

## TESTIMONY OF RICHARD F. LE FEBVRE

On Behalf of AAA American Credit Bureau Inc.

Before the

Committee on Banking, Housing, and Urban Affairs

United States Senate

July 10, 2003

Good morning, Chairman Shelby, Ranking Member Sarbanes and distinguished members of the Committee on Banking, Housing, and Urban Affairs. My name is Richard Le Febvre, and I am President of AAA American Credit Bureau, Inc. (AAA). My company is a credit-reporting agency (“CRA/reseller”) based in Flagstaff, Arizona. I have worked in the credit reporting industry for over 12 years. My agency was one of the first in the country to provide “rescoring” services to consumers. I started doing so in 1998. My work in rescoring and assisting consumers to correct errors in their credit reports has drawn national attention, including for example a column in the July 14, 2001 *Washington Post* attached as Exhibit A hereto.

Credit scores are used in a wide variety of consumer transactions. Credit scores are calculated by applying various proprietary “credit risk models” to information contained in credit files. The credit reports most widely used are sold by TransUnion, Experian, and Equifax. Unfortunately, credit reports often contain inaccurate and/or outdated information about consumers. Inaccurate information can and often does significantly affect credit scores. *See, e.g.*, Ken Harney, “Credit Report Errors Can Prove Costly,” *Washington Post* (June 14, 2003), attached as Exhibit B hereto; and credit scores help determine every day whether consumers will be extended credit and, if so, the credit terms and conditions.

These industry developments make the requirements of the Fair Credit Reporting Act (FCRA) more relevant and crucial than ever. In particular, consumer reporting agencies and resellers of consumer reports must “follow reasonable procedures to assure maximum possible accuracy” of their credit information. The lightening speed and efficiency of automated credit decisions does not assure accuracy of the underlying data. Automated underwriting depends on accurate information about the particular applicant. The old saying “garbage in, garbage out” holds true. Worse yet, the dazzling efficiency of automated systems may be providing false comfort that automated credit decisions necessarily reflect true credit risks.

Studies have shown that credit reports may contain large numbers of errors. I have attached a two-year study that we did for the years 1999 and 2000 <sup>1</sup> attached as Exhibit “C” hereto, which shows that our study and the CFA/NCRA study correlate. A copy of our AAA Credit Score was used to generate the results of our study attached as Exhibit “D” hereto. Scores are based on groups, but what if the consumer is placed into the wrong group based on errors within their credit file? The CFA/NCRA study <sup>2</sup> concluded that, out of

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<sup>1</sup> AAA Study showing error rates from 1999 – 2000 (Exhibit C)

<sup>2</sup> <http://www.ncrainc.org/documents/CFA%20NCRA%20Credit%20Score%20Report.pdf> December 17, 2002 CFA/NCRA study

500,000 C/R's in their study, 1 in 3 consumers had point variations of 50+ points, 1 in 20 had 100+ point variations, but the average point variation was 43 per C/R.

My point is that increasing efficiencies in processing applications and increasing sophistication in credit underwriting rules *should not be mistaken for assuring maximum possible accuracy of the consumer information used*. Indeed, automated systems “must not” be allowed to interfere with the requirements of the FCRA or the opportunity for consumers to dispute information in their credit reports. Reasonable procedures for assuring maximum possible accuracy often requires a human being to make calls, interview the consumer, verify consumer's documentation, and apply professional judgment. Unfortunately, some underwriting systems make it impossible or too expensive for consumers, consumer reporting agencies, and resellers to do their jobs<sup>3</sup> in direct violation of the FCRA, consumers rights, and CRA/reseller requirements.

### **MY EXPERIENCE WITH CREDIT REPORTS**

I've reviewed tens of thousands of “merged” reports that have information from more than one national credit bureau, but usually they contain all three regarding the same consumer and/or joint consumer. In merged reports, information from the same creditor is grouped together as reported by each repository. This is done for both the applicant and co-applicant. In my experience, the information about a consumer's account with a creditor often differs significantly, depending on which national credit bureau is reporting the information. The information regarding the same consumer and the same creditor is often inconsistent. As a result, a consumer commonly—almost always—receives different credit scores from each repository, and the differences are often significant. The differences can sometimes be “explained” vaguely by the use of different credit risk models (which are proprietary and not available to consumers) and different dates for the creditors' updates, but in my experience the difference can often be explained by inconsistent information about the consumer.

