PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

THE FAIR CREDIT REPORTING ACT

Before the

FINANCIAL INSTITUTIONS AND

CONSUMER CREDIT SUBCOMMITTEE

of the

HOUSE FINANCIAL SERVICES COMMITTEE

Washington, D.C.

June 4, 2003

I. Introduction

Mister Chairman and members of the Subcommittee, my name is Howard Beales, and I am Director of the Bureau of Consumer Protection of the Federal Trade Commission ("Commission" or "FTC"). I am pleased to have this opportunity to provide background on the Fair Credit Reporting Act ("FCRA").[1] The Commission has played a central role in interpreting and enforcing the FCRA since the law was enacted in 1970. I appreciate the opportunity to discuss the FCRA and its role in regulating credit report information.

II. Consumer Credit Reporting

The development of consumer credit was a phenomenon of the post-World War II years. Prior to that time, consumer credit relationships were largely personal because many consumers lived in one place all their lives and dealt only with local merchants and banks. After WWII, the American population grew and became vastly more mobile. Consumer credit also exploded for many reasons, including pent-up demand for consumer goods and services and fading of the cash-only Depression psychology. At the same time there was an increased demand for home ownership. In response, the government supported the growth of a long-term consumer credit market. For all these reasons, the amount of consumer credit outstanding has grown

[1] While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

exponentially.[2] Indeed, consumer spending accounts for over two-thirds of U.S. gross domestic product and consumer credit markets drive U.S. economic growth.[3]

The credit reporting industry developed in tandem with the burgeoning of consumer credit. Early on, credit reporting was local or regional and relatively unsophisticated; the amount of information collected was limited and not standardized. Credit bureaus (consumer reporting agencies)[4] manually recorded consumer information on index cards, updated irregularly, and often retained indefinitely. Over time, however, small credit bureaus grew to become large repositories of information on consumers.[5]

Today, the credit reporting system, consisting primarily of three main credit bureau repositories, contains data on as many as 1.5 billion credit accounts held by approximately 190 million individuals.[6] Creditors and others voluntarily submit this information to centralized,

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[2] In 1946, the beginning of the post-war period, total outstanding consumer credit stood at $55 billion; by 1970, the time of enactment of the FCRA, it had grown to $556 billion. [Figures adjusted for inflation.] Today it is $ 7 trillion. *See* Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, at 1.

[3] *Id.* at 8.

[4] "Consumer reporting agency" is the term used in the FCRA, and reflects the fact that consumer information is collected and reported for a variety of purposes in addition to credit transactions. In common terminology, however, the agencies are known as "credit bureaus" or "credit reporting agencies." (Similarly, "credit report" and "credit history" are commonly-used non-technical terms for "consumer report.") The term "repository" is most often reserved for the large, national bureaus that collect and store information on over 190 million consumers. The "repository" agencies, in turn, are sometimes referred to as the "big three," in recognition of the three major companies that have predominated for several years – Equifax, Experian, and Trans Union. A fourth company, Innovis Data Services (an affiliate of CBC Companies), also maintains "a national database of consumers with unfavorable current or past credit histories." *See* http://www.innovis-cbc.com/products.htm.

[5] For a more complete recitation of the early history of the consumer reporting industry, *see* Retail Credit Co., 92 F.T.C. 1 at 134-36 (1978).

[6] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 49.

nationwide repositories. Lenders analyze this data and other information to develop sophisticated predictive models to assess risk, as reflected in the consumer's credit score.[7] The flow of information enables credit grantors to make more expeditious and accurate credit decisions, which benefits consumers as a whole. These benefits are illustrated by a study of credit bureau files that found that nearly 20% of the currently-reported active accounts had been open for less than 12 months.[8]

The modernization of credit reporting has played a key role in providing American consumers rapid access to consumer credit. It was not that many years ago that applying for credit required a personal visit to a loan officer. The loan officer, if he did not know you personally, contacted your references, including other creditors, before making a decision on your application. If you were new to the community or applying for credit for the first time, you might get turned down or be approved for only a small, entry-level loan. The decision would often take days and would be based solely on the judgment of the loan officer.

By contrast, consumers today can use the internet from the comfort of their home to comparison shop for a wide array of credit products and get a virtually instantaneous offer, including rate and other terms. Or, they can obtain a five-figure loan from an auto dealer they have never been to before and drive a car away from the showroom the same day. In each instance, their eligibility for the lowest rate or most favorable terms depends on a sophisticated

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[7] Scoring products are based on analyses of historical consumer credit data, which allow creditors to develop models that help them predict the risk of default of a particular consumer. (The products are thus sometimes referred to as "risk scores" or "credit scores.") When the consumer applies for credit or other goods or services, the scoring programs that are developed from the complex analysis of past data compare the scoring factors to the individual information of the particular consumer, with the result reflected in a score that is generated for that application.

[8] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 52, table 2 ("All credit accounts and balances...").

credit scoring system that produces rapid, reliable scores based on information from a consumer report.

Chairman Greenspan of the Board of Governors of the Federal Reserve System put it well when he recently testified before the full Committee that "...there is just no question that unless we have some major sophisticated system of credit evaluation continuously updated, we will have very great difficulty in maintaining the level of consumer credit currently available because clearly, without the information that comes from various credit bureaus and other sources, lenders would have to impose an additional risk premium because of the uncertainty before they make such loans or may, indeed, choose not to make those loans at all. So it is clearly in the interests of consumers to have information continuously flowing into these markets. It keeps credit available to everybody, including the most marginal buyers. It keeps interest rates lower than they would otherwise be because the uncertainties which would be required otherwise will not be there."[9]

Before describing some of the primary elements of the FCRA, let me describe briefly how the consumer reporting system works in this country today. Creditors voluntarily report account histories to consumer reporting agencies.[10] Typically, creditors report full account payment information, both "positive" information that the account is current, as well as "negative" information, such as delinquencies and collection accounts.[11] This contrasts with practices in

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[9] Remarks following testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee, at

[10] Each of the three national credit reporting companies receives more than 2 billion items of information each month. *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 49.

