. Floor action is likely after Congress returns from its one-week mid-October recess.

The Senate measure includes several provisions aimed at increasing consumer control over credit information. But a leading consumer advocate said the legislation still does too much for businesses and too little for individuals.

"We are disappointed that the Senate Banking Committee is now on record with the House as supporting permanent pre-emption of most stronger state credit reporting laws," said Edmund Mierzwinski, consumer program director at the U.S. Public Interest Research Group.

That would set up a conference with the House, which passed its version of the legislation (HR 2622) overwhelmingly on Sept. 10.

subcommittee, p. 1840; Background, pp. 1840, 1206; 1996 Almanac, p. 2-43; 1970 Almanac, p. 624.

Mierzwinski said the few good things for consumers in both the House and Senate versions of the bill were ideas that germinated in the states, and yet Congress was moving to stamp out state innovation in privacy regulation.

"Congress has not demonstrated a propensity for enacting uniform consumer protection laws that are adequate, except when driven by the threat of state action," Mierzwinski said.

Shelby, co-chairman of the Congressional Privacy Caucus, originally sought stronger consumer protections. But financial services companies, particularly industry giants such as Citigroup Inc., and Bank of America Corp., oppose restrictions on their ability to share data. *(Role of caucuses, p. 2334)*

Congress is under pressure to send a credit reporting bill to President Bush by the end of the year because the current law that bans states from enacting financial privacy laws expires Jan. 1.

The financial services industry argues that a single national standard makes it easier and cheaper for them to extend credit to consumers. The industry says consumers benefit when financial institutions can rapidly exchange data to approve auto loans, mortgages and other transactions.

Consumer Provisions

Both chambers included provisions aimed at helping consumers guarantee the accuracy of their credit reports.

The House and Senate bills would give consumers the right to a free copy of their credit reports once a year from the national credit bureaus to check for errors. Both bills also would require lenders to disclose credit scores to mortgage applicants free of charge. And the bills would give consumers the right to mark their records with a "fraud alert" so lenders would know to check first with consumers before extending credit. That provision is designed to combat identity theft, which the Federal Trade Commission has said is one of the fastest growing financial crimes.

Several arguments remain to be settled. The Senate bill would require that when a bank extended a credit offer "materially less favorable than the terms generally available," it would have to state whether negative information on the customer's credit report was a factor in the decision. The financial services industry has warned that such a policy might create extra paperwork and processing costs because it could apply to millions of customers.

California Democrats have their own complaints. Sens. Barbara Boxer and Dianne Feinstein plan to offer a floor amendment to protect a just-enacted California law giving consumers the right to "opt out" of the marketing lists shared by affiliated companies.

"Consumers should have the right to decide when, how and to whom their personal information is shared," Feinstein said.

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Shelby Vows Senate Version Of Financial Privacy Bill Will Prevail in Conference

By Siobhan Hughes, CQ Staff

Senate Banking Committee Chairman Richard C. Shelby had already compromised on some of the issues he cared about most when he drafted legislation to permanently block states from enacting tough new financial privacy laws.

So, after the Senate passed his version of the bill (HR 2622) on Nov. 5 by an overwhelming 95-2 vote, the Alabama Republican dug in his heels. He was signaling his intention that during conference negotiations with the House he will protect provisions, such as one that would give new bank customers the power to say no to marketing materials from affiliated companies. *(Senate Vote 437, p. 2795)*

"We believe we've got a better bill in the Senate, an improved bill over the House, and we're going to stay with the Senate provisions," Shelby told reporters after the vote.

BoxScore

Bills: HR 2622 (H Rept 108-263, H Rept 108-263, Part 2), S 1753 (S Rept 108-166) — To block states from acting to protect the privacy of consumer credit information.
Latest Action: Senate passed HR 2622, after amending it with the text of S 1753, 95-2, on Nov. 5.
Next Likely Action: Conference negotiations.
Reference: Senate committee, CQ Weekly, p. 2359; House passage, p. 2228; House committee, p. 1915; House subcommittee, p. 1840; background, pp. 1840, 1206; 1996 Almanac, p. 2-43; 1970 Almanac, p. 624.

The battle over updating the 1970 Fair Credit Reporting Act (PL 91-508), which governs the credit reporting industry, has largely been won by the financial services industry, which favors a nationwide credit reporting system that allows people to obtain mortgages or other financing within minutes.

Now, lawmakers are preparing for further skirmishes as Senate and House negotiators meet to work out their differences on the bill and adopt a conference report that President Bush has indicated he will sign into law. The House passed its version of the bill on Sept. 10 by a lopsided 392-30 vote.

"Only the war for privacy has been lost," said Edmund Mierzwinski, consumer program director at U.S. Public Interest Research Group, a consumer advocacy organization. "The war for protecting victims of credit theft and protecting the rights of states in areas where they hadn't previously been pre-empted is still going on."

The single, national credit reporting standard got its start in 1996, when Congress passed a law (PL 104-208) to block states from developing their own credit reporting regulations. The financial services industry, the

White House, and most lawmakers say the wide availability of credit shows that the 1996 law has been a boon to the economy, supporting consumer spending, which accounts for almost 70 percent of U.S. gross domestic product.

Industry vs. States

Consumer groups, however, say the 1996 law strips states of their ability to protect consumers' financial information from misuse, limiting states' ability to protect the privacy of financial records and to combat identity theft. They had hoped to use expiration of the 1996 law to encourage states to enact their own laws starting next year.