It astonishes me to this day how the same credit information furnisher can report different information about the same account, but it is a common problem. Perhaps this is a “Tower of Babel” problem. Credit furnishers use many different types of processing software, and they are communicating to the three repositories, which each has different software and formats for receiving the data.

### **Solution**

Allow all CRA/resellers to perform to the standards set out by the FCRA and the FTC's consent order with Credco, which spells out responsibilities of “all” resellers attached as Exhibit “E” hereto. The user and/or person that makes, participates in, or arranges extensions of credit “must” accept the verified accurate report that meets the requirements under the FCRA. Plus require all credit data providers to update to the Metro II format by a specific date.

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<sup>3</sup> For purposes of the Fair Credit Reporting Act (“FCRA”), the term “credit reporting agency” includes any business that compiles information about consumers and provides “consumer reports” to third parties. Please keep in mind that “any” person that regularly engages in, participates in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing them to third parties is considered a “consumer reporting agency”.

## SCORING/RESCORING

AAA has performed re-scoring. Re-scoring often involves the following:

- Updating of credit information
- Updating account balances
- Deleting/updating inaccurate tradelines
- Deleting obsolete tradelines
- Updating/deleting public record data
- Deleting inaccurate late payments
- Updating incomplete and/or missing data

In many cases, reports can vary, based on inquiry input and date based on many factors, but here are the three most common factors: First, wrong input by subscriber/user. Second, missing or incomplete data. Third, since data changes almost daily, the information one user sees on a credit report may differ greatly from what another user receives, based on the time the reports were pulled. As a result, scores vary depending on the different versions of the scoring models used by lenders and the GSE's. I have seen credit reports differ significantly, including credit scores from day to day.

Assuring an accurate credit history, and credit score, is an ongoing and difficult process for consumers. It can become a full-time job for those who are victims of identity theft, fraud, inaccuracies, or a stubbornly lazy furnisher of credit information. I have attached some rescoring examples we have done that show how dependant a credit score is on accurate data and how some credit scores truly make no sense.

### Score – EXAMPLES (actual files)

**Example#1** - Based on one \$10 missed payment (that was not late) had a 3-year history with no lates.

Mr. & Mrs. Hispanic

Mid Fico score - **731** – 6/7/99

Mid Fico score - **587** – 7/9/99 (after one missed \$10 payment)

XPN - **72** points (average drops per bureau after one missed \$10 payment)

TU - **121** points

EFX - **178** points

**Example#2** - had 21 collection/charged off accts that did not belong to him, but another with same name

EFX – **520**, XPN – **541**, TU – **506**

**Example #3** - Based on errors by Macy's 1x30, 1x60, 1x90, 1x120, 1x150

Retired Female

EFX - **611** - 11/09/00 (before re-scoring), TU – **617**, XPN – **674**

EFX - **743** - 11/15/00 (after re-scoring), TU – **744**, XPN – **733**

#### **Example #4**

Consumer has 2 foreclosures with scores of

**726, 732, 735**

Co-borrower with no foreclosures

**655, 696, 680**

#### **Example #5**

Consumer with multiple bankruptcies filed within the same 2 years and within the last 36 months and multiple Fed Tax Liens and many collections and charged off accounts, but have the following scores:

EFX – **672**, XPN – **642**, TU – **636**

It just goes to show that everything is not what it appears!

**Example#6** - Six months history, higher than avg scores, no track rec, consumer has 1 acct opened 12/99  
EFX - last reported 08/00 - months reviewed - 8  
XPN - last reported 05/00 - months reviewed - 6  
TU - last reported 07/00 - months reviewed - 24  
XPN – **700**, TU – **687**, EFX – **702**

### **Solution**

Require the same scoring model “versions” to be used as provided by the credit grantor, Fair Isaac, the three CRA’s, or any other third party vendor. Have credit scores valid for 90 days during the mtg process.