[11] Although the majority of creditors report full account information, some types of accounts are typically reported only when the payment history turns negative, most often when the debt is transferred to a debt collector. Accounts related to medical debts, telecommunications, and power companies are the most common examples. *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve*

some other countries (and, indeed, with some credit bureaus in the early years of their development in this country) where only negative payment history is reported.[12]

Although the credit reporting industry has developed uniform reporting formats and methods,[13] not all creditors necessarily report to all major repositories. Moreover, credit reporting agencies have different schedules and procedures to augment individual consumer files with updated data from creditors. Consumer reporting agencies also obtain information from other sources, such as public record data. For all of these reasons, at any given point in time, each of the credit reports on an individual as supplied by the three major repositories may contain somewhat different information.[14] As a result, in the residential mortgage market, for example, creditors use credit reports produced by resellers who consolidate the data available from the three major repositories.

When a consumer applies for credit, lenders obtain consumer reports by providing identifying information on the consumer to the credit bureau. The credit bureau provides a full report listing all accounts and payment histories and/or a credit score, which is a numerical

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Bulletin, February 2003, at 50, 68. To the extent that consumers have positive payment history only from non-traditional credit such as rent and utilities, this may limit their access to credit.

[12] *See, e.g.,* The World Bank, "World Development Report 2002," at 95 (2002); John M. Barron and Michael Staten, "The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience," at 14, available online at http://www.privacyalliance.org/resources/staten.pdf (2000) (comparing the U.S. comprehensive credit reporting system to the Australian negative-information-only system).

[13] *See* http://www.cdiaonline.org/data.cfm for information on the uniform reporting format utilized by most creditors and other furnishers of information to consumer reporting agencies.

[14] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 50-51, 70-71.

classification based on information in the consumer report.[15] The credit agencies also handle other functions (including those required by the FCRA, such as responding to consumer disputes) through uniform industry processes.[16] The importance of these additional functions has grown along with concerns about identity theft,[17] because credit reporting agencies play a major role in limiting the damage and correcting the fraudulent records that identity thieves leave behind.

III. FCRA Overview

A. Background

Along with the growth of consumer credit, and the parallel development of consumer reporting agencies, concerns began to surface about the treatment of consumer information in credit reporting. The credit reporting industry had evolved piecemeal, and there was little consistency in methods of data collection or, before the FCRA, standards of retention or accuracy. For example, there were no federal legal restrictions on access to consumer credit data, so reporting agencies were free to share a wide range of information with credit grantors and

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[15] Between 2 and 3 million consumer reports are issued by credit bureaus each day. *See* http://www.cdiaonline.org/about.cfm. For a brief description of scores, *see* Note 7, *supra*.

[16] The Consumer Data Industry Association (CDIA) is a trade association for major consumer reporting agencies. Among other steps to promote standardized automated procedures between and among consumer reporting agencies and furnishers of information to agencies, CDIA oversees a system for credit bureaus to forward consumer disputes to furnishers for investigation. Disputes are forwarded on standardized Automated Consumer Dispute Verification (ACDV) forms. The system now has a web-based component, E-OSCAR, that is intended to further enhance the flow of consumer disputes, update information, and other data. The automated dispute system not only provides a uniform format for conveying the disputes, it also serves an implicit authenticating function – a creditor who receives a consumer dispute via the system knows that the forwarding entity has been approved by CDIA for use of the system.

[17] Identity theft occurs when someone commits fraud by using another person's identifying information, such as date of birth, social security number, or credit account numbers. The fraud could include applying for or using credit in another's name, obtaining bank loans, employment, utility services (including cell 'phones), or similar illegal conduct in the "true name" identity of the consumer whose information was misappropriated.

others, without regard to the purpose for which the information was sought. Consumer awareness of credit reports was low due in part to the fact that users of reports were contractually prohibited by credit bureaus from disclosing the reports to consumers.[18] Even if a consumer could learn what was in his or her credit report, there was no way for the consumer to challenge erroneous information.

In response to rising concerns about the consumer reporting system, and recognizing its importance to business and consumers, Congress held hearings that resulted in passage of the FCRA to provide a framework for the industry and to secure protections for consumers. In enacting the FCRA, Congress specifically recognized that consumer credit "is dependent upon fair and accurate credit reporting."[19]

The 1970 FCRA imposed duties primarily on consumer reporting agencies, with very limited requirements on those that use credit reports, and no provisions aimed at those who furnished information to the reporting agencies.

The consumer reporting industry and the consumer credit economy changed tremendously in the decades following the enactment of the FCRA. The computerization of credit histories into vast databases accelerated markedly. The industry further consolidated, eventually comprising three major credit bureau repositories that maintain large, automated databases of consumer

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[18] Congress was especially concerned about this lack of awareness in the context of "investigative consumer reports" – reports on a consumer's character, general reputation, personal characteristics, or mode of living, obtained through personal interviews with neighbors, friends, or associates of the consumer – and thus provided special notice and disclosure requirements, together with other provisions, for investigative reports. Section 606 of the FCRA; 15 U.S.C. § 1681d.

[19] Section 602(a)(1), the Congressional findings and statement of purpose for the FCRA. 15 U.S.C. § 1681(a)(1).

information, and a limited number of other agencies.[20] Logistical challenges associated with increased computerization and further changes in the industry led to an increase in complaints about mixed files – inclusion in a single file of information belonging to two or more different individuals – and other consumer report inaccuracies. More generally, the American public has become increasingly aware of privacy issues related to personal information.

In 1996, after several years of legislative consideration, Congress passed significant amendments to the FCRA. The amendments built on the core elements of the original FCRA and provided added protections to consumers in several key areas. The amendments also permitted greater sharing of consumer report information by affiliated companies under certain conditions,[21] and granted more flexibility to creditors and insurers in making prescreened offers, *i.e.*, obtaining lists of consumers based on consumer report information, in order to make offers of credit or

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[20] At present, the three largest bureaus are Trans Union, Experian (formerly owned by TRW), and Equifax. Although some local bureaus still remain, most are affiliated in some fashion with one of the "big three" repositories. The industry has also witnessed the emergence of companies that collect and report specialized information such as check writing histories, rental records, and employment applications. The 1990's saw the growth of "resellers," consumer reporting agencies that purchase consumer information from one or more of the major repositories and then resell it, usually after re-formatting, categorizing, or otherwise treating the information. All of these entities are covered by the FCRA.

[21] Section 603(d)(2)(A)(iii) exempts from the FCRA communication of information among affiliates, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated and the consumer is given the opportunity to opt out of such information sharing. 15 U.S.C. § 1681a(d)(2)(A)(iii).

insurance to consumers who the offeror deems qualified.[22] Let me briefly review some of the important elements of the FCRA as it stands today, thirty-three years after its original passage.