But it looks as if the financial industry has prevailed. Negotiators are likely to work out their differences well before Jan. 1, 2004, when the 1996 amendments to the Fair Credit Reporting Act will expire.

"We're extremely optimistic," said Ed Yingling, executive vice president of the American Bankers Association, which has lobbied in favor of making permanent the 1996 restrictions. "The two bills are not all that different and they are based on similar language, which will make the technical part of the negotiations go faster."

The financial services industry headed off a threat on Nov. 4, when the Senate voted 70-24 to table, or kill, an amendment by California Democrats Dianne Feinstein and Barbara Boxer. It would have permitted consumers to "opt out" of information-sharing arrangements among banks, insurers and brokerage firms that are part of the same corporation. *(Senate Vote 434, p. 2795)*

That amendment was similar to a recently passed California law that would be blocked from taking effect if the overriding federal bill becomes law.

Debate now turns on narrow differences between the House and Senate measures. One provision in the Senate bill would allow new customers of a bank, brokerage or other unit of a financial company to permanently block solicitations from the company's sister divisions.

Shelby, the architect of the marketing "opt-out" provision, had intended it to last for five years, but Boxer won on an amendment to allow consumers to keep their answering machines or mailboxes from filling up with solicitations from affiliates permanently.

The House bill, meanwhile, would bar states from developing their own new identity theft laws in six areas, such as imposing requirements on how credit bureaus handle information in a credit report that is the result of identity theft.

The House and Senate bills both would allow consumers to place a "fraud alert" in their credit files. And both bills also would give consumers the right to a free copy of their credit report once a year from each of the three national credit bureaus.

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Financial Privacy Rules Set To Clear

By Siobhan Hughes, CQ Staff

Legislation headed toward President Bush's desk would extend federal consumer credit reporting rules, preventing states from imposing more restrictive regulations.

The House was expected to adopt the conference report on the bill (HR 2622 — H Rept 108-396) late the evening of Nov. 21. The Senate was expected to clear the measure before recessing for Thanksgiving. The administration supports the legislation.

The conference report was the product of intense negotiations. Banks, insurance companies and other financial institutions hailed the result as a victory. Consumer groups warned that Americans would lose privacy protections, even as they would win new powers to manage their credit profiles.

BoxScore

Bill: HR 2622 (Conference report: H Rept 108-396) — To regulate consumer credit reporting.
Latest Action: House debated HR 2622 on Nov. 21.
Next Likely Action: House to adopt and Senate to clear.
Reference: Senate passage, CQ Weekly, p. 2773; Senate committee, p. 2359; House passage, p. 2228; House committee, p. 1915; House subcommittee, p. 1840; background, p. 206; 1996 Almanac, p. 2-43; 1970 Almanac, p. 624.

"There are some important new consumer rights in the bill," said Ed Mierzwinski, consumer program director at the U.S. Public Interest Research Group. "Unfortunately, they came at the expense of the states."

Lawmakers said the legislation reflects trade-offs designed to ensure that financial institutions can continue to make loans, while still giving consumers a measure of control over the financial information.

"No one ever gets all that they want, obviously, but I think that we struck a good balance here," said Paul S. Sarbanes of Maryland, the ranking Democrat on the Senate Banking Committee.

Congress has been under pressure to update the 1970 Fair Credit Reporting Act (PL 91-508) this session in order to preserve federal credit reporting rules that expire this year. That national standard dates from the enactment of a 1996 law (PL 104-208) blocking states from setting their own credit reporting regulations.

The financial services industry and many lawmakers argue that the wide availability of credit shows that the 1996 law has been a boon to the economy, supporting consumer spending.

Two House conferees on HR 2622, Maxine Waters, D-Calif., and Bernard Sanders, I-Vt., refused to sign

the conference report.

If signed by the president, the bill would override a new California statute. Beginning in 2004, the state law would allow consumers to block financial conglomerates from sharing personal information — such as addresses and outstanding loan data — among their banking, securities and insurance divisions.

Under the federal legislation, consumers would be entitled to a free credit report annually upon request from each of the three national credit bureaus, Equifax, TransUnion and Experian. The requests would be routed through a centralized system.

Consumers would also be able to place a "fraud alert" in their credit files if they believed they were the victims of identity theft. That would serve as a "red flag" barring companies from extending loans to consumers without taking precautions, such as contacting the consumer.

The bill also would allow soldiers to place "active duty alerts" in their files to prevent fraud while they are absent.

Credit bureaus would have to take reasonable steps to investigate disputed credit information. Retailers and other companies also would be required to print only partial Social Security and credit card numbers on receipts and other documents.

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Senate Clears Credit Report Blocking Bill

By Siobhan Hughes, CQ Staff

Congress has cleared for President Bush's signature legislation designed to block states from writing their own consumer credit reporting laws and to give the financial services industry the continued certainty of a single set of national laws.

The bill, which Bush is expected to sign, would renew portions of the Fair Credit Reporting Act that pre-empt state law and were scheduled to expire Jan. 1.

California already has passed its own, more stringent consumer protection law. Bush's signature on the bill would block the California law before it can take effect.

BoxScore

Bill: HR 2622 (Conference report: H Rept 108-396) — To regulate consumer credit reporting.
Latest Action: Senate cleared HR 2622 by voice vote Nov. 22 after House adopted conference report by 379-49 on Nov. 21.
Next Likely Action: President Bush expected to sign.
Reference: Conference report debated, CQ Weekly, p. 2906; Senate passage, p. 2773; Senate committee, p. 2359; House passage, p. 2228; House committee, p. 1915; House subcommittee, p. 1840; background, p. 206; 1996 Almanac, p. 2-43; 1970 Almanac, p. 624.