### **CONSUMER DISCLOSURES CAN DIFFER FROM “RETAIL” CREDIT REPORTS**

When a consumer orders his or her own report, which is called a “consumer disclosure,” the consumer must produce many pieces of identifying data in order for the three national repositories to produce and send a consumer their disclosure. This means that the more identifying data put into the bureaus networks the more accurate the consumer disclosure. Users of credit information many times take a less accurate approach because users often have less complete data to identify the consumer. For example, users/lenders input partial names, only the current address, and sometimes plug in a number such as “000-00-0000” for the Social Security number. The “0” Social Security number may return a “hit” with the consumer’s accurate social security. Identity thieves also obtain consumers’ Social Security numbers this way.

In addition, “retail” versions of credit reports generated to resellers, users, and paying consumers differ from the consumer disclosures that consumers receive for “free” following adverse action by a creditor. The FCRA requires that any consumer-reporting agency, upon request of a consumer, must disclose “everything” in the consumers report (excluding any type of credit score). Many consumer disclosures do not include date of first delinquency or do not include all “late dates” in the payment pattern and/or do not receive the 24-48 month payment grid. In short, consumers are not receiving everything contained in their credit files.

### **Solution**

I would suggest that the FCRA be amended to expressly require that all credit furnishers report “full” and uniform account information to the national repositories. Require retail versions of consumer credit reports instead of consumer disclosures.

### **MERGE BLENDING**

This is another major problem within the mortgage industry that lenders and the GSE’s except as an acceptable practice because they want/need these quick and dirty credit reports no matter the cost to the consumer. The top credit reporting agencies that are on many AU systems use “merge blending”. This is how it works; lets say ACB credit furnisher reports to XPN as 1x30 (late was 1/03), TU as 1x30 (late was 2/03), and report to EFX as 1x30 (late was 3/03) its clear that the furnisher intended to only report 1x30. The tri-merge credit report would show that the consumer was 3x30 (lates in 1/03,02/03,03/03) while having an affect on a credit score it has a larger affect on a consumers credit risk, credit worthiness, and credit reputation and many times creates loan denials based on false information.

If the consumer disputes the inaccurate information that was reported on the tri-merge credit report with Experian, TransUnion, and Equifax that they were “never” 3x30 all three bureaus would only show it as 1x30. It’s a circle of deceit that harms consumers, which could lead to a credit denial or higher rates and fees and violates the foundation of the FCRA.

### **Solution**

I would suggest that the FCRA be amended to expressly ban the practice and require that all CRA/resellers who have knowledge of errors from the same furnisher to verify the inaccuracy with the furnisher directly.

### **CERTAIN CREDIT DATA PROVIDERS HARM CONSUMERS**

The *American Banker*<sup>4</sup> did a story titled “*Hearing to shine spotlight on credit process*” in which I provided an example of a consumers rescore we did showing how a young couple was harmed by Capital One’s refusal to report full account information. As this article points out, it is Capital One’s policy not to report full account information such as a consumers credit limit and you have to ask yourself why? Do they know that not reporting the credit limit on revolving credit cards lowers a consumers credit score? This practice unfairly keeps consumers in higher rate credit cards and this in turn keeps the consumer from price shopping for better rates in a free and open market. One of the driving forces behind calculating a credit score is to determine a consumer’s likelihood of default, credit risk, credit worthiness, and credit reputation. One on the top reasons why a credit score is not higher, that appears on almost every consumers adverse reason summary, is #10 “proportion of balances to credit limits is too high on bank revolving or other revolving accounts”. This practice affects this reason code and others because it gives a “false” indication of the overall revolving indebtedness, which is a major factor driving a consumers credit scores.

The younger the consumer the more negative impact on their credit scores or the thinner the file the more negative impact on the scores. This practice is not limited to just Capital One because other credit card vendors are also involved in the practice, but others aren’t as large, and only do it periodically. Capital One being one of the largest credit card vendors if not the largest and Capital One does it on “all” cardholders, which affects more people. This means that almost every Capital One card holder is having their credit scores artificially lowered, which could make a major difference in getting declined or paying higher fees and costs.