B. Key FCRA Provisions

As I discussed earlier, the FCRA establishes a framework that enables businesses to engage in the information exchanges necessary for the proper functioning of the credit markets. At the same time, it provides corresponding consumer protections in two vital areas – privacy and accuracy. It is important to keep in mind that, notwithstanding its title, the Fair Credit Reporting Act has always covered more than what are conventionally termed "credit reports." It applies generally to any information collected and used for the purpose of evaluating consumers' eligibility for products and services that they want. Thus, the FCRA has always applied to insurance, employment, and other non-credit consumer transactions.[23] The focus here will be on credit reporting, but the same basic regulatory structure applies to all consumer reports.

1. Privacy

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[22] Prescreened offers, which are discussed in more detail below, are unsolicited "firm offers" of credit or insurance that are based on information from consumer reports. Generally they take the form of lists of consumers to whom credit grantors make offers of credit – the most obvious example is mailed promotions of credit cards. These lists are assembled by credit bureaus based on criteria set by the credit grantor; the bureau screens its consumer files (except those that have opted out of prescreened offers) for all consumers who meet the creditor's criteria. Generally speaking, the FCRA requires that all consumers who survive the prescreen must receive a "firm offer" of credit. Prescreened lists are thus an exception to the general rule that credit reports can be furnished only when a consumer initiates a transaction or has a preexisting relationship with the creditor seeking a copy of the report. *See* H. Rep. 103-486, 103rd Cong., 2nd Sess., 32-33 (1994).

[23] "It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information..." Section 602(b) of the FCRA; 15 U.S.C. § 1681(b).

As recognized by Congress in its initial passage of the FCRA, the confidentiality of consumer report information is a fundamental principle underlying the statute.[24]

a. Permissible purposes

The FCRA is designed to protect consumer privacy in a number of ways. Primarily, it limits distribution of credit reports to those with specific, statutorily-defined "permissible purposes."[25] Generally, reports may be provided for the purposes of making decisions involving credit, insurance, or employment.[26] Consumer reporting agencies may also provide reports to persons who have a "legitimate business need" for the information.[27] Under the FCRA, government agencies are treated like other parties – that is, they must have a permissible purpose

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[24] The congressional findings note the "...need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." Section 602(a)(4); 15 U.S.C. § 1681(a)(4). Under the "reasonable procedures" portion of the statement of purpose for the FCRA, Congress noted the importance of the "confidentiality" of consumer report information. Section 602(b); 15 U.S.C. § 1681(b).

[25] What constitutes a "consumer report" is a matter of statutory definition (Section 603(d); 15 U.S.C. § 1681a(d)) and case law. Among other considerations, to constitute a consumer report, information must be collected or used for "eligibility" purposes. That is, the data must not only "bear on" a characteristic of the consumer (such as credit worthiness, credit capacity, character, general reputation, or mode of living), it must also be *used* in determinations to grant or deny credit, issue insurance, make employment decisions, or make other determinations regarding permissible purposes. Trans Union Corp. v. FTC, 81 F.3d 228, 234 (D.C. Cir. 1996).

[26] Section 604(a)(3); 15 U.S.C. § 1681b(a)(3). Credit reports may also be furnished for certain on-going account-monitoring and collection purposes.

[27] 15 U.S.C. § 1681b(a)(3)(F). *See also* Note 33, *infra*, and text accompanying.

to obtain a credit report.[28] The written instructions of the consumer may also provide a permissible purpose for a consumer reporting agency to furnish a credit report.[29] Under the FCRA, target marketing – making unsolicited mailings or telephone calls to consumers based on information from a credit report – is generally not a permissible purpose.[30] In a 1992 Commission action to enforce the FCRA against a consumer reporting agency that sold target marketing lists assembled using consumer report information, the court of appeals held that "...a major purpose of the Act is the privacy of a consumer's credit-related data."[31] If consumer information is "so sensitive as to rise to the level of a consumer report," then it must "...be kept private except under circumstances in which the consumer could be expected to wish otherwise or, by entering into

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[28] Under Section 608 of the FCRA, government entities may obtain limited identifying information (name, address, employer) without a "permissible purpose." 15 U.S.C. § 1681f. The FCRA additionally now contains express provisions on government use of consumer reports for counterintelligence and counter-terrorism. Sections 625 and 626, respectively; 15 U.S.C. §§ 1681u, 1681v.

[29] Other permissible purposes specified in the FCRA include (1) in response to an order of a court or a Federal grand jury subpoena; (2) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; and (3) in response to a request by the head of a state or local child support enforcement agency if the person making the request certifies to the credit bureau that certain conditions are met (and in certain other child support circumstances). Section 604(a); 15 U.S.C. § 1681b(a).

[30] Prescreening, discussed more fully below at notes 35-41 and accompanying text, is a form of target marketing for firm offers of credit or insurance, for which the FCRA now provides an explicit permissible purpose keyed to adherence to statutory procedures, including affording consumers the opportunity to opt out of future prescreened solicitations. *See also* note 22, *supra*.

[31] Trans Union Corp. v. FTC, 81 F.3d 228, 234 (D.C. Cir. 1996). The Trans Union case has a long history. The Commission issued an administrative complaint in 1992, and a Commission administrative law judge ("ALJ") granted summary judgment to complaint counsel, and was affirmed by the full Commission. 118 F.T.C. 821 (1994). On appeal, the case was remanded back to the ALJ for a trial. Trans Union Corp. v. FTC, 81 F.3d 228 (D.C. Cir. 1996). After a trial, the ALJ issued another decision in the Commission's favor, which was affirmed by the full Commission. ____ F.T.C. ___ (2000). This decision was affirmed by the U.S. Court of Appeals for the D.C. Circuit , and certiorari was denied by the Supreme Court. Trans Union Corp. v. FTC, 245 F.3d 809, *reh. denied* 267 F.3d 1138 (D.C. Cir. 2001), *cert. denied*, 122 S. Ct. 2386 (June 10, 2002).

some relationship with a business, could be said to implicitly waive the Act's privacy to help further that relationship."[32]

The 1996 amendments added provisions that reflected Congress' awareness of increased public concern about the privacy of personal information. For example, Congress added, for the first time, an express provision stating that the "legitimate business need" permissible purpose requires that the transaction be "initiated by the consumer."[33] Congress also added express language prohibiting any person from *obtaining* a consumer report without a permissible purpose.[34]

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[32] *Id.*

[33] Section 604(a)(3)(F)(i); 15 U.S.C. 1681b(a)(3)(F)(i). The review of an account "to determine whether the consumer continues to meet the terms of the account" supplies the other "legitimate business need" of this permissible purpose. Section 604(a)(3)(F)(ii); 15 U.S.C. 1681b(a)(3)(F)(ii).