The Senate cleared the conference report on the bill (HR 2622 — H Rept 108-396) by voice vote Nov. 22. The House had adopted the final version of the legislation a day earlier on a 379-49 vote. *(House Vote 667, p. 2978)*

Lenders protested that letting a federal standard lapse would create a nightmare of having to keep track of and comply with 50 different state consumer laws.

As cleared, the measure would make a few changes to current federal law, including giving consumers the right to free copies of their credit reports once a year from each of the three national credit bureaus upon request, and creation of a centralized system for processing consumers' requests.

"In addition to obtaining free reports, under this legislation consumers will be informed when negative information is added to their credit reports," said Paul S. Sarbanes of Maryland, ranking Democrat on the Senate Banking, Housing and Urban Affairs Committee. The measure "will help improve Americans' access to and understanding of information contained in their credit reports," he said.

Bank of America Corp., Wells Fargo & Co. and Citigroup are among the major beneficiaries of the legislation, which ensures that financial conglomerates will continue to be able to share information about customers — including addresses and payment habits — among their banking, securities and insurance divisions without getting the customers' permission.

Consumer groups called the bill a disappointment, even though it gave consumers guaranteed annual access to the credit files maintained by Equifax, TransUnion and Experian. The credit bureaus also were disappointed with the bill's final form, saying it will be costly for them to provide reports for free.

Since the information in credit reports is controlled by the credit companies, customers have complained about being left in the dark about their own credit histories.

Many are not aware, for instance, that some banks create their own internal credit scores and use those unique rankings when deciding whether to extend credit and how much credit to approve.

The bill aims to help reduce the growing problem of identity theft by giving consumers who think their credit information has been stolen the right to place a "fraud alert" in their files.

That would formalize a practice that is already common at credit bureaus, alerting businesses to check with the consumer before extending credit.

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2003 Legislative Summary: Financial Privacy

Bill: HR 2622 — PL 108-159.

Status: Congress easily cleared legislation that permanently blocks states from enacting laws on the privacy of personal financial information that are tougher than those of the federal government. Consumers won the right to a free copy of their credit reports once a year under the legislation, which amended the Fair Credit Reporting Act. The bill was signed into law Dec. 4.

Synopsis: Banks, credit card companies, retailers and other businesses had pressed Congress to reauthorize the 1970 Fair Credit Reporting Act (PL 91-508), which was set to expire at the end of 2003. If Congress had not acted, states could have enacted their own laws starting in 2004, making it more difficult for banks, insurers, and securities firms to swap consumer credit records. The new law overrides a stricter California statute that was set to take effect within months.

The financial services industry said making the expiring provisions permanent was essential to preserve a nationwide credit reporting standard. Consumer groups wanted Congress to let the provisions expire so that states could pass tougher standards. But Rep. Spencer Bachus, R-Ala., working with Rep. Darlene Hooley, D-Ore., helped mute the opposition by adding measures to guard against the growing problem of identity theft.

Several members of the House said they had been the victims of identity theft, and soon became involved in the legislation. Consumers won the legal right to place "fraud alerts" in their credit file, formalizing a process in place at credit reporting agencies. The bill requires companies to take precautions before extending new credit to those who describe themselves at risk of identity theft. Consumers also won the right to a free copy of their credit reports once a year from each of the major credit-reporting agencies.

Senate Banking Chairman Richard C. Shelby, R-Ala., was expected to pose an obstacle. Shelby was a co-founder of the Congressional Privacy Caucus. But he ultimately threw his support behind the bill when it included a scaled-back version of one of his chief proposals — giving consumers more power to block solicitations from other parts of a financial conglomerate with which they already do business.

A final conflict was resolved during House-Senate negotiations when conferees agreed to block states from writing new "fraud alert" statutes or enacting other identity theft measures that were addressed in the federal law. That was similar to language in the House bill, and was a disappointment to consumer groups hoping to preserve a range of state powers in the area of identity theft.

Legislative action:

House passed HR 2622 (H Rept 108-263, Parts 1, 2), 392-30, on Sept. 10.

Senate passed HR 2622, amended (S Rept 108-166), 95-2, on Nov. 5.

House adopted the conference report (H Rept 108-396), 379-49, on Nov. 21.

Senate cleared the bill by voice vote Nov. 22.

President signed PL 108-159 on Dec. 4.

Related stories: Final action, CQ Weekly, p. 2972; Senate passage, p. 2773; House passage, p. 2228; background, pp. 1840, 206.

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Fair Credit Reporting Act: A Side-By-Side Comparison of House, Senate and Conference Versions

Updated December 11, 2003

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Fair Credit Reporting Act: A Side-By-Side Comparison of House, Senate and Conference Versions

Summary

As the preemption provisions of the Fair Credit Reporting Act (FCRA) were set to expire at the end of 2003, both the House and Senate revisited the entire Act, holding a series of hearings on divergent issues related to consumer credit, the credit reporting system, and financial privacy. Legislation emerged from these hearings.

H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, was introduced by Representative Bachus on June 26, 2003, and was passed by the House on September 10, 2003. The bill included a number of provisions aimed at preventing identity theft, ensuring the accuracy of consumer credit information, and protecting consumer privacy with respect to certain information. It would have also made the FCRA's current preemption provisions permanent.