### **Solution**

Require through legislation and/or through agreements with all three repositories that all credit furnishers report “full” account information or they will not be able to pull credit reports under account review or upon a credit application. I know industry will state that our credit system is voluntary, which it is and many credit furnishers who report now would pull out reporting any data at all, but that is simply not going to be the case.

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<sup>4</sup> American Banker “FCRA Hearing to Shine Spotlight on Credit Process” dated 06/12/03

## **H.R. 2622**

I am not in favor of this bill for many reasons, but it does have some real good consumer protections built into it. First, the only thing that consumers gain from this bill is one “free” consumer disclosure per year, but they don’t gain a “free” credit score as a matter of fact they don’t even gain access to their credit scores at all. The only thing consumer’s get/receive from this bill is a “summary of credit scores”, which truly does consumers no good. It’s like trying to bake a cake and having all the ingredients, but without having the directions (the score). You will probably wind up with a mess in the oven. Consumers will wind up with more questions and problems then ever before.

Second, CDIA has worked hard and lobbied hard to get all these reseller “exemptions” built into this bill, which doesn’t do the consumer any good at all. Since CRA/resellers control most of the mortgage, employment screening, and tenant market then this bill does consumers no good if they are victims of identity theft, fraud, or inaccurate credit reports if the consumer is involved in a purchase of a home, refinance, employment, or looking for a home or apartment to rent.

Here is an example: Mr. Smith applies to buy a home and puts into escrow his whole life savings of 10K as a nonrefundable deposit as required in most real estate transactions. Mr. Smith didn’t listen to all the propaganda out there in regards to checking his credit first. He knew he checked it about 6 months ago and it was great, but now he finds out he’s a victim of “Identity theft”, fraud, or inaccuracies because his loan officer mistakenly showed him his tri-merged credit report. This is where many times consumers find out that they are victims of identity theft, fraud, or inaccuracies. So he calls ABC reseller who prepared the error filled report and the CRA/reseller is prohibited from helping him because of H.R.2622. Even though they produced the inaccurate credit report for the lender. So the consumer is faced with only two opinions; first, walk away from the property and lose his deposit because most R/E contracts don’t allow refunds unless you have been turned down. Second, since he was never turned down he would have to take the sub-prime, A-loan, which changes the rate considerably, the terms, may require more down, and may have a prepayment penalty. This is a decision consumers should not have to face when they are buying a home, which will many times be their largest purchase, their life savings, and their future financial nest egg. There are other issues I have with this bill, but this is the main one.

My position along with the rest of the CRA/reseller industry is we want the responsibility and we also want to be able to help all types of consumers who are victims of identity theft, fraud, or inaccurate credit reports if we have permissible purpose as outlined in the FCRA. If this bill passes then only consumers will be harmed if they are victims of the largest growing crime in the world identity theft and fraud. These two crimes also harm the lenders who lose out in making a loan because we the CRA/resellers have our hands tied by this bill.

### **Solution**

No CRA/reseller exemptions, keep it “status quo” where all CRA/resellers have all the same responsibilities as the national credit repositories Experian, TransUnion, and Equifax. Require the end-user and/or

CRA/reseller, during the mortgage process that uses or generates any type of credit scores for automated underwriting, be required to provide to the consumer a copy of “all” consumer reports, credit reports, and credit scores within 5 business days after such use and/or after adverse action is taken.

## **PRIVACY**

As noted above, the 1996 amendments to the FCRA sought to improve consumer report accuracy by placing a larger burden on credit furnishers to report information accurately. Many times furnishers utterly fail to meet their duties under the FCRA. Many times consumers dispute the information with both CRA’s and with furnisher directly.

The sale to a collection agency by furnishers of inaccurate information about consumers is the kind of egregious invasions of privacy the FCRA was intended to prevent. These actions by furnishers in turn lead to additional, severe privacy invasions in the form of collection agencies calling and writing to consumers at work and at home. This type of invasion of privacy goes up tremendously when the consumer is a victim of identity theft where a number of furnishers and consumer reporting agencies believe that the victim is “guilty until they prove themselves innocent instead of innocent until proven guilty”.

