SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION

HEARING ON
OVERSIGHT OF TELEMARKETING PRACTICES
AND THE CREDIT REPAIR ORGANIZATIONS ACT (CROA)

July 31, 2007

Testimony of:

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INTRODUCTION

Mr. Chairman and members of the Committee, I am Robin Holland, Senior Vice President, Global Operations for Equifax. I want to thank you for this opportunity to testify regarding the Credit Repair Organizations Act, frequently referred to as CROA. I commend your efforts, Mr. Chairman, the members of the Committee and your excellent staff for taking up the long-overdue issue of CROA reform.

In this statement, I briefly describe Equifax; the original reasons for CROA's enactment; the credit monitoring products that Equifax has developed since the passage of CROA to assist consumers to understand their credit histories and to protect their credit histories from fraud and identity theft; and the CROA reforms that, we believe, should be put into place to protect these vital credit monitoring services and to protect consumers.

EQUIFAX

Founded in 1899, Equifax is the oldest, the largest, and the only publicly traded of the national companies that provide consumer information for credit and other risk assessment decisions. As one of the three "national" credit bureaus, Equifax's activities are highly regulated under the Fair Credit Reporting Act (FCRA) and dozens of other related federal and state statutes. Equifax is a responsible steward of sensitive consumer information and, as such, is committed to consumer privacy. We have been steadfast in working with governments, consumers, and businesses to forge effective solutions to complex information and privacy issues. Equifax believes that the marketplace can offer solutions that enlighten, enable and empower consumers. Equifax has developed products, such as credit monitoring products, which directly assist consumers in understanding their credit files and in empowering them to prevent identity theft and to manage their financial health.

THE CREDIT REPAIR ORGANIZATIONS ACT (CROA)

In 1996, Congress enacted CROA to address the consumer threat posed by credit repair organizations, commercial entities which charge consumers for providing services that purportedly would improve a consumer's credit record, credit history or credit rating. In our view, promising to alter or remove negative, but accurate and timely, information from a consumer's credit report constitutes an unfair and deceptive practice that ultimately undermines consumer confidence in the credit reporting system. In order to protect the integrity of the credit reporting system, consumer reporting agencies, including Equifax and the other national credit bureaus, urged Congress to enact CROA to attempt to stop these entities from making false promises to consumers about their ability to change or alter accurate and timely data contained in credit reports. CROA imposed a number of appropriately harsh requirements on credit repair organizations, including consumer disclosures about the limits of any possible changes to a credit file.

Thus, CROA's intent is to protect consumers from paying money for a service which, almost by definition, cannot be provided and indirectly, at least, protect consumer reporting agencies and legitimate consumer reporting activities from the deceptive and fraudulent actions of credit repair organizations. Ironically, by crafting an intentionally broad definition of "credit repair organization", CROA's definition of a credit repair organization (any entity which, directly or indirectly, purports to "improve" a consumer's credit record) has bee misread to cover credit monitoring products offered by consumer reporting agencies – the very entities that originally sought passage of the legislation.

CREDIT MONITORING

Accurate credit reports are important to individual consumers and to the economy. Individual consumers who fall victim to identity theft can be denied employment or credit and may be forced to expend significant resources correcting fraudulent credit report information. Further, identity theft ends up costing financial institutions, including the national credit bureaus, well in excess of $1 billion annually. The Federal Trade Commission (FTC) recommends that consumers regularly review their credit report files to help guard against identity theft.

As public awareness and concern grows over the risk of identity theft, the national credit bureaus have developed products to assist consumers to monitor their credit files and to detect and to prevent identity theft.

The market for providing credit monitoring products is highly competitive in both product features and price. Credit monitoring products offered by the national credit bureaus are widely popular with consumers and recognized as a highly effective consumer protection service by federal and state consumer protection agencies. These products give consumers a first line of defense against identity theft, and are routinely made available to victims of security breaches. Indeed, credit monitoring has become a staple requirement of most state security breach notification laws. The FTC has explicitly endorsed credit monitoring as part of a consumer strategy to protect against identity theft.

Equifax offers several credit monitoring products, including:

- <u>Equifax Credit Watch Silver</u>: provides consumers with weekly credit monitoring of their Equifax credit file, one copy of their Equifax Credit Report™, and identity theft insurance in the amount of $2,500 per consumer, with a $250 deductible (not available to consumers in New York), to cover injuries arising from an occurrence of identity theft (subject to limitations and exclusions).

