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.

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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

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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

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§ 601. Short title

This title may be cited as the Fair Credit Reporting Act.

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§ 603. Definitions and rules of construction

(a) * * *

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(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) * * *

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(e) ELECTION OF CONSUMER TO BE EXCLUDED FROM LISTS.—

(1) * * *

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(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.

* * * * * * *

§ 615. Requirements on users of consumer reports

(a) * * *

* * * * * * *

(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]

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[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-

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[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-

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[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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