Again, a central purpose of the FCRA is to protect consumers by ensuring accuracy and giving individuals reasonable control over their personal information. It is time for furnishers to be accountable for its multiple invasions of consumers’ privacy.

## **CREDIT FURNISHER LIABILITY – 1681s-2(b)**

Many times furnishers report the same status on an account to all three repositories. Then they verify that an account they reported to both TransUnion and Experian was “accurate”. On the other hand they reported and verified the same account to Equifax as “inaccurate” or any variation of bureaus listed above. On its face this violates the Fair Credit Reporting Act (“FCRA”). The reporting of “two” sets of data undermines our banking system, which is dependent upon fair and accurate reporting by furnishers. Inaccurate reporting by furnishers after a consumer exercises his/her rights under reinvestigation directly impairs the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of our banking system.

The definition of inaccurate information in a consumers report means “any” misleading, incomplete, and/or outdated data, which fails to convey the full and true picture of a consumers credit reputation, credit risk, and credit worthiness.

Sometimes as professionals who know the system, we have to allow the consumer to get off the merry-go-round and do what’s right instead of just quoting company policy and procedure. The burden of proof falls directly on the furnisher of the information. The FCRA requires reasonableness during the reporting of data and then puts a higher standard on all players after the consumer exercises their rights under reinvestigation. Many cases clearly cross over the line on the issue of reasonableness. Many times furnishers do the following:

- Fail to properly notify all three repositories that the information was inaccurate;

- Report information again after notice and confirmation of errors;
- Fail to follow reasonable procedures to prevent reinsertion of previously deleted data;
- Fail to provide notice of dispute to all three repositories after the consumer disputes;
- Fail to conduct an adequate investigation with respect to the disputed information;
- Fail to review all relevant information provided by the consumer or repository;
- Fail to report the results of their investigation to “all” consumer reporting agencies;

### **Solution**

Allow consumer to dispute directly with furnisher under 1681s-2(a) with the same furnisher liability as under 1681s-2(b).

### **REINVESTIGATION - 1681i**

In the industry of credit reporting all three national repositories have been over the years trying to convert all their customers/furnishers over from the old Metro format to the new and improved Metro II format. Many of the customer/furnishers have been refusing to convert to the new Metro II. Since all three national repositories depend on their customer/furnishers for data in order to have a product to sell it's kind of like having “the fox guarding the hen house”.

The human factor during the credit reporting process cannot be under estimated. Throwing technology at a problem “credit reporting errors” does more harm, when sometimes only a human can protect consumers against inaccurate reporting no matter who's at fault. In my experience of handling thousands of consumer disputes under the FCRA, sometimes only a piece of paper, pencil, and a telephone call can assure the maximum possible accuracy as required under the FCRA. The average consumer relation's person at the repositories has to generate and complete 10 – 15 consumer disputes per hour. As a CRA/reseller, handling consumer disputes, our average time “per disputed tradeline” is 30-45 minutes some lasting much longer; the dispute quality coming from the repositories must be questioned at an average time of one consumer every five minutes per customer service representative.

It is my opinion that the repositories do an overall fair/good job, but when the dispute is more sophisticated requiring more than basic thought then they fail their responsibilities under the FCRA for not following reasonable procedures based on the following reasons:

- The repositories failed to properly notify credit furnishers within 5 days of dispute;
- Repositories failed to include all relevant information regarding consumer to furnisher;
- Repositories fail to understand clearly many consumers disputes during reinvestigation;
- Fail to have reasonable procedures in place to assure maximum possible accuracy;
- Fail to follow procedures stopping furnishers reinsertion of previously deleted data;
- Fail to have procedures to avoid allowing furnishers to report inaccurate information;

Within the industry I see daily the “pass the buck” attitude between the furnishers and all three national repositories. It's always the repositories fault, per the furnisher and it's always the furnisher's fault, per the repositories. This attitude comes from a very simple concept “profit”. Meaning the dispute process

for both furnishers and repositories is a “lost profit center” for both industries. So in fact little time is put into the dispute process other than the bare bones minimum.