S. 1753, the National Consumer Credit Reporting System Improvement Act of 2003, was reported as an original measure by the Senate Committee on Banking, Housing and Urban Affairs on October 17, 2003. The bill included a number of provisions similar to those in H.R. 2622 and would have also made the FCRA's preemption provisions permanent. The Senate considered S. 1753 on November 4, 2003, approving several amendments to the original version as reported by the Senate Committee on Banking, Housing and Urban Affairs, including an amendment in the nature of a substitute offered by Senator Shelby. On November 5, 2003, the Senate incorporated S. 1753, as previously amended, in H.R. 2622 as an amendment. The Senate passed H.R. 2622, as amended, in lieu of passing S. 1753. Upon passage of H.R. 2622, as amended, the Senate appointed conferees. On November 6, 2003, the House appointed conferees. A conference agreement was reached and the House approved the conference report on November 21, 2003, with the Senate approving it the following day. The President signed the legislation on December 4, 2003, and it became P.L. 108-159.

This report provides an overview of legislative proceedings in each chamber and a side-by-side comparison of the major provisions of the House and Senate bills, as well as the conference report, which became P.L. 108-159. This report will not be updated.

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Fair Credit Reporting Act: A Side-By-Side Comparison of House, Senate and Conference Versions

Introduction

As the preemption provisions of the Fair Credit Reporting Act (FCRA) were set to expire at the end of 2003,[1] both the House and Senate revisited the entire Act, holding a series of hearings on divergent issues related to consumer credit, the credit reporting system, and financial privacy.[2] Legislation emerged from these hearings.

H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, was introduced by Representative Bachus on June 26, 2003. The House Financial Services Subcommittee on Financial Institutions and Consumer Credit held a markup on July 16, 2003, and the full committee completed its markup of the bill on July 24, 2003. H.R. 2622 was reported, as amended, by the Committee on September 4, 2003.[3] The House debated and passed the legislation on September 10, 2003.[4] As passed, H.R. 2622 would have amended the Fair Credit Reporting Act to make permanent the current expiring preemptions, thus preventing states from enacting and enforcing legislation related to certain issues addressed in the FCRA.[5] The bill also included a number of provisions aimed at preventing identity theft, ensuring the accuracy of consumer credit information, and protecting consumer privacy with respect to certain information.

On October 17, 2003, S. 1753, the National Consumer Credit Reporting System Improvement Act of 2003, was reported as an original measure by the Senate Committee on Banking, Housing and Urban Affairs.[6] As reported, S. 1753 included a number of provisions similar to those in H.R. 2622, including a provision to make

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[1] *See* 15 U.S.C. 1681t(d)(2).

[2] For more information on these and other issues addressed in the legislation, see the following: CRS Report RS21576, *Fair Credit Reporting Act: Frequently Asked Questions*; CRS Report RL31666, *Fair Credit Reporting Act: Rights and Responsibilities*; CRS Report RL31758, *Financial Privacy: The Economics of Opt-In vs. Opt-Out*; CRS Report RL31847, *The Role of Information in Lending: The Cost of Privacy Restrictions*; CRS Report RL32008, *A Consumer's Access to a Free Credit Report: A Legal and Economic Analysis*; and CRS Report RL31919, *Remedies Available to Victims of Identity Theft*.

[3] H.Rept. 108-263.

[4] Roll Call No. 499, 149 Cong. Rec. H8166 - H8167 (daily ed. Sept. 10, 2003).

[5] For more information on the FCRA's preemption provisions, see CRS Report RS21449: *Fair Credit Reporting Act: Preemption of State Law*.

[6] S.Rept. 108-166.

permanent the FCRA's current expiring preemptions. The Senate considered S. 1753 on November 4, 2003, approving several amendments to the original version as reported by the Senate Committee on Banking, Housing and Urban Affairs, including an amendment in the nature of a substitute offered by Senator Shelby.[7] On November 5, 2003, the Senate incorporated S. 1753, as previously amended, in H.R. 2622 as an amendment. The Senate passed H.R. 2622, as amended, in lieu of passing S. 1753.[8] Upon passage of H.R. 2622, as amended, the Senate appointed conferees The House appointed conferees on November 6, 2003.

On November 21, 2003, a conference agreement was reached.[9] The House approved the conference report the same day, with the Senate approving the report on November 22, 2003. The President signed the legislation on December 4, 2003, and it became P.L. 108-159.

The following table provides a side-by-side comparison of the major provisions of H.R. 2622, as passed by the House, H.R. 2622, as passed by the Senate, and the conference report, which became P.L. 108-159.

[7] *See* 149 Cong. Rec. S13848 - S13891 (daily ed. Nov. 4, 2003).

[8] Record Vote Number 437, 149 Cong. Rec. S13982 (daily ed. Nov. 5, 2003).

[9] H.Rept. 108-396.

Preemption of State Law

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Expiration of current FCRA preemptions	Makes the current expiring preemptions permanent. (Sec. 101)	Makes the current expiring preemptions permanent. (Sec. 611)	Makes the current expiring preemptions permanent. (Sec. 711)
Preemption of state identity theft laws	Amends the FCRA's preemption provisions to preempt state laws related to specific identity theft provisions included in the FCRA, as amended by the legislation. (Sec. 201)	No similar provision.	Amends the FCRA's preemption provisions to preempt state laws related to the truncation of credit and debit card account numbers; fraud alerts; blocking of information in credit reports; truncation of social security numbers on credit reports; free annual credit reports; and other issues related to identity theft addressed in the FCRA, as amended. (Sec. 711)