[34] The 1970 FCRA prohibited consumer reporting agencies from *furnishing* consumer reports to those who do not have a permissible purpose, but there was no analogous provision aimed at those who obtained consumer reports (with the exception of a criminal provision imposed on those who obtained information on a consumer "under false pretenses." Section 619, 15 U.S.C. § 1681q).

b. Consumer right to opt out of prescreening.

The 1996 amendments also added an express permissible purpose for prescreening. As noted above, prescreened offers are unsolicited offers of credit or insurance that are made (typically in mass mailings) to consumers who were selected for the offer based on information in their credit reports. Prior to the 1996 amendments, the FCRA did not specifically address the use of consumer reports for such unsolicited offers. The Commission, however, had issued an interpretation of the FCRA in 1973 that permitted the use of consumer reports by creditors for unsolicited offers of credit if creditors followed guidelines set forth in the Commission's interpretation.[35] Those guidelines required every consumer on any list resulting from the use of consumer reports to receive a firm offer of credit – *i.e.*, the offer must be unconditional; all the consumer had to do to receive the credit was to accept the offer.

In the 1996 amendments, Congress added a number of provisions to the FCRA to provide an explicit statutory framework for prescreening.[36] The legislative process leading to the 1996

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[35] 16 C.F.R. § 600.5 (withdrawn in 1990 when the Commission *Commentary* was published; *see* notes 52-53, *infra*). The Commission's rationale for permitting prescreening was that the minimal invasion of consumer privacy involved in prescreening was offset by the fact that every consumer received an offer of credit. The four banking regulatory agencies also interpreted the FCRA to sanction prescreening for the entities under their jurisdiction.

[36] Sections 603(*l*); 604(c) and (e); and 615(d); 15 U.S.C. §§ 1681a(*l*), 1681b(c) and (e), and 1681m(d), respectively. "Firm offer of credit or insurance," the term used by Congress for what is commonly known as "prescreening," is defined in Section 603(*l*), which also contains much of the operable language governing prescreening. The permissible purpose is set out in Section 604(c) and the opt-out scheme is contained in Section 604(e). Section 615(d) recites the disclosures required of those who use consumer reports to make prescreened offers. *See* H. Rep. 103-486, 103rd Cong., 2nd Sess., 32 (1994)("The bill permits a consumer reporting agency to furnish limited information, commonly referred to as a prescreened list, in connection with such transactions only if the transaction consists of a 'firm offer of credit,' the consumer reporting agency has established a notification system whereby consumers can opt out to have their names excluded from consideration from such offers of credit, and the consumer has not elected to be so excluded. Under the bill, a pre-screened list, furnished by a consumer reporting agency in connection with a credit transaction that is not initiated by the consumer, may contain only certain types of information.").

amendments included an extensive consideration of prescreening issues. Congress ultimately chose to permit prescreening for both credit and insurance purposes, and to permit certain postscreening[37] to protect the safety and soundness of the financial industry.

At the same time, Congress provided an important mechanism for consumers to safeguard their privacy. Every written prescreened offer must provide notice of the consumer's right to "opt out" of future prescreen lists.[38] Credit bureaus must have a system, including a toll-free telephone number, that consumers can use to opt out,[39] and they cannot include consumers who opt out on any subsequent prescreened list.[40] The FCRA requires nationwide bureaus to maintain

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[37] Section 603(*l*) limits permissible postscreening to verifying that consumers continue to meet the criteria used in the prescreening and to verify any application information (such as income or employment) that is used in the process of granting credit or insurance. Credit grantors are also permitted to require that consumers furnish collateral so long as the collateral requirement is established before the prescreening is conducted and is disclosed to the consumer in the solicitation that results from the prescreening. 15 U.S.C. § 1681a(*l*). *See also* H. Rep. 103-486, 103rd Cong., 2nd Sess., 33 (1994)("The Committee recognizes that the furnishing of consumer reports for such credit solicitation is an exception to the general rule in Section 604(a)(3)(A) that consumer reports may be furnished by consumer reporting agencies only for credit transactions that are initiated by the consumer. Consequently, the Committee has established a special rule which permits the furnishing of consumer reports by a consumer reporting agency for credit transactions not initiated by the consumer, but only if the agency complies with strict limitations to ensure privacy protections for consumers. This special rule is a liberalization of an FTC interpretation of the FCRA.").

[38] Section 615(d) requires that written prescreen offers make a clear and conspicuous statement that (i) information in the consumer's credit report was used in the prescreen; (ii) the consumer was selected because the consumer met criteria for credit worthiness or insurability; (iii) the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not continue to meet the criteria used to select the consumer for the offer; (iv) the consumer has the right to opt out of further unsolicited offers; and (v) the methods by which the consumer can notify the credit bureau of a decision to opt out. 15 U.S.C. § 1681m(d).

[39] Section 604(e)(5); 15 U.S.C. § 1681b(e)(5).

[40] Section 604(c)(1)(B)(iii); 15 U.S.C. § 1681b(c)(1)(B)(iii).

an opt-out notification system, so that a notification by a consumer to one bureau is sufficient to have the consumer excluded from prescreened offers at all of the bureaus.[41]

2. Accuracy

Credit report accuracy was, and remains, a core goal of the FCRA. Because even small differences in a consumer's credit score can influence the cost or other terms of the credit offer, or even make the difference between getting approved or denied, accuracy of the information underlying the score calculation is paramount. Accurate reports benefit not only consumers but also credit grantors, who need accurate information to make optimal decisions. These considerations provide significant incentives for all parties to maintain a high level of accuracy in consumer credit files. Congress recognized, however, that decisions based on inaccurate information can impose potentially severe consequences to individual consumers. Consequently, Congress enacted the FCRA accuracy protections.[42]

The FCRA uses two major avenues to achieve the goal of optimal accuracy. First, it provides that consumer reporting agencies must follow "reasonable procedures to assure maximum possible accuracy of the information" they report.[43] Second, the FCRA establishes mechanisms for consumers to learn about possible errors in their credit reports and have them

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[41] Section 604(d)(6); 15 U.S.C. § 1681b(d)(6). The opt-out is effective for two years if conveyed by telephone, or permanently (unless revoked) if conveyed in writing. Section 604(d)(4)(B); 15 U.S.C. § 1681b(d)(4)(B).