Over the past five years of “re-scoring” we have seen, our updates on consumers credit files being deleted and/or corrected at the bureau level based on the furnisher’s documentation. Then the furnisher never corrects their tape that was sent to each of the repositories. So in other words, it’s here today, gone tomorrow, and back on sometime down the road. Many times tapes override manual updates and/or automated updates. Many times the repositories give their customers/furnishers a certain number of days to get their “act together” and update their systems/tapes after a manual and/or automated update.

### **Solution**

Requiring all credit furnishers to use the new Metro II format and not allow previously deleted data to be reinserted if the credit furnisher, CRA, and/or through rescoring made a manual update.

### **E-OSCAR (The way the bureaus communicate with their data furnishers during reinvestigation)**

This system was designed to expedite the credit dispute process and to improve data quality, but falls short on behalf of both the data furnisher and the bureau complying to assure maximum possible accuracy. In the process the bureau captures the disputed data that it has within its database and that snapshot is presented to the data furnisher to be verified.

This system “can not” and “does not” have “ALL” the relevant information that the consumer provided to the bureau, including the lengthy description and/or letter the consumer supplied, all documents supplied by consumer, and any other important facts the consumer has brought to the attention of the bureau.

The bureau breaks down the consumers detailed explanation into a two digit number with predetermined canned statements like (i.e.) “not mine”, “not in bankruptcy”, “possible mixed file” and the list goes on. The furnisher replies with “verified as reported”, “update”, or “delete”. This system is just not adequate enough in many instances to “assure maximum possible accuracy”.

### **ADVERSE ACTION NOTICE UNDER FCRA – 1681m**

One of the most important sections of the FCRA and the one that gives consumers a heads up that something is wrong causing them financial hardship is “notice of an adverse action”. Any user and/or person that makes, participates in, or arranges extensions of credit for consumer purposes is required to give the consumer an adverse action notice if they used in whole or in part a consumer report and their decision was adverse to the interest of the consumer.

In today’s Internet based automated evaluations, automated underwriting of insurance and mortgages these systems deny consumers the right to see their consumer reports that were used in their evaluation. It is extremely unfair to consumers today with all the “risk based pricing” adjustments the GSE’s and lenders are using to surcharge consumers not to give the consumer their “mandatory” adverse action notice.

## **Solution**

Require all users, and any person who makes, participates in, or arranges extensions of credit for consumer purposes to give consumer's adverse action notice when a credit report is used and the consumer is offered less favorable rates and terms. Just like we do currently for insurance adverse action notices.

## **CONCLUSION**

In today's information super highway world many credit grantors use automated evaluations, which vary from lender to lender, and these automated systems live and die on the use of credit scoring. Consumers are judged within seconds based principally on a credit score. In many cases it's a PASS or FAIL decision, but if the consumer passes the score test many credit grantors software have built in check and balance systems. These systems scan the credit file looking for bankruptcies, charge off's, foreclosures, collection accounts, and other derogatory accounts and/or comments attached to tradelines and/or public records. The higher the credit score the better the rates and terms and in many cases a point up or down could be the difference between getting your application accepted or rejected or paying higher fees and costs.

Scores change almost daily and the American Dream of homeownership and the consumers right to obtain auto and homeowners insurance should not be a "gamble" based on the time of the month you buy a home, refinance your home, and the month your insurance renews. No matter how industry spins it if you're a victim of identity theft the largest crime we have today, errors in your credit file, merging your file with someone with a common name, or you have multiple files with the same bureau, you will still have an "infected" credit score which leads to higher rates and terms. It also leads to an increased credit risk for new lenders, lowering of consumers credit worthiness, and lowering the overall credit reputation harming both the consumer and the lender who lost a chance to make a good loan, which would have helped our economy.