Identity Theft Provisions

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Changes of address	Requires the federal banking agencies and the National Credit Union Administration to jointly prescribe regulations for credit card and debit card issuers to ensure that certain procedures are followed to verify changes of address when requests for additional cards are received. (Sec. 201)	Requires the federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission to prescribe regulations applicable to card issuers to ensure that certain procedures are followed when the issuer receives a request for an additional card not later than 30 days after the issuer has received notification of a change of address for the same account. (Sec. 114)	Similar to the Senate provision, except requires that certain procedures are followed when the issuer receives a request for an additional or replacement card within a short period of time (during at least the first 30 days) following notification of a change of address for the same account. (Sec. 114)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Fraud alerts	Allows consumers, or persons acting on behalf of or as a personal representative of the consumer, to have one-call fraud alerts placed in their credit files if they have been, or expect that they will become, a victim of identity theft. Requires a consumer reporting agency to: 1) maintain a fraud alert in the file for at least 90 days, 2) disclose to the consumer that the consumer may request a free copy of the file, 3) exclude the consumer from any prescreeened lists for two years after the date the fraud alert is requested, and 4) refer the information regarding the fraud alert to each of the other nationwide consumer reporting agencies. Allows consumers to request extended alerts that stay in their file up to seven years. Allows an active duty military consumer to request an active duty alert to stay in their file for a period of no less than 12 months and excludes the consumer from prescreened lists for 2 years following the request. (Sec. 202)	Similar to H.R. 2622, as passed by the House, except that it requires the consumer to personally make the request for the fraud alert, and does not include a provision requiring the consumer reporting agency to automatically exclude the consumer from prescreened lists after an initial fraud alert is requested. Consumer reporting agencies, however, are required to exclude consumers from prescreened lists for seven years after the date of request for an extended alert and 12 months for active duty alerts. (Sec. 112)	Similar to the Senate provision, except allows persons acting on behalf of or as a personal representative of the consumer to place fraud alerts. Also requires that fraud alerts be provided along with any credit score generated in using that file. Consumer reporting agencies are required to exclude consumers from prescreened lists for five years after the date of request for an extended alert and two years for active duty alerts. (Sec. 112)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Truncation of credit card numbers	Prohibits the expiration date or more than the last 5 digits of a credit card number from appearing on a cardholder's electronically printed receipt. (Sec. 203)	Similar to H.R. 2622, as passed by the House. (Sec. 113)	Similar to both the House and Senate provisions. (Sec. 113)
Summary of rights of identity theft victims	Requires the Federal Trade Commission, in consultation with the federal banking agencies and the National Credit Union Administration, to prepare a model summary of the rights of consumers with respect to the procedures for remedying the effects of fraud or identity theft. Such summary must be provided to any consumer who contacts the consumer reporting agency and expresses a belief that he/she is a victim of identity theft. (Sec. 204)	Similar to H.R. 2622, as passed by the House. (Sec. 151)	Similar to both the House and Senate provisions. (Sec. 151)
Information available to victims	No similar provision.	Requires a business entity, upon request and subject to verification of the identity of the victim, provide copies of application and business transaction records evidencing any transaction alleged to be a result of identity theft to the victim, any federal, state or local governing law enforcement agency or officer specified by the victim, or to any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of the records in question. (Sec. 151)	Similar to the Senate provision. (Sec. 151)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Blocking of information resulting from identity theft	Requires consumer reporting agencies to block the reporting of any information in the file of a consumer, that the consumer identifies as information that resulted from an alleged identity theft, not later than 5 business days after the receipt of the following information: proof of identity of the consumer, a police report, identification of information in question, and confirmation that the information is not information relating to any transaction by the consumer. The consumer reporting agency must also notify the furnisher of the information in question that it may be the result of identity theft. The consumer reporting agency has the authority to rescind or decline to block under certain circumstances. (Sec. 205)	Requires consumer reporting agencies to block the reporting of any information in the file of a consumer, that the consumer identifies as information that resulted from an alleged identity theft, not later than 3 business days after the receipt of the following information: appropriate proof of the identity of the consumer, a copy of the identity theft report, and the identification of such information by the consumer. The consumer reporting agency must also notify the furnisher of the information in question that it may be the result of identity theft. The consumer reporting agency has the authority to rescind or decline to block under certain circumstances. (Sec. 152)	Similar to both the House and Senate provisions, except the information must be blocked not later than 4 business days after the receipt of the following information: appropriate proof of the identity of the consumer, a copy of an identity theft report, the identification of such information by the consumer, and a statement by the consumer that the information is not information relating to any transaction by the consumer. (Sec. 152)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Procedures for identifying possible instances of identity theft	Requires the federal banking agencies and the National Credit Union Administration, in consultation with the Federal Trade Commission, to jointly establish and maintain guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft with respect to accounts, and update such guidelines as often as necessary. Also requires these entities to prescribe regulations requiring insured depository institutions to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to customer accounts or to the safety and soundness of institutions. (Sec. 206)	Requires the federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission to establish and maintain guidelines for use by financial institutions, creditors and other users of consumer reports regarding identity theft, including regulations requiring financial institutions, creditors, and other users of consumer reports to notify the Federal Trade Commission in any case in which there has been, or is reasonably believed to have been unauthorized access to computerized or physical records which compromises the security, confidentiality, or integrity of consumer information maintained by the entity. Also, requires these agencies to prescribe regulations requiring financial institutions, creditors and other users of consumer reports to establish reasonable policies and procedures for implementing the guidelines established to identify possible risks to account holders or to the safety and soundness of the institution or customers. (Sec. 114)	Requires the federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission to jointly establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft; prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines; and prescribe regulations regarding changes of address and requests for new cards (discussed supra). Requires the guidelines to identify patterns, practices and specific forms of activity that indicate the possible existence of identity theft. (Sec. 114)
Treasury study on the use of technology to combat identity theft	Requires the Secretary of the Treasury to conduct a study on the use of biometrics and other similar technologies to reduce the incidence and cost of identity theft. (Sec. 207)	No similar provision.	Similar to the House provision. (Sec. 157)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Statute of Limitations	No similar provision.	Extends the statute of limitations under the FCRA to allow suit to be brought not later than the earlier of 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability, or 5 years after the date on which the violation that is the basis for such liability occurs. (Sec. 156)	Similar to the Senate provision. (Sec. 156)
Truncation of Social Security Numbers	No similar provision.	Allows a consumer to request that the first five digits of his or her social security number not be included on a credit report provided to the consumer by a consumer reporting agency. (Sec. 116)	Similar to the Senate provision. (Sec. 115)