[42] Section 602(a)(1) of the FCRA, Congressional findings and statement of purpose, notes that "Inaccurate credit reports directly impair the efficiency of the banking system...." 15 U.S.C. § 1681(a)(1).

[43] By its terms therefore ("*reasonable* procedures...maximum *possible* accuracy"), the statute itself recognizes that absolute accuracy is impossible. Section 607(b); 15 U.S.C. § 1681e(b). Pragmatic consideration of the large volume of data that credit bureaus must store and process also bears on this issue. *See* notes 2, 5, 6, 10 and 15, *supra,* and text accompanying.

corrected. The statute gives consumers both the right to know what information the credit bureau maintains on them, and the right to dispute errors.

a. Consumer right to know.

Under Section 609 of the FCRA, consumers have a right to know all information in their files (except risk scores) upon request and proper identification. They also have the right to learn the identity of all recipients of their report for the last year (two years in employment cases).[44] In addition, the consumer's right to learn about and dispute inaccuracies is facilitated by the FCRA's "adverse action" notice requirements. Adverse action notices – sometimes called "Section 615 notices" – are a key mechanism for maintaining accuracy. Since 1970, the FCRA has required that when credit is denied based even in part on a consumer report (or, in some cases, when the consumer is offered less-advantageous terms than would be the case in the absence of the consumer report information), the creditor must notify the consumer and provide certain key information, including (1) the identity of the consumer reporting agency from which the creditor obtained the report; (2) the right to obtain a free copy of the report; and (3) the right to dispute the accuracy of information in the report.[45]

Under the 1970 FCRA, adverse action notices were required only when consumer reports were used for credit, insurance, or certain employment purposes. In the 1996 amendments, Congress broadened the circumstances under which adverse action notices are required in connection with insurance and employment decisions. It also required notices of adverse action

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[44] 15 U.S.C. § 1681g.

[45] Section 612 provides that consumer reporting agencies must make free disclosure if a consumer makes a request within 60 days of receipt of an adverse action notice, and may charge a maximum of $8 in other cases. 15 U.S.C. § 1681j. The Commission is charged in the FCRA with modifying the maximum amount, based proportionally on changes in the Consumer Price Index. The latest annual finding on the matter raised the maximum allowable charge to $ 9. 67 Fed. Reg. 77282 (Dec. 17, 2002); *see also* http://www.ftc.gov/opa/2002/12/fyi0265.htm.

when consumer reports are used in other situations, such as opening savings or checking accounts, apartment rentals, and retail purchases by check.[46]

The Commission believes that the "self-help" mechanism embodied in the FCRA's scheme of adverse action notices and the right to dispute is a critical component in the effort to maximize the accuracy of consumer reports. Consumers are most likely to recognize the errors in their credit history and are more highly motivated to raise their concerns once they know that an adverse action was based on their credit report. The Commission has given high priority to assuring compliance with this provision.[47]

b. Consumer dispute rights

The consumer initiates a dispute by notifying the consumer reporting agency of an error in the completeness or accuracy of any item of information contained in the file. The consumer reporting agency must reinvestigate the dispute, generally within 30 days, record the current status of the information and delete it if it is found to be inaccurate or unverifiable. The consumer reporting agency is required to provide "all relevant information" to the original furnisher of the disputed information, to help ensure that the furnisher fully investigates the dispute. The agency must report the results of the investigation to the consumer. If the investigation does not resolve

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[46] In the original FCRA, adverse action notices were required only when "credit or insurance...or employment...is denied or the charge for such credit or insurance is increased...." After changes enacted in the 1996 amendments, adverse action for purposes of credit transactions is tied to the interpretation of "adverse action" in the Equal Credit Opportunity Act. For use of consumer reports in insurance, the scope of "adverse action" was expanded to include "a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for...." Similar expansion of the scope of "adverse action" was enacted for employment purposes ("a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee") and other permissible purposes. *See* Section 603(k); 15 U.S.C. 1681a(k).

[47] *See, e.g.,* Quicken Loans Inc., D-9304 (April 8, 2003) at Note 67, *infra*, and text accompanying.

the dispute, the consumer may file a statement with his or her version of the facts, which must then be furnished with the credit report.

For the first time, the 1996 amendments imposed certain accuracy and reinvestigation duties on furnishers of information to credit bureaus. These requirements recognize that furnishers – the original source of the information – have a critical role to play in the overall accuracy of consumer report information.

The 1996 amendments also sought to address the problem of recurring errors by prohibiting consumer reporting agencies from reinserting into a consumer's credit file previously-deleted information without first obtaining a certification from the furnisher that the information is complete and accurate, and then notifying the consumer of the reinsertion.

3. Other important FCRA provisions.

Under the FCRA, adverse items of information may, with certain exceptions, be reported for only seven years. The 1996 amendments clarified the date from which the seven years should be calculated.

The 1996 amendments expanded the obligations of certain users of consumer reports. In the employment context, these changes were quite significant; they include requirements that an employer obtain the consent of a job applicant or current employee before obtaining a consumer report and, before taking adverse action based on the report, provide a copy of it to the individual.[48]

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[48] Because the new employer obligations imposed by the 1996 amendments apply also to investigative consumer reports and Congress removed a prior exemption for use of investigative reports in certain employment circumstances, employers may encounter difficulties when using outside entities to assist by preparing reports based on interviews in investigations of alleged workplace misconduct. Concerns arose because such investigations might be hampered by FCRA obligations, such as the requirement that an employer obtain the authorization of an employee before obtaining a consumer report, and the requirement that the employee be provided a copy of the report before the employer can take adverse action. Several Congressional proposals to amend the FCRA to meet the workplace investigation

The 1996 amendments also made changes in the relationship between the FCRA and state laws. As originally enacted in 1970, the FCRA provided that the federal statute did not exempt persons from complying with state laws "with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent" with the FCRA. The 1996 amendments retained this language, but significantly modified the provision to preempt state laws in certain specified areas covered by the amended FCRA.[49]

Section 624 of the FCRA ("Relation to State Laws") now provides that no state laws may be imposed in the areas of (i) prescreening (including the definition of the term "firm offer of credit or insurance" and the disclosures which must be made in connection with prescreened offers), (ii) the time within which a consumer reporting agency must complete its investigation of disputed information, (iii) the adverse action notice requirements of Section 615, (iv) the obsolescence limitations and other provisions of Section 605, (v) furnisher obligations under Section 623, (vi) the consumer summary of rights required by Section 609(c) to be provided by consumer reporting agencies to consumers who obtain disclosure of their files, and (vii) information sharing by affiliates.[50] The specific preemptions are qualified in a number of respects, including specifying particular pre-existing state enactments to which the preemptions do *not*

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concerns have been introduced. In 2000, the Commission commented (*see* http://www.ftc.gov/os/2000/03/ltrpitofskysessions.htm) and testified with respect to one such proposal (*see* http://www.ftc.gov/os/2000/05/fcratestimony.htm). The Commission remains of the opinion that a legislative remedy of the type endorsed by the Commission in 2000 is the most appropriate response to these concerns.

