

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**“EXAMINING THE USES OF CONSUMER CREDIT DATA”**

**Before the  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT  
COMMITTEE ON FINANCIAL SERVICES**

**UNITED STATES HOUSE**

**Washington, D.C.**

**September 13, 2012**

## **I. Introduction**

Chairman Capito and members of the Subcommittee, my name is Robert Schoshinski, and I am an Assistant Director for the Division of Privacy and Identity Protection at the Federal Trade Commission (“Commission” or “FTC”).<sup>1</sup> I appreciate the opportunity to appear before you today to discuss consumer reports and credit scores.

Today, data compiled and maintained by consumer reporting agencies (“CRAs”) is used to make critical decisions about the availability and cost of various consumer products and services, including credit, insurance, employment, and housing. Consumer reports are often used to evaluate the risk of future nonpayment, default, or other adverse events. For example, complete and accurate consumer reports enable creditors to make informed decisions, benefitting both creditors and consumers.

Errors in consumer reports, however, can cause consumers to be denied credit or other benefits or pay a higher price for them, and may lead credit issuers to make inaccurate decisions that result in declining credit to a potentially valuable customer or issuing credit to a riskier customer than intended. The Fair Credit Reporting Act<sup>2</sup> (“FCRA”) was enacted in 1970 to balance businesses’ “dependen[ce] upon fair and accurate credit reporting” and the “need to insure that CRAs exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”<sup>3</sup> The FCRA (1) prevents the misuse of sensitive consumer

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

<sup>2</sup> 15 U.S.C. §§ 1681-1681x.

<sup>3</sup> *Id.* at § 1681(a).

information by limiting recipients to those who have a legitimate need for it; (2) improves the accuracy and integrity of consumer reports; and (3) promotes the efficiency of the nation's banking and consumer credit systems. Since the FCRA's passage, Congress has amended the statute to address developments in the consumer reporting system and the marketplace, and to increase consumers' rights and protections with respect to the collection and use of their data.

The Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA since its enactment,<sup>4</sup> and has appreciated Congress' ongoing efforts to protect consumers while ensuring that creditors and others have access to information that they truly need. In the last decade, the Commission has brought over thirty actions to enforce the FCRA against CRAs, users of consumer reports, and furnishers of information to consumer reporting agencies. As the consumer reporting system evolves and new technologies and business practices emerge, vigorous enforcement of the FCRA continues to be a top priority for the Commission, as does consumer and business education concerning applicable rights and responsibilities under the statute.

This testimony first provides background on the FCRA and its treatment of consumer reports and credit scores. It then discusses the Commission's recent work to enforce the FCRA and educate consumers and businesses about their respective rights and responsibilities under the statute. Finally, it discusses the unique concerns created by "thin files," a term used to describe

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<sup>4</sup> As enacted, the FCRA established the Commission as the primary federal enforcement agency, with wide jurisdiction over entities involved in the consumer reporting system; the primary exceptions to the Commission's jurisdiction are federally regulated financial institutions. *See* 15 U.S.C. § 1681s(a)-(b). Pursuant to the Consumer Financial Protection Act of 2010 ("CFPA"), Title X of Pub. L. 111-203, 124 Stat. 1955 (July 21, 2010) (The Dodd-Frank Wall Street Reform and Consumer Protection Act), the Commission will share its FCRA enforcement role with the Consumer Financial Protection Bureau ("CFPB") in many respects.

consumer files with limited or no credit histories, and medical debt as they relate to credit reporting and credit scoring.

## **II. The Fair Credit Reporting Act, Consumer Reports, and Credit Scores**

Congress passed the FCRA to curb reported abuses by some in the credit reporting industry, which had assumed a “vital role in assembling and evaluating consumer credit and other information on consumers.”<sup>5</sup> The statute imposes a number of obligations on CRAs that assemble and evaluate consumer information into consumer reports for use by issuers of credit, insurance companies, employers, landlords, and others in making eligibility decisions affecting consumers. For example, to protect the privacy of sensitive consumer report information, CRAs must take reasonable measures to ensure that they provide such information only to those who have a statutorily-specified “permissible purpose” to receive it.<sup>6</sup> The FCRA also contains numerous requirements to ensure the accuracy of consumer reports, including requirements that CRAs (1) make reasonable efforts to ensure the “maximum possible accuracy” of consumer reports,<sup>7</sup> and (2) maintain procedures through which consumers can dispute and correct inaccurate information in their consumer reports.<sup>8</sup>

In addition, the FCRA imposes obligations on those who furnish information about consumers to CRAs (“furnishers”) and on users of consumer reports, such as entities extending

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<sup>5</sup> 15 U.S.C. § 1681(a)(3).