Resolution of Consumer Disputes

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Coordination of consumer complaint investigations	Requires consumer reporting agencies to develop and maintain procedures for the referral of any consumer complaint alleging identity theft, or requesting a block or fraud alert. (Sec. 301)	Similar to H.R. 2622, as passed by the House. (Sec. 153)	Similar to both the House and Senate provisions. (Sec. 153)
Notice of dispute through reseller	Requires resellers, upon notification of a consumer, to determine whether disputed information is incomplete or inaccurate as a result of the reseller's act or omission, and if the information is incomplete or inaccurate as a result of the reseller's act or omission, correct the information or delete it. If the item of information is not incomplete or inaccurate as a result of the reseller's act or omission, the reseller must convey notice of the dispute to each consumer reporting agency that provided the reseller with the information in question. (Sec. 302)	No similar provision.	Similar to the House provision, but also requires consumer reporting agencies to notify the reseller in lieu of the consumer upon the completion of a reinvestigation and the reseller shall immediately reconvey such notice to the consumer. (Sec. 316)
Reasonable investigation required	Requires consumer reporting agencies to conduct a reasonable reinvestigation of the disputed accuracy of any information in a consumer's file. (Sec. 303)	No similar provision.	Same as the House provision. (Sec. 317)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Fed and FTC study on the prompt investigation of disputed consumer information	Requires the Board of Governors of the Federal Reserve System and the Federal Trade Commission to conduct a study on the extent to which, and the manner in which, consumer reporting agencies and furnishers of information are complying with the procedures, time lines, and requirements under the FCRA for the prompt investigation of the disputed accuracy of any consumer information. (Sec. 305)	No similar provision.	Similar to the House provision. (Sec. 313)

Accuracy of Consumer Records

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Reconciling addresses	Requires consumer reporting agencies to notify requesters of any substantial discrepancies in the address the agency has on file and the address the requester was given. (Sec. 401)	Similar to H.R. 2622, as passed by the House. (Sec. 316)	Similar to both the House and Senate provisions. (Sec. 315)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Prevention of repollution of consumer reports	Prohibits furnishers of information from furnishing information identified by the consumer as resulting from identity theft, unless the furnisher subsequently knows or is informed by the consumer that the information is correct. (Sec. 402)	Requires furnishers of information to have in place reasonable procedures to respond to any notification from a consumer reporting agency regarding the blocking of information resulting from identity theft, to prevent such information from being refurnished. Also requires furnishers to conduct an investigation when the furnisher receives, directly from the consumer, an identity theft report or a properly completed copy of a standardized affidavit of identity theft developed by the Federal Trade Commission. (Sec. 154)	Requires furnishers of information to have in place reasonable procedures to respond to any notification from a consumer reporting agency regarding the blocking of information resulting from identity theft, to prevent such information from being refurnished. Also prohibits furnishers of information from furnishing information identified by the consumer as resulting from identity theft, unless the furnisher subsequently knows or is informed by the consumer that the information is correct. (Sec. 154)
Disclosure of contact information	Requires the disclosure of the addresses and telephone numbers of sources of information in consumer credit reports. (Sec. 404)	No similar provision.	No similar provision.
FTC study of issues relating to the Fair Credit Reporting Act	No similar provision.	Requires the Federal Trade Commission to conduct a study on ways to improve the operation of the FCRA. Provides that the study should focus on improving the accuracy of information, requiring notification to consumers when negative information is added, and evaluating the types of information reported to consumer reporting agencies. (Sec. 317)	Same as the Senate provision. (Sec. 318)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
FTC study of the accuracy of consumer reports	Requires the Federal Trade Commission to conduct an ongoing study of the accuracy and completeness of information contained in consumer reports, and methods for improving the accuracy and completeness of such information. (Sec. 405)	No similar provision.	Same as the House provision. (Sec. 319)
Risk-based pricing notice	No similar provision.	Requires users who grant, extend, or otherwise provide credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that user, to provide a special notice to the consumer. Provides that the notice must include a statement informing the consumer that the terms offered to the consumer were set based on information from a consumer report; identification of the consumer reporting agency that furnished the report; a statement informing the consumer that the consumer may obtain a copy of a consumer report from that agency free of charge; and the contact information specified by the agency for obtaining such reports. (Sec. 311)	Similar to the Senate provision, but also includes that the notice may be provided at the time of application for, or a grant, extension, or other provision of, credit or the time of communication of an approval, except as provided by regulation. (Sec. 311)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies	Requires furnishers of information to maintain reasonable procedures designed to ensure that the information furnished is accurate. Allows consumers to dispute the accuracy of information directly with the furnisher. Requires furnishers to investigate the disputed information and report results to the consumer within a specified period of time. If the information is found to be inaccurate, the furnisher must notify each consumer reporting agency where the information was furnished and provide the correct information. (Sec. 304)	Requires the federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission to establish and maintain guidelines for furnishers of information regarding the accuracy and completeness of the information they provide, and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. (Sec. 312)	Combines provisions similar to both the House and the Senate. Accuracy guidelines are similar to the Senate provision. Ability of consumers to dispute information directly with furnishers, and the duties of furnishers after receiving notice of dispute are similar to the House provision, except the federal banking agencies, the National Credit Union Administration and the Federal Trade Commission must jointly prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute. (Sec. 312)
Addressing consumer complaints	No similar provision.	Requires the Federal Trade Commission to compile all complaints that it receives regarding the completeness or accuracy of information in a disputed consumer report, and transmit each complaint to the consumer reporting agency involved. Requires consumer reporting agencies that receive the complaints to review each complaint to determine that all legal obligations have been met, report to the FTC regarding the determinations and actions taken by the consumer reporting agency with respect to the complaints, and maintain records regarding the disposition of each complaint. (Sec. 313)	Similar to the Senate provision. (Sec. 313)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Ongoing audits	No similar provision.	Requires the Board of Governors of the Federal Reserve System to conduct ongoing audits of the accuracy and completeness of the information contained in consumer reports. Requires the Board to independently verify the accuracy and completeness of information contained in consumer reports by evaluating the information and data provided by consumer reporting agencies. (Sec. 314)	No similar provision.
Disclosure of results of reinvestigation	No similar provision.	Requires consumer reporting agencies to notify furnishers of information when information they have provided has been modified or deleted from the file of the consumer following a reinvestigation. Also requires furnishers to modify or delete from their records an item of any information disputed by a consumer that is found to be inaccurate or incomplete or cannot be verified after reinvestigation. (Sec. 315)	Similar to the Senate provision, but also allows furnishers to permanently block the reporting of an item of information disputed by the consumer, based on the results of the reinvestigation. (Sec. 314)