[49] Thus, both before *and after* the 1996 preemptions, states were free to legislate in areas covered by the FCRA but not specifically preempted. *See, e.g.,* Colo. Rev. Stat. § 12-14.3-104 (providing for free annual credit reports).

[50] Section 624(b); 15 U.S.C. § 1681t(b).

apply.[51] The primary proviso with respect to the preempted provisions, however, is that after January 1, 2004, states may enact laws that (i) are specifically intended to supplement the FCRA, and (ii) give greater protection to consumers than is provided under the FCRA.

Finally, other significant additions of the 1996 amendments include authorizing states to enforce the FCRA, and adding civil penalty authority for the Federal Trade Commission.

IV. FTC Interpretive Guidance and Enforcement

When it enacted the FCRA in 1970, Congress provided that the Commission would be the principal agency to enforce the statute. To help foster understanding and ensure compliance with the law, the Commission engaged in extensive business education and guidance, including, in the first two decades, publishing over 350 staff opinion letters, a staff guidance handbook, and six formal Commission interpretations.[52] All of this material was then brought together in the Commission's 1990 *Commentary on the FCRA*.[53] The *Commentary* was well received and has served as a valuable explanatory and enforcement guide to industry and other affected parties. It also has assisted the staffs of the Commission and other regulatory agencies in interpreting the Act efficiently and consistently.

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[51] Section 624(d); 15 U.S.C. § 1681t(d). There is, moreover, a blanket "grandfathering" of state laws relating to the obsolescence limits of Section 605. Section 624(b)(1)(E); 15 U.S.C. § 1681t(b)(1)(E). An example is N.Y. Gen. Bus. L. § 380-j(f)(1)(ii)(paid judgments may not be reported for more than five years).

[52] The interpretations were published at 16 C.F.R. § 600 and were withdrawn when the Commission published the 1990 *Commentary*.

[53] 55 Fed. Reg. 18804 (May 4, 1990). The 1990 Commentary was the culmination of a proposal published in August 1988 and the Commission's review of over 100 submissions it received in response to its request for public comments on that proposal. 53 Fed. Reg. 29696 (August 8, 1988).

After the 1996 amendments, the Commission intensified its long-standing program of consumer and industry education.[54] In view of the extension of enforcement authority to the states, the Commission conducted a nationwide series of training sessions on the FCRA for state officials. The Commission's informal guidance expanded to meet the interpretive needs prompted by the amendments. As one result of that effort, the Commission staff published an additional 85 opinion letters. The letters can be found on the Commission's website, which also features easy access to other useful FCRA information for both business and consumers.[55] The Commission and its staff maintain active participation in many industry and consumer outreach efforts and respond daily to callers with FCRA questions.[56]

Current interpretive efforts at the Commission are focused on a revision to the 1990 *Commentary*.[57] The passage of time generally, and the 1996 amendments specifically, have rendered the 1990 Commentary partly obsolete. The new *Commentary* will draw on the staff opinion letters that post-dated the 1990 effort, as well as other Commission enforcement and interpretive experience.

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[54] The Commission also drafted and published language for the three notices required by the 1996 amendments to be distributed by credit bureaus: (1) a notice to consumer report users of their FCRA responsibilities; (2) a notice to furnishers explaining their new obligations; and (3) a notice to consumers, describing their FCRA rights, which must be included with any credit report requested by the consumer. The Commission believes that Congress' aim in requiring these notices has been achieved – the notices seem to be effective in conveying to consumers and businesses their rights and obligations under the Act.

[55] *See, e.g.,* the Commission's FCRA "home page," http://www.ftc.gov/os/statutes/fcrajump.htm, and plain-English consumer information, http://www.ftc.gov/bcp/conline/edcams/fcra/index.html.

[56] To achieve compliance, the Commission has also periodically worked with industry and self-regulatory groups where appropriate.

[57] *See* Commission press release at http://www.ftc.gov/opa/2003/01/fyi0302.htm, and "Notice of intent to request public comments" at http://www.ftc.gov/os/2003/01/16cfr1frn.htm.

Over the entire period of the FCRA, the Commission has engaged in extensive consumer education.[58] The Commission continues to regard consumer education as particularly vital to the FCRA because the statute contains self-enforcing elements, such as the right to dispute inaccurate or incomplete information.

The Commission has also brought a number of formal actions to enforce the FCRA. These actions have included cases to ensure (1) compliance with the adverse action notice requirements on the part of creditors[59] and employers;[60] (2) compliance with privacy and accuracy requirements by the major nationwide credit bureaus;[61] (3) compliance by resellers of consumer

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[58] Over the past seven years, 3.9 million of the five most popular FCRA brochures were distributed by the Commission. The information is duplicated on the Commission's web site, where the same brochures have registered over 1.6 million visits during the past five years. FCRA brochures such as "Building a Better Credit Record," "How to Dispute Credit Report Errors," and "Fair Credit Reporting" have each been distributed in numbers exceeding 100,000 per year over the past five years.