<sup>6</sup> *Id.* at § 1681b(a), (c). Permissible purposes under the FCRA include, but are not limited to, the use of a consumer report in connection with a determination of eligibility for credit, insurance, or a license; in connection with the review of an existing account; and for certain employment purposes.

<sup>7</sup> *Id.* at § 1681e(b).

<sup>8</sup> *Id.* at § 1681i(a)-(d).

credit. For example, if a user of a consumer report takes an adverse action against a consumer based on information in a consumer report – such as a denial of credit or employment – the user must provide an adverse action notice to the consumer, which explains how the consumer can dispute any inaccurate information in the report.<sup>9</sup> Finally, the FCRA provides many other important rights for consumers, such as the right to: obtain copies of their files from CRAs, in many instances at no charge;<sup>10</sup> purchase a credit score;<sup>11</sup> and opt-out of pre-screened offers of credit and insurance based on information in their consumer report.<sup>12</sup>

#### **A. Consumer Reports and Credit Scores**

The FCRA defines a consumer report as any “communication of any information by a CRA bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used” for certain eligibility purposes, including credit, insurance, employment, and housing.<sup>13</sup> Information in a consumer report typically includes the subject consumer’s credit history and payment patterns, demographic and identifying information, and public record information, such as arrests, convictions, judgments, and bankruptcies. Consumer reports can also include the

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<sup>9</sup> *Id.* at § 1681m(a). The adverse action notice also must include a statement that the CRA that supplied the consumer report did not make the decision to take the adverse action and cannot give the consumer any specific reasons for the decision. *Id.* at § 1681m(a)(2)(B).

<sup>10</sup> *Id.* at §§ 1681g(a); 1681j(a)-(e).

<sup>11</sup> *Id.* at § 1681g(f).

<sup>12</sup> *Id.* at § 1681b(e).

<sup>13</sup> *Id.* at § 1681a(d)(1).

consumer's employment history, driving record, and consumer data from social networking sites.<sup>14</sup>

A numerical or other evaluation of data by a CRA, such as a credit score or other predictive score that bears on a consumer's credit worthiness, falls within the FCRA's definition of a consumer report when it is used or expected to be used for eligibility purposes. There are many different types of credit scores in use today, including scores that measure general credit worthiness, scores that are specific to certain types of credit (such as automobile loans or mortgages), and credit-based scores used to measure risk for automobile and homeowners insurance. Typically, a credit score is a number generated by a statistical model that is based on information in a consumer's file at a CRA and is used to predict the risk that the consumer will engage in adverse behaviors, such as default or delinquency. There are various forms of credit scoring models, however. Creditors do not necessarily all rely upon the same score, or even the same factors or weighing of those factors, to make their credit decisions, and a single creditor may use different models for different products. Additionally, because a credit score is based on information about a consumer that is in the consumer's particular file at a particular moment, the same model may generate a different score when used by different CRAs at different times. The score will change as the underlying file data is updated.

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<sup>14</sup> Letter from Maneesha Mithal, Assoc. Dir., Div. of Privacy and Identity Prot., FTC, to Renee Jackson, Counsel for Social Intelligence Corp. (May 9, 2011) (closing letter to CRA that included public information gathered from social networking sites in consumer reports), available at <http://www.ftc.gov/os/closings/110509socialintelligenceletter.pdf>.

## **B. Increased Transparency and Consumer Access to Consumer Reports and Credit Scores**

Amendments to the FCRA, especially within the last ten years, have increased the transparency of and consumers' access to their credit scores as well as the consumer reports upon which they are based. For example, the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act")<sup>15</sup> amended the FCRA to give consumers the right to obtain free annual file disclosures<sup>16</sup> and purchase a credit score from a CRA,<sup>17</sup> and to require that certain mortgage lenders provide a credit score without charge to home loan applicants.<sup>18</sup> Pursuant to the FACT Act amendments addressing risk-based pricing,<sup>19</sup> the Commission and the Board of Governors of the Federal Reserve System promulgated regulations allowing creditors, as an alternative to providing risk-based pricing notices, to provide a free credit score, along with information about that score, to all consumers.<sup>20</sup> In 2010, the Consumer Financial Protection Act ("CFPA")<sup>21</sup>

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<sup>15</sup> Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003). For further discussion of the Commission's implementation of the FACT Act, see Prepared Statement of the FTC, *Keeping Score on Credit Scores: An Overview of Credit Scores, Credit Reports and Their Impact on Consumers: Hearing Before the Subcomm. on Financial Institutions and Consumer Credit of the H. Comm. on Financial Services*, 111th Cong. (March 24, 2010), available at <http://www.ftc.gov/os/2010/03/P065404facta.pdf>.