In today's risk based pricing by parties from the GSE's, lenders, and insurance companies consumers need the specialized attention that CRA/resellers give them. Consumers **"Can't Fight What They Can't See"** and by not allowing "transparency" for consumers in the form of copies of consumer reports, credit reports, and/or adverse action notices sent directly to the consumer then we truly don't have transparency at least on behalf of all consumers. In mortgage underwriting, inaccuracies that lower credit scores "cost" the borrowers--not the lenders. Rescoring services that help raise credit scores simply means the borrower gets the standard loan package. "Risk-based pricing" in mortgages seems to be a one-way street. Lenders, the GSE's, and the repositories are destroying consumer choice because they both are forcing consumers to check their credit files in advance or **"Buyer Beware"** and/or be ready to pay extremely high fees to re-score. It's a position consumers should not have to face if we truly believe that "all" consumer reporting agencies are to assure "maximum possible accuracy" during the process of preparing credit reports to third parties, or are we just giving "lip service" to the banking industry and the consumer for whom we are trying to protect, which are the two driving forces behind our economy?

I thank you, Mr. Chairman, for this opportunity to testify and present my views and the views of AAA American Credit Bureau. I will be happy to answer any questions you may have.

## EXHIBIT A

washingtonpost.com

### **Bad FICO Mark? Rescore Your Credit**

By Kenneth R. Harney

Saturday, July 14, 2001; Page H01

You've probably heard that American mortgage applicants now have ready access to those once-secret, triple-digit numbers that pigeonhole them as good financial risks or bad -- their credit scores.

But you might not have heard of a fast-growing service that can dramatically improve your loan prospects almost overnight: "rapid rescoring." This is a service now offered by dozens of local credit-reporting agencies around the country; it allows mortgage loan officers to request a rescoring of applicants' credit files at each of the three giant credit repositories -- Equifax, Experian and Trans Union.

At the request of the loan officer, a local credit-reporting agency analyzes an applicant's files, obtains written corrections from creditors of any mistaken information in the files, and advises the applicant on how to restructure certain open credit lines to raise credit scores. Sometimes scores can be boosted by 40 to 100 points or more in less than a week -- all fully within the law and with the cooperation of the credit repositories themselves.

With a higher score, borrowers may qualify for lower mortgage rates, lower loan fees and better terms overall. Corrective rescoring can save consumers tens of thousands of dollars in long-term debt, and alert them to negative information sitting in their credit files.

Consider the case of Alexandria C. Phillips, a lawyer who lives near Los Angeles. She recently sought to refinance a condominium she owns in Newport Beach and to buy a new house in Laguna Beach. Her idea was to pull money out of the condo and use it to help with the down payment on the house.

When she applied for mortgage money through a local broker, however, she was told that her "credit scores don't look too good." Phillips was tied up with a heavy courtroom schedule and didn't ask what her scores were or why they were low. She asked the broker to get the best terms she could get under the circumstances to buy the house and refi the condo.

The credit scores the broker referred to were "FICO" scores, the predominant quick-reference credit-analysis tool used by mortgage lenders, credit card issuers and others. FICO stands for Fair, Isaac and Co., the developer of the scoring models that ranks applicants in terms of their relative likelihood to pay their debts on time.

FICO scores are generated by proprietary computer programs licensed by Fair, Isaac and housed at Equifax, Experian and Trans Union. Individuals' full, electronic credit files are run through the software and evaluated for risk patterns by the statistical models. Though long kept secret from consumers by contractual requirements, FICO scores are now easy to obtain. Fair, Isaac and Equifax provide them on the Internet for a nominal charge ([www.myfico.com](http://www.myfico.com)), and the other repositories provide proprietary-scoring advisory information as well.

In Phillips's case, her scores when pulled on May 23 were 597 (Experian), 569 (Trans Union) and 580 (Equifax). Scores at the three repositories usually differ because of different creditor information in their files.

Phillips's scores were, in a word, horrible. To qualify for the best loan quotes, borrowers generally need scores of 700 or better. Scores under 620 are "sub-prime" -- and produce significantly higher quotes on interest rates and fees. Phillips's broker referred her application to a lender specializing in sub-prime,

damaged-credit mortgages. The lender, in turn, sent Phillips's files to one of the country's most prominent rescoring experts, Richard Lefebvre, president of AAA American Credit Bureau in Flagstaff, Ariz.