Use of and Consumer Access to Credit Information

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Free annual credit reports	Requires the free annual disclosure of consumer reports, by a consumer reporting agency that compiles and maintains files on a nationwide or regional basis, upon request. (Sec. 501)	Requires the free annual disclosure of consumer reports by nationwide consumer reporting agencies only if the request is made by mail or through an Internet website using the centralized system and standardized form established for such requests pursuant to the legislation. (Sec. 211)	Requires the free annual disclosure of consumer reports by nationwide consumer reporting agencies upon request, but only if the request from the consumer is made using the centralized source established for such purpose by the Federal Trade Commission. The centralized source must provide a toll free telephone number for consumers, the use of an Internet web site for making requests, and provide for requests by mail. (Sec. 211) Also requires the free annual disclosure of consumer reports by nationwide specialty consumer reporting agencies upon request pursuant to regulations prescribed by the Federal Trade Commission. A nationwide specialty consumer reporting agency is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to 1) medical records or payments; 2) residential or tenant history; 3) check writing history; 4) employment history; or 5) insurance claims. (Sec. 211)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Disclosure of credit scores	Requires consumer reporting agencies, upon the request of a consumer for a credit score, to provide the consumer with a statement indicating that the information and credit scoring model may be different from the credit score used by the lender. Requires the consumer reporting agency to also provide the consumer with a notice, which shall include the following information: the consumer's current or most recent credit score, the range of possible credit scores under the model used, the key factors that adversely affected the consumer's credit score, the date the credit score was created, and the name of the person or entity that provided the credit score or credit file upon which the credit score was created. Allows for a reasonable fee to be charged for the disclosure of the credit score. (Sec. 502) Requires mortgage lenders to make additional disclosures regarding credit scores. (Sec. 502)	Requires the disclosure of credit score information in connection with an application for an extension of credit for a consumer purpose that is to be secured by a dwelling. Requires the disclosure of information similar to that required in the disclosure notice under H.R. 2622. (Sec. 212)	Similar to the House provision. (Sec. 212)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Disclosures regarding the right to opt-out of prescreened lists	Expands on the current notification provisions under the FCRA to require persons who use consumer reports for prescreening purposes to notify consumers, in a simple and easy to understand format, of their right to opt out of prescreened lists. (Sec. 503)	Expands on the current notification provisions under the FCRA to require persons who use consumer reports for prescreening purposes to provide to the consumer a statement including the address and toll-free telephone number where they may request to be excluded from prescreened lists. The statement must be presented in such a format and in such type size and manner as established by the Federal Trade Commission, in consultation with the federal banking agencies and the National Credit Union Administration. The consumer's election to be excluded from such lists shall be effective for seven years. (Sec. 213)	Similar to the Senate provision, except that duration of election is five years. (Sec. 213)
Disclosures to consumers regarding negative information	Requires furnishers of information to notify consumers in writing when negative information is being reported. Allows the financial institution to submit additional negative information to a consumer reporting agency with respect to the same transaction, extension of credit, account, or consumer without providing additional notice to the consumer. (Sec. 504)	No similar provision.	Same as the House provision. (Sec. 217)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
FTC study on credit scores	Requires the Federal Trade Commission, in consultation with the Department of Housing and Urban Development, to conduct a study of (1) the effects of the use of credit and credit-based insurance scores on the availability and affordability of financial products/services, (2) the degree of causality between the factors considered by credit score systems and the quantifiable risks and actual losses experienced, (3) the extent to which credit and credit-based insurance scores result in disparate impact on a variety of social groups, and (4) the extent to which businesses use credit scoring systems, the factors considered by these systems, and the effects of variables not considered. (Sec. 505)	Requires the Federal Trade Commission to conduct a similar study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products. (Sec. 215)	Similar to both the House and Senate provisions, but also includes participation by the Board of Governors of the Federal Reserve System. (Sec. 215)
GAO study on discrimination and the credit system	Requires the Comptroller General to conduct a study of the credit system to determine the extent to which discrimination exists with regard to the availability and terms of credit. (Sec. 506)	No similar provision.	No similar provision.
Fed study on restricting offers of credit or insurance	Requires the Board of Governors of the Federal Reserve System to conduct a study on the ability of consumers to avoid receiving written offers of credit/insurance not initiated by the consumer, and the potential impact on consumers of placing further restrictions on such offers. (Sec. 507)	No similar provision.	Similar to the House provision. (Sec. 213)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Financial literacy	Requires the Comptroller General to conduct a study on methods for improving financial literacy among consumers, and to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process. (Sec. 508)	Establishes a financial literacy and education commission which shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy and education programs, grants, and materials of the federal government, including curricula for all Americans. (Title V)	Similar to the Senate provision, but also includes a provision for the Secretary of the Treasury to develop, implement, and conduct a pilot national public service multimedia campaign to enhance the state of financial literacy and education in the United States. (Title V)
Disclosures regarding increase in APR	Requires credit card issuers to clearly and conspicuously disclose to the consumer the ability of the issuer to increase any annual percentage rate (APR) applicable to a credit card account, or to remove or increase any introductory APR for reasons other than actions or omissions of the card holder that are directly related to such account. (Sec. 509)	No similar provision.	No similar provision.