- <u>Equifax Credit Watch Gold</u>: provides consumers with daily credit monitoring of their Equifax credit file, unlimited copies of their Equifax Credit Report™, and identity theft insurance in the amount of $20,000 per consumer (not available to consumers in New York) to cover injuries arising from an occurrence of identity theft (subject to limitations and exclusions).

- Equifax Credit Watch Gold with 3-in-1 Monitoring: provides consumers with daily credit monitoring of their Equifax, Experian and Trans Union credit files, unlimited copies of their Equifax Credit Report™, a 3-in-1 Credit Report which provides consumers with their credit history as reported by the three major credit reporting agencies, and identity theft insurance in the amount of $20,000 per consumer (not available to consumers in New York) to cover injuries arising from an occurrence of identity theft (subject to limitations and exclusions).

- Score Watch™: provides consumers with continuous monitoring of their FICO® credit score and notification when a change in their FICO score impacts the interest rate they are likely to receive, detailed explanations for key score changes and specific tips for understanding their score, daily credit monitoring of their Equifax credit file, and two free Score Power® (which include the consumer's Equifax Credit Report™ and FICO credit score).

THE NEED FOR CROA REFORM

CROA was enacted before any of these recently developed positive and popular consumer education and credit file monitoring products were created. Unfortunately, a broad (and, ultimately, incorrect) interpretation of CROA could include consumer reporting agencies and their credit monitoring products under the definition of credit repair organizations. Inclusion of consumer reporting agencies under CROA restrictions would inappropriately restrict and complicate consumer access to credit file monitoring products and to the beneficial features offered by these products.

Without CROA reform, plaintiffs' class action suits threaten the viability of credit monitoring products. Under CROA, these suits could require the disgorgement of all revenues from the sale of the monitoring products. Several of the first wave of these kinds of lawsuits has been settled, but this kind of litigation is an ongoing threat and, if successful, could drive credit monitoring products from the marketplace or, at the very least, adversely distort their pricing and delivery.

CROA, quite rightly, prohibits the collection of fees before completing the promised service. This requirement is appropriate for credit repair organizations but inappropriate for credit monitoring products which customarily are sold through instant online delivery and an annual subscription.

Further, CROA requires that covered entities provide prospective consumer subscribers with notices that address the inability of credit repair organizations to remove adverse, but accurate, data from a credit report. Warnings against the deceptive practices of credit repair organizations would be confusing and inappropriate if given to a consumer seeking credit monitoring products.

Further, credit repair organizations are subject to a number of appropriately harsh and specific penalties, including a requirement to disgorge all revenues if CROA is violated. These penalties are not appropriate for credit monitoring products.

PROPOSED LEGISLATION TO REFORM CROA

Enforcement authority under CROA was placed with the Federal Trade Commission (FTC). The FTC staff states that it sees no basis for subjecting the sale of credit monitoring and similar educational products and services to CROA.

As you know, the bipartisan House bill (H.R. 2885) being offered by Representatives Paul E. Kanjorski (D-PA) and Ed Royce (R-CA) provides that an entity providing legitimate credit monitoring products, and not credit repair services, would not fall within the definition of a credit repair organization and, therefore, would not be subject to CROA. The bill would also provide for a complete and detailed notice to be sent to consumers on their rights under the Fair Credit Reporting Act, including a right to a free report.

In addition, the House bill guarantees subscribers to credit monitoring products a *pro rata* refund in the event that they cancel their service.

CONCLUSION

CROA reform is straight-forward and narrowly tailored to simply effectuate Congress' intent to apply CROA to credit repair organizations and not to other products and services that did not even exist in 1996 and which benefit, rather than harm, consumers. The fraudulent efforts of credit repair agencies harm consumers and the safety and soundness of the credit system. The objective of CROA always was and is to target companies which engage in fraudulent practices such as promising to delete accurate information from a consumer's credit report.

CROA reform, as proposed in the House bill, does not provide a *per se* exemption from CROA for consumer reporting agencies, based simply on their status as consumer reporting agencies. Rather, entities are exempt from CROA only if they do not engage in credit repair activities. Thus, CROA reform does not, in any way, weaken consumers' protections from deceptive practices enforced by the FTC and State Attorneys General which address the activities of credit repair organizations or address unfair or deceptive practices involving credit repair services.