<sup>16</sup> 15 U.S.C. § 1681j(a)(1).

<sup>17</sup> *Id.* at § 1681g(f).

<sup>18</sup> *Id.* at § 1681g(g).

<sup>19</sup> *Id.* at § 1681m(h). Risk-based pricing refers to the practice of offering credit to a particular consumer on terms that reflect the risk of nonpayment by that consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories than they offer to consumers with poor credit histories.

<sup>20</sup> Final Rule: Fair Credit Reporting Risk-Based Pricing Regulations, 75 Fed. Reg. 2724 (Jan. 15, 2010), available at <http://edocket.access.gpo.gov/2010/pdf/E9-30678.pdf>. Pursuant to these regulations, creditors generally must provide consumers with a "risk-based pricing" notice

further amended the FCRA to require that creditors, when providing an adverse action<sup>22</sup> or risk-based pricing notice,<sup>23</sup> include in the notice any credit score used in the decision.

The FACT Act also amended the FCRA to enhance the accuracy and completeness of information contained in consumer reports. For example, pursuant to the FACT Act, the Commission, along with the federal banking regulatory agencies,<sup>24</sup> promulgated the “Furnisher Rule,” which was designed to ensure the accuracy of information that furnishers provide about consumers to CRAs for inclusion in consumer reports.<sup>25</sup> The Furnisher Rule requires furnishers to establish reasonable policies and procedures for implementing specific guidelines designed to ensure the accuracy and integrity of information furnished to CRAs.<sup>26</sup> The Furnisher Rule also

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when, based on the consumer’s credit report, the creditor provides credit to the consumer on less-favorable terms than it provides to other consumers. Rather than conducting the analysis necessary to determine which consumer should receive a risk-based pricing notice, however, many creditors may choose to provide free credit score disclosures to all consumers, further improving the availability of credit score information to consumers. The Commission notes that authority over these regulations transferred in large part to the CFPB in July 2011.

<sup>21</sup> Title X of Pub. L. No. 111-203, 124 Stat. 1955 (July 21, 2010).

<sup>22</sup> 15 U.S.C. § 1681m(a).

<sup>23</sup> *Id.* at § 1681m(h).

<sup>24</sup> As used here, this term refers to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration.

<sup>25</sup> Final Rule: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 74 Fed. Reg. 31484 (July 1, 2009), *available at* <http://www.ftc.gov/os/2009/07/R611017factafrn.pdf>. As with the Risk-Based Pricing Regulations, *supra* note 20, the CFPB transferred much of the authority over the Furnisher Rule to the CFPB.

<sup>26</sup> *E.g., id.* at 31527. For example, the Furnisher Rule’s guidelines state that when furnishers report an outstanding balance on a credit account, they should also report the consumer’s credit limit. This is because the failure to include a credit limit can cause credit

requires furnishers, in most cases, to investigate disputes that consumers submit directly to them regarding the accuracy of information that the furnishers reported to a CRA. In addition, the FACT Act amended the FCRA to allow identity theft victims to address inaccuracies in their consumer reports that resulted from the theft.<sup>27</sup> Finally, as mentioned above, the FACT Act greatly increased consumers' access to their files maintained by CRAs, permitting them to evaluate whether the files contain inaccurate or incomplete information that they should dispute. Ensuring the accuracy and completeness of the underlying consumer files upon which credit scores are based should increase the accuracy and predictive value of credit scores, benefitting both consumers seeking credit and insurance as well as the users of the credit scores.

## **II. FTC's Activities To Implement the FCRA**

As mentioned above, the Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA for over 40 years. The Commission now shares many of these responsibilities with the CFPB, and the agencies have been working together to avoid duplication and leverage their respective resources to address specific concerns. Vigorous enforcement of the FCRA to maintain accuracy and fairness in the consumer reporting system and to protect consumer privacy remains a top priority for the Commission, as does effective and timely consumer and business education concerning the rights and obligations created by the statute.

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evaluators, such as credit scoring systems, to inaccurately estimate how much available credit a consumer is using, which is typically an important factor in assessing credit worthiness.