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Affiliate information sharing	No similar provision.	Amends the FCRA to add a new section addressing the sharing of information among affiliates for marketing purposes. Provides that such information may not be used to make a solicitation for marketing purposes, unless it is clearly and conspicuously disclosed to the consumer that the information may be exchanged for such purposes, and the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations. Specifies that a consumer's request to opt out be effective permanently unless the consumer revokes the request. Allows for some exemptions, including persons using information for marketing solicitation purposes to consumers with whom persons have a pre-existing business relationship. (Sec. 214)	Similar to the Senate provision, except limits the effectiveness of the consumer's election to five years and adds new exemptions for persons using the information for marketing solicitation purposes. Also includes a provision exempting the use of information to send a solicitation to a consumer, if such information was received prior to the date on which persons are required to comply with regulations implementing the opt-out requirement. (Sec. 214)
Disposal of consumer report information and records	No similar provision.	Requires the Federal Trade Commission to promulgate regulations requiring any person that maintains or otherwise possesses consumer information or any compilation of consumer information derived from consumer reports for a business purpose to properly dispose of any such information or compilation. (Sec. 216)	Similar to the Senate provision, except also requires the participation by and coordination with the federal banking agencies, National Credit Union Administration and the Securities and Exchange Commission. (Sec. 216)

Use and Sharing of Medical Information

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Definition of medical information	No similar provision.	Amends the definition of medical information in the FCRA to read as follows: "The term medical information means information or data, other than age or gender, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to (1) the past, present, or future physical, mental, or behavioral health or condition of an individual; (2) the provision of health care to an individual; or (3) the payment for the provision of health care to an individual." (Sec. 411)	Similar to the Senate provision. (Sec. 411)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Protection of medical information	Prohibits consumer reporting agencies from issuing reports containing medical information for employment purposes, or in connection with a credit or insurance transaction, unless (1) if the report is furnished in connection with an insurance transaction, the consumer affirmatively consents; (2) if the report is for employment purposes or in connection with a credit transaction, the information is relevant to the employment or credit transaction, and the consumer provides specific written consent; or (3) the information pertains solely to debts arising from the receipt of medical services, products, or devices and such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices. (Sec. 701)	Prohibits consumer reporting agencies from issuing reports containing medical information for employment purposes, or in connection with a credit or insurance transaction, unless (1) if the report is furnished in connection with an insurance transaction, the consumer affirmatively consents; (2) if the report is for employment purposes or in connection with a credit transaction, the information is relevant to the employment or credit transaction, and the consumer provides specific written consent; or (3) such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices; or the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance. (Sec. 411)	Same as the House provision. (Sec. 411)
Use of medical information by creditors	Prohibits creditors from obtaining or using medical information about a consumer when determining eligibility for credit. (Sec. 701)	Similar to H.R. 2622, as passed by the House. (Sec. 411)	Similar to the House and Senate provisions. (Sec. 411)
Exchange of medical information among affiliates	Prohibits the exchange of medical information among affiliates. (Sec. 701)	Similar to H.R. 2622, as passed by the House. (Sec. 411)	Similar to the House and Senate provisions. (Sec. 411)

	H.R. 2622, as passed by the House	H.R. 2622, as passed by the Senate	Conference Report (P. L. 108-159)
Confidentiality of medical information in credit reports	Requires a person whose primary business is providing medical services, products, or devices and who furnishes information to a consumer reporting agency to notify the agency of his or her status as a medical information furnisher. Prohibits the inclusion of the name, address, and telephone number of any medical information furnisher in a credit report provided to a person other than the consumer, unless (1) such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices; or (2) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance. (Sec. 702)	Same as H.R. 2622, as passed by the House. (Sec. 412)	Same as both the House and Senate provisions. (Sec. 412)