[59] Hospital & Health Services Credit Union, 104 F.T.C. 589 (1984); Associated Dry Goods, 105 F.T.C. 310 (1985); Wright-Patt Credit Union, 106 F.T.C. 354 (1985); Federated Department Stores, 106 F.T.C. 615 (1985); Winkleman Stores, Civ. No. C 85-2214 (N.D. Ohio 1985); Strawbridge and Clothier, Civ. No. 85-6855 (E.D. Pa. 1985); Green Tree Acceptance, Civ. No. CA 4 86 469 K (M.D. Tex. 1988); Quicken Loans Inc., D-9304 (April 8, 2003). *See also,* Aristar, Civ. No. C-83-0719 (S.D. Fla. 1983); Allied Finance, Civ. No. CA3-85-1933F (N.D. Texas 1985); Norwest Financial, Civ. No. 87 06025R (C.D. Cal. 1987); City Finance, Civ. No. 1:90-cv-246-MHS (N.D. Ga. 1990); Tower Loan of Mississippi, Civ. No. J90-0447 (J) (S.D. Miss. 1990); Barclay American Corp., Civ. No. C-C-91-0014-MU (N.C. 1991); Academic International, Civ. No. 91-CV-2738 (N.D. Ga. 1991); Bonlar, Civ. No. 97C 7274 (N.D. Ill. 1997); Capital City Mortgage, Civ. No. 1:98CV00237 (D.D.C. 1998).

[60] Electronic Data Systems, 114 F.T.C. 524 (1991); Kobacker, 115 F.T.C. 13 (1992); Keystone Carbon, 115 F.T.C. 22 (1992); McDonnell Douglas Corp., 115 F.T.C. 33 (1992); Macy's,115 F.T.C. 43 (1992); Marshall-Field, 116 F.T.C. 777 (1993); Bruno's, Inc., 124 F.T.C. 126 (1997); Aldi's, 124 F.T.C. 354 (1997); Altmeyer Home Stores, Inc., 125 F.T.C. 1295 (1998).

[61] Trans Union Corp., 102 F.T.C. 1109 (1983); FTC v. TRW Inc., 784 F. Supp. 362 (N.D. Tex. 1991); Trans Union Corp. 116 F.T.C. 1357 (1993)(consent settlement of prescreening issues *only* in 1992 target marketing complaint; *see also* Trans Union Corp. v. FTC, 81 F.3d 228 (D.C. Cir. 1996)); Equifax Credit Information Services, Inc., 130 F.T.C. 577 (1995). Each of these "omnibus" orders differed in detail, but generally covered a variety of FCRA issues including accuracy, disclosure, permissible purposes, and prescreening.

reports (agencies that purchase consumer reports from the major bureaus and resell them);[62] as well as cases addressing a number of other FCRA issues.[63]

The Commission's enforcement efforts since 1996 have focused on the new requirements added by the amendments. For example, the amendments added a requirement that the nationwide credit bureaus have "personnel accessible" at toll-free numbers printed on a consumer's credit report.[64] The Commission settled cases against the three major repositories charging that they failed to have adequate personnel available to answer FCRA-mandated toll-free telephone numbers. The orders required the repositories to (1) maintain adequate personnel; (2) establish auditing requirements to ensure future compliance, and (3) pay a total $2.5 million in civil penalties.[65] The Commission also has settled cases against furnishers of information to consumer reporting agencies alleging that they reported inaccurate dates for when consumers'

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[62] *See* I.R.S.C., 116 F.T.C. 266 (1993); CDB Infotek, 116 F.T.C. 280 (1993); Inter-Fact, Inc., 116 F.T.C. 294 (1993); W.D.I.A., 117 F.T.C. 757 (1994)(consents against resellers settling allegations of failure to adequately insure that users had permissible purposes to obtain the reports). *See also* First American Real Estate Solutions, LLC, C-3849, January 27, 1999, 1999 FTC LEXIS 137 (consent with a reseller concerning the dispute obligations of consumer reporting agencies).

[63] Howard Enterprises 93 F.T.C. 909 (1979)(bad check lists); Equifax, Inc. (formerly Retail Credit Company), 96 F.T.C. 844 (1980)(investigative consumer reports);. MIB, Inc., d/b/a Medical Information Bureau, 101 F.T.C. 415 (1983)(prohibits a non-profit medical reporting agency from conditioning the release of information to a consumer on his/her execution of a waiver of claims against the firm; requiring timely reinvestigations of disputed information; contact, when possible, the source(s) of disputed information or other persons identified by the consumer who may possess information relevant to the challenged data and modify its files accordingly).

[64] Section 609(c)(1) of the FCRA, 15 U.S.C. § 1681g(c)(1), requires a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis to establish a toll-free telephone number, at which personnel are accessible to consumers during normal business hours. This telephone number must be provided with each written disclosure of information in the consumer's file, by the consumer reporting agency to the consumer.

[65] Equifax, No. 1:00-CV-0087 (N.D. Ga. 2000); Experian, No. 3-00CV0056-L (N.D. Tex. 2000); TransUnion, 00C 0235 (N.D. Ill. 2000).

delinquencies had begun, with the result that adverse information remained on the consumer' reports past the seven-year limit provided by the FCRA.[66]

Recently, the Commission settled an action against an Internet mortgage lender that failed to give adverse action notices to consumers who did not qualify for online pre-approval because of information in their credit reports.[67]

The Commission staff recently conducted an investigation of fifteen landlords in five cities across the United States. The staff found a high level of compliance with the adverse action requirements of the FCRA.[68] To a significant degree, landlords *do* notify applicants when they turn them down for rentals based on information from a consumer report. The Commission will continue this type of compliance review in other industries, and bring law enforcement actions as appropriate. The Commission will continue to use this combination of education initiatives and vigorous enforcement to foster compliance with the FCRA.

V. Current Issues: The FCRA and the Expanded Use of Consumer Reports

Based on the Commission's experience interpreting and enforcing the FCRA, we see several ongoing developments in the consumer reporting marketplace that may have significant impact on consumers. First, more types of businesses are using credit reports to make decisions

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[66] DC Credit Services, Inc., No. 02-5115 (C.D. Cal. 2002)(furnishing information to a consumer reporting agency knowing or consciously avoiding knowing that the information is inaccurate, failure to notify consumer reporting agencies when previously-reported information is found to be inaccurate and to provide corrections, failure to provide accurate delinquency dates, failure to report accounts as "disputed" to consumer reporting agencies; $300,000 civil penalty); Performance Capital Management, Inc., 2:01cv1047 (C.D. Cal. 2000)(providing inaccurate delinquency dates, failure to properly investigate disputes, failure to report accounts as "disputed" to consumer reporting agencies; $2 million civil penalty).

[67] Quicken Loans Inc., Docket No. D-9304 (April 8, 2003); *see also* http://www.ftc.gov/opa/2002/12/quicken.htm.