<sup>27</sup> *See, e.g.*, 15 U.S.C. § 1681c-2 (allowing identity theft victims to permanently block the reporting of information in their file that resulted from the theft).

## **A. Enforcement**

The Commission continues to aggressively enforce the FCRA. Given the sensitivity of consumer report information, improper use of such information is of special concern. For example, the Commission recently sued and obtained a consent order against Spokeo, Inc. (“Spokeo”), a data broker, based on allegations that the company operated as a CRA when it marketed and sold detailed profiles of consumers to companies in the human resources, recruiting, and employment background screening industries.<sup>28</sup> The Commission charged that Spokeo collected personal information about consumers from hundreds of online and offline data sources, including social networks, and assembled it to create detailed personal profiles of consumers. These profiles included personal information such as name, address, age range, and email address, and may have included hobbies, ethnicity, religion, participation on social networking sites, and photos. The Commission alleged that these profiles were consumer reports and that Spokeo violated the FCRA by failing to take reasonable steps to ensure that the reports it sold would be used only for permissible purposes under the statute; failing to ensure the reports were accurate; and failing to inform users of the reports of their obligations under the FCRA. The FTC’s consent order imposed an \$800,000 civil penalty against the company and enjoins Spokeo from violating the FCRA in the future.

In addition, last year, the Commission sued and obtained a consent order against a CRA that used its consumer report information to create and sell marketing lists, which is not a

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<sup>28</sup> *United States v. Spokeo, Inc.*, No. CV 12-05001 (C.D. Cal. filed June 7, 2012) (consent decree), available at <http://www.ftc.gov/opa/2012/06/spokeo.shtm>.

permissible purpose under the statute.<sup>29</sup> In its complaint against Teletrack, Inc. (“Teletrack”), a CRA providing consumer reports to businesses that mainly serve financially-distressed consumers, the Commission alleged that the company created a marketing database of information that it gathered through its credit reporting business and then sold the information in this database to marketers. For example, Teletrack sold lists of consumers who previously sought payday loans to third parties that wanted to use this information to target potential customers with marketing for similar products. The Commission’s complaint alleged that these marketing lists were consumer reports and that Teletrack violated the FCRA by selling these consumer reports without a permissible purpose under the statute. The Commission’s consent order required Teletrack to pay civil penalties of \$1.8 million and prohibits the company from violating the FCRA in the future.

Further, given the critical need for accuracy in consumer reports, the Commission continues to enforce the FCRA’s provisions requiring CRAs to follow reasonable procedures to ensure maximum possible accuracy of information included in reports and to conduct reasonable investigations of consumer disputes. The Commission recently took action against HireRight Solutions, Inc. (“HireRight Solutions”), a CRA providing employment background screening services.<sup>30</sup> In its capacity as a CRA, HireRight Solutions provides background reports that contain information about prospective and current employees to help thousands of employers

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<sup>29</sup> *United States v. Teletrack, Inc.*, No. 1:11- CV-2060 (N.D. Ga. filed June 24, 2011) (stipulated final judgment and order), available at <http://www.ftc.gov/opa/2011/06/teletrack.shtm>.

<sup>30</sup> *United States v. HireRight Solutions, Inc.*, No. 1:11-cv-01313 (D.D.C. filed Aug. 8, 2012) (stipulated final judgment and order), available at <http://www.ftc.gov/os/caselist/1023130/index.shtm>.

make hiring decisions. The Commission's complaint alleged that, in many cases, HireRight Solutions failed to follow reasonable procedures to prevent patently inaccurate consumer report information from being provided to employers, such as criminal records pertaining to someone other than the subject of the report, and failed to take reasonable steps to ensure that the information in the consumer reports it provided was current and reflected updates, such as the expungement of criminal records. The Commission alleged that these failures led to consumers being denied employment or other employment-related benefits. Further, the Commission alleged that HireRight Solutions failed to conduct reasonable investigations of disputed items in a consumers' files. The Commission's consent order imposed a \$2.6 million civil penalty against HireRight Solutions and prohibited future violations of the FCRA.

Finally, the Commission continues to work to ensure that CRAs maintain the security and confidentiality of the sensitive consumer information with which they are entrusted. Last year, for example, the Commission settled enforcement actions against three CRAs for failure to take reasonable information security steps to protect consumers' data.<sup>31</sup> The Commission alleged the companies' failures allowed hackers to access more than 1,800 consumer reports without authorization. The orders settling the charges require the companies to strengthen their data security procedures and submit to assessments of those procedures for 20 years.