Lefebvre immediately began checking out the negatives ("derogatories" in credit lingo) in Phillips's file. One by one, with Phillips's help, the derogatories turned out to be long-standing errors on her credit files: an incorrect report of a delinquent payment on a credit card; a Mercedes listed as "repossessed" in her file that actually belonged to someone else; an incorrectly listed "collection" action against her for \$1,054 in 1995. After requests from Lefebvre, all were corrected by fax and sent directly to the repositories.

Lefebvre also noticed that Phillips routinely put bills from her law office onto several credit cards. But the balances outstanding when the FICO scores were pulled were nearly at the limit on the cards. High credit balances relative to card limits are a major no-no for FICO scores: When your limit is \$10,000 and you've got a \$9,800 balance, your score takes a hit. So Lefebvre had Phillips pay off or redistribute balances so that no card or credit line had a balance near the limit.

The result? Within five days, Phillips's FICO scores jumped 200 points -- taking her from a 580 to a 780, and from a high-risk mortgage applicant to an A-plus cream puff.

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## **EXHIBIT B**

**Washingtonpost.com**

### **Credit Report Errors Can Prove Costly**

Saturday, June 14, 2003; Page F01

When you discovered an error on your credit report in connection with a mortgage application, was it easy to get it corrected? Or did you get a months-long runaround from the creditor that made the mistake and the credit bureau that failed to promptly amend your credit file? That's what happened to Rep. Gary L. Ackerman (D-N.Y.).

Ackerman's complaint was just one of dozens that surfaced last week during Capitol Hill hearings that have huge potential significance to anyone who applies for a home loan. The hearings were centered on the Fair Credit Reporting Act, a 33-year-old federal consumer-protection statute that few consumers know much about.

A key focus was how credit system errors and disclosure failures can cost homebuyers significantly when they apply for mortgages. Banking and credit industry witnesses at the hearing generally argued that while the U.S. credit system may have flaws, it is by far the most efficient in the world.

Consumer advocates presented starkly different assessments. Shanna L. Smith, president and chief executive of the nonprofit National Fair Housing Alliance, said electronic mortgage underwriting systems -- used by practically all major lenders today to quote rates to applicants -- frequently cause or enable borrowers to be steered to higher-cost loans.

When a loan applicant has a FICO credit score near or below a set threshold, typically the low 600s, most electronic underwriting systems flag the applicant and direct the lender to "manually" underwrite the transaction. So, the loan officer is supposed to show the applicant the underlying credit report data and try to

determine whether errors, omissions or other factors may be depressing the score. The consumer then can use the amended credit report to get a better score and lower interest rate.

FICO scores are generated by running credit file data from each of the three national credit repositories -- Equifax, Experian and TransUnion -- through risk-prediction software developed by Fair Isaac Corp. Scores range from the upper 300s to the mid-800s, with high scores indicating lower risk of nonpayment.

But Smith, whose organization conducts fair-lending "testing" of mortgage companies nationwide, said that lenders often skip the manual-underwriting step. Instead, she testified, "from interviews with hundreds of loan originators over the past five years, I have learned that at least half" of lenders send the applicant to a subprime lender "rather than spend the time necessary to manually underwrite the loan."

The electronic underwriting systems now in widespread use throw "many healthy, viable babies out with the proverbial bath water," Smith said. In effect, large numbers of credit-worthy applicants get shunted into subprime, high-fee mortgages that are extra profitable for lenders and investors.

A credit agency president, Richard L. LeFebvre of AAA American Credit Bureau Inc., of Flagstaff, Ariz., told the hearing that although federal law guarantees consumers the right to an "adverse action" notice anytime their credit file data causes them a "financial hardship," mortgage applicants routinely get no disclosure whatsoever when an underwriting computer pushes them into a higher-cost loan.

LeFebvre is a nationally known expert in "rapid rescoring," essentially intervening in the loan application process to correct or supplement credit data quickly enough to obtain the mortgage rate desired by the consumer. Dozens of independent credit reporting companies nationwide are licensed to perform rescoring services, working for brokers and lenders on behalf of consumer clients.

LeFebvre