[68] The Commission's January 15, 2002 press release on the investigation and resulting business education brochure can be found at http://www.ftc.gov/opa/2002/01/fcraguide.htm.

in consumer transactions. For example, telephone service providers routinely use consumer reports to make decisions on whether to provide service and what deposit requirements (if any) to impose. Insurance companies have long considered consumer reports when underwriting homeowners and auto insurance policies. While insurers once looked primarily at consumers' claims history to determine risk of loss, it appears that they are increasingly using information from consumers' credit histories to make underwriting decisions.[69]

Second, we are seeing new types of consumer credit providers and products in the marketplace. For example, the growing use of prescreened offers for marketing credit cards has led to the development of credit card banks that rely almost entirely on prescreened offers to market their cards.[70] Prescreening, in combination with other direct marketing and advertising, has led to the widespread availability of credit cards with no annual fee and other attractive benefits, and has enhanced competition.[71] Of course, some consumers may object to what may seem like a flood of prescreened offers in their mail boxes, or have concerns about the increased risk of identity theft that may occur in the same context. The 1996 Amendments to the FCRA allow these consumers to opt out of future offers.

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[69] *See, e.g.,* Sabrina Jones and Sandra Fleishman, "One Claim Too Many? Insurance's New Policy: Use It and Lose It," Washington Post, November 10, 2002, at H01; Dan Oldenburg, "Car Insurers Take Credit Into Account," Washington Post, October 15, 2002, at C10; Albert Crenshaw, "Bad Credit, Big Premiums; Insurers Using Bill-Payment History to Help Set Rates," Washington Post, June 18, 2002, at E01.

[70] *See* Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, at 11.

[71] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 72-73. *See also* Note 8 *supra*, and text accompanying.

Third, businesses increasingly are using consumer report data to undertake risk-based pricing of products or services.[72] In many areas, the decision making of creditors and other businesses has moved away from a simple approval or denial model, and towards using consumer report data in a more finely-calibrated evaluation of what terms to offer.[73] Consumers whose credit histories warrant more favorable treatment benefit from access to products and terms that are more tailored by risk evaluations based on their actual performance. Consumers with poorer credit histories who in the past might have been turned down, may now qualify for credit, but on less favorable terms commensurate with the risk. Consumers benefit from a more efficient and competitive consumer credit market.[74]

Credit report scoring products are used in a variety of other contexts, including on-going monitoring and servicing of consumer accounts that can result in adjustments in terms, such as credit limits and finance changes. Rapid access to credit scores also permits retailers and others to offer "instant credit" to consumers.

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[72] *Id. See also* Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, at 12.

[73] *See, e.g.,* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 70 ("[consumer report] data and the credit-scoring models derived from them have substantially improved the overall quality of credit decisions and have reduced the costs of such decision-making"), *citing* Gates, Perry and Zorn, "Automated Underwriting in Mortgage Lending: Good News for the Underserved?" *Housing Policy Debate*, vol. 13, issue 2, 2002, pp. 369-91; and Barron and Staten, "The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience," Credit Research Center, Georgetown University, 2002.

[74] Some commentators suggest that using credit score cards built with data supplied by credit bureaus results in delinquency rates 20-30 percent lower than lending decisions based solely on judgmental evaluation of applications for credit. *See* Peter McCorkell, "The Impact of Credit Scoring and Automated Underwriting on Credit Availability," in Thomas A. Durkin and Michael E. Staten, eds., *The Impact of Public Policy on Consumer Credit* (2002).

Overall, developments in the consumer credit marketplace have increased consumer choice and provided financial benefits to consumers.[75] The Commission believes that the growth of the consumer credit market has also increased public awareness and interest in credit reports and credit scores, and that the FCRA made this information more timely, accurate, and accessible. The consumer reporting system, and the obligations and protections of the FCRA, make it possible for creditors and other businesses to have access to timely, accurate consumer data.

Any reference to the consumer reporting system should also recognize the increasing problem of identity theft. The range, accuracy, and timeliness of information in consumer reporting databases make them unique resources. They are therefore simultaneously a target for identity thieves and a valuable resource for combating identity theft. Identity theft threatens the fair and efficient functioning of consumer credit markets by undermining the accuracy and credibility of the information flow that supports the markets.

As I detailed recently before this Committee, the Commission is working actively to combat identity theft in a number of areas.[76] As awareness of the FTC's role in identity theft has grown, businesses and organizations who have suffered compromises of personal information have begun to contact the FTC for assistance. For example, in the cases of TriWest[77] and Ford/Experian,[78] in which massive numbers of individuals' personal information was taken, the

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[75] *See, e.g.,* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 70; Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, *passim.*

[76] *See* http://financialservices.house.gov/media/pdf/040303hb.pdf.

[77] Adam Clymer, *Officials Say Troops Risk Identity Theft After Burglary*, N.Y. TIMES, Jan. 12, 2003, § 1 (Late Edition), at 12.

[78] Kathy M. Kristof and John J. Goldman, *3 Charged in Identity Theft Case*, L.A. TIMES, Nov. 6, 2002, Main News, Part 1 (Home Edition), at 1.

Commission provided advice on notifying those individuals and what steps they should take to protect themselves. From these experiences, the FTC developed a business record theft response kit that will be posted shortly on the identity theft web site. The kit includes the steps to take in responding to an information compromise and a form letter for notifying the individuals whose information was taken. The kit provides advice on the type of law enforcement agency to contact, depending on the type of compromise, business contact information for the three major credit reporting agencies, suggestions for setting up an internal communication protocol, information about contacting the FTC for assistance, and a detailed explanation of what information individuals need to know. Organizations are encouraged to print and include copies of *Identity Theft: When Bad Things Happen to Your Good Name* with the letter to individuals.

VI. Conclusion

In 1970, Congress recognized that "consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers."[79] While Congress in 1970 may not have envisioned the specific ways in which consumer report information would facilitate the development of products and services that ultimately benefit the American consumer, the thirty-three years since passage of the Act have fully demonstrated the wisdom of Congress in enacting the FCRA.

The FCRA helps make possible the vitality of modern consumer credit markets. The consumer reporting industry, furnishers, and users can all rely on the uniform framework of the FCRA in what has become a complex, nationwide business of making consumer credit available to a diverse, mobile American public.

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[79] Section 602(a)(3) of the FCRA.

The 1970 Act, along with the 1996 amendments, provide a carefully balanced framework, making possible the benefits that result from the free, fair, and accurate flow of consumer data. All of these benefits depend on the consumer reporting system functioning as intended. That is why the Federal Trade Commission continues to emphasize the importance of educating consumers and businesses, and of enforcing the law to ensure compliance by all who have a role in making the system work.