## **B. Consumer and Business Education**

The Commission continues to educate consumers and businesses about consumer reports, credit scores, and their rights and obligations under the FCRA. The Commission recently added

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<sup>31</sup> *In re SettlementOne Credit Corp.*, Docket No. C-4330 (Aug. 17, 2011) (decision and order); *In re ACRAnet, Inc.*, Docket No. C-4331 (Aug. 17, 2011) (decision and order); and *In re Fajilan and Assoc.*, Docket No. C-4332 (Aug. 17, 2011) (decision and order), available at <http://www.ftc.gov/opa/2011/08/creditreporters.shtm>.

a new video<sup>32</sup> and a simplified consumer alert<sup>33</sup> concerning employment background screening to its robust library of consumer education materials concerning consumer reports and credit.<sup>34</sup> The Commission's publication, *Need Credit or Insurance? Your Credit Score Helps Determine What You'll Pay*,<sup>35</sup> explains how credit scoring works and how it is used by lenders and insurance companies. Another publication explains how consumers can obtain their free annual consumer report from each of the nationwide consumer reporting agencies and use the FCRA's dispute procedures to ensure that information in their consumer reports is accurate.<sup>36</sup> Finally, through the Commission's Legal Services Collaboration,<sup>37</sup> the agency is disseminating consumer education materials to some of our nation's most vulnerable consumers.

Business education is also an important priority for the FTC. The Commission seeks to educate businesses by developing and distributing free guidance and has created several business publications relating to compliance with the FCRA, including: *Consumer Reports: What*

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<sup>32</sup> <http://www.ftc.gov/multimedia/video/jobs.shtm>.

<sup>33</sup> *What to Know When You Look for a Job*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt080.shtm>.

<sup>34</sup> See generally <http://www.ftc.gov/bcp/menus/consumer/credit/reports.shtm>.

<sup>35</sup> Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

<sup>36</sup> *FTC Facts for Consumers: How to Dispute Credit Report Errors*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm>.

<sup>37</sup> Through this program, the FTC is working with legal services providers to distribute consumer education materials and gather complaints about pernicious practices affecting at-risk and indigent communities.

*Insurers Need to Know*;<sup>38</sup> *Credit Reports: What Information Providers Need to Know*;<sup>39</sup> *Using Consumer Reports: What Employers Need to Know*;<sup>40</sup> and *Disposing of Consumer Report Information? New Rule Tells How*.<sup>41</sup> These publications, as well as other business education materials, are available through the FTC's Business Center website, which averages one million unique visitors each month.<sup>42</sup> The Commission also hosts a Business Center blog,<sup>43</sup> which has featured FCRA topics; presently, approximately 3,500 attorneys and business executives subscribe to email blog updates.

Another way the Commission seeks to educate businesses is by issuing public closing and warning letters. For example, the Commission recently sent warning letters to the marketers of six mobile apps that provide background screening services.<sup>44</sup> These letters noted that some of the apps included criminal record histories, which bear on an individual's character and general reputation and are precisely the type of information that is typically used in employment and tenant screening. The Commission warned the apps marketers that they must comply with

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<sup>38</sup> Available at <http://business.ftc.gov/documents/bus07-consumer-reports-what-insurers-need-know>.

<sup>39</sup> Available at <http://business.ftc.gov/documents/bus33-credit-reports-what-information-providers-need-know>.

<sup>40</sup> Available at <http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>.

<sup>41</sup> Available at <http://business.ftc.gov/documents/alt152-disposing-consumer-report-information-new-rule-tells-how>.

<sup>42</sup> See generally <http://business.ftc.gov>.

<sup>43</sup> See generally <http://business.ftc.gov/blog>.

<sup>44</sup> Press Release, FTC, *FTC Warns Marketers that Mobile Apps May Violate Fair Credit Reporting Act* (Feb. 7, 2012), available at <http://www.ftc.gov/opa/2012/02/mobileapps.shtm>.

the FCRA if they have reason to believe the background reports they provide are being used for employment screening, housing, credit, or other similar purposes. The Commission urged the companies to review their apps and their policies and procedures to ensure compliance with the statute if it applies.

### **III. Special Concerns: “Thin Files” and Reporting of Medical Debt**

Two issues relating to our nation’s consumer reporting system continue to be of special concern, especially with the increased reliance on credit scoring systems to make eligibility determinations. The first relates to problems faced by consumers with limited or no credit history, often described as having “thin files.” The second is the impact of medical debt on consumer reports and credit scoring models.

#### **A. “Thin Files”**

“Thin files,” or consumer files with limited or no credit histories, limit the ability of credit providers to assess these consumers’ credit worthiness. In 2003, Congress asked the Commission to study whether common financial transactions not generally reported to CRAs would be useful in determining the credit worthiness of consumers.<sup>45</sup>

In 2004, the Commission issued a report concluding that there is a sizable consumer population that is difficult to evaluate for credit purposes because they have thin files or no credit history.<sup>46</sup> The report discussed the breadth of the problem and described the types of groups that have little or no credit histories, such as recent immigrants, young people living on

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<sup>45</sup> FACT Act, Pub. L. No. 108-159, § 318(a)(2)(D), 117 Stat. 1952, 1998.

<sup>46</sup> FTC, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 78 (Dec. 2004), available at <http://www.ftc.gov/reports/facta/041209factarpt.pdf>.

their own for the first time, people who established credit through a spouse, and people who either do not use credit or who rely on alternative credit sources, like payday loans, that may not report to CRAs. In addition, the report noted that minorities are over-represented among consumers with limited or no credit histories.

As described in the Commission's report, credit issuers and others advocate for the inclusion of additional sources of data in credit files.<sup>47</sup> Such data could include rental payment information, utility payment information, and cellular phone payment information.<sup>48</sup> The Commission's report identified barriers to reporting this alternative data, including high costs, the diffuse nature of reporting rental payments, and differences in state laws and regulations governing utilities.<sup>49</sup> The report also identified private efforts underway to collect and report such data. The Commission remains interested in the various products in the marketplace that currently use such alternative data<sup>50</sup> to provide consumers with greater access to credit opportunities.

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<sup>47</sup> *Id.* at 82-84.

<sup>48</sup> See, e.g., Policy & Economic Research Council, *A New Pathway to Financial Inclusion: Alternative Data, Credit Building, and Responsible Lending in the Wake of the Great Recession* 7 (June 2012), available at [http://perc.net/files/WEB%20file%20ADI5%20layout\(1\).pdf](http://perc.net/files/WEB%20file%20ADI5%20layout(1).pdf).

<sup>49</sup> FTC, *supra* note 46, at 84-85.

<sup>50</sup> See, e.g., Press Release, CoreLogic, *FICO and CoreLogic Announce Availability of More Predictive Mortgage Credit Score Designed to Enable Growth in Mortgage Lending Market* (July 10, 2012), available at <http://www.corelogic.com/about-us/news//fico-and-corelogic-innovative-predictive-score.aspx> (announcing score that evaluates traditional credit data as well as landlord/tenant and other alternative data).

## **B. Medical Debt**

The treatment of medical debt for credit reporting and credit scoring purposes also presents unique challenges. Although medical service providers may not report debts directly to CRAs, third-party debt collectors will often report medical collection accounts. As with all debts reported to a CRA, medical debts that are reported result in negative items on consumers' credit reports even after such debts have been paid. Such items can adversely affect a consumer's credit score.

Some have questioned the appropriateness and value of medical debt in assessing and predicting credit risk because of the unique nature of such debt. For example, in some cases, the debt may arise because of a billing dispute or misunderstanding between the consumer and their insurer. Also, some argue that medical debt is atypical and unexpected, and thus may not be a good indicator of a consumer's general credit worthiness. On the other hand, others argue that such debts typically reflect accurate financial obligations of consumers. Some states have attempted to address issues raised by the reporting of medical debt to CRAs by requiring that certain patients be allowed several months to work out payment arrangements for such debt before the accounts may be reported to a CRA.<sup>51</sup> At the federal level, proposed legislation would require the removal of some fully paid medical debt accounts from consumer reports.<sup>52</sup>

The Commission is keenly aware of the issues presented by the reporting of medical debt to CRAs and how such reporting can impact consumers and their credit scores. Although the

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<sup>51</sup> *See, e.g.*, Cal. Health & Safety Code § 127425(d).

<sup>52</sup> *See, e.g.*, H.R. 2086, 112<sup>th</sup> Cong. (2011).

Commission has not taken a position with respect to any federal or state legislation on this issue, it continues to monitor developments in this area.

#### **IV. Conclusion**

Thank you for the opportunity to provide the Commission's views on the topic of consumer reports and credit scores. We look forward to continuing to work with Congress and this Subcommittee on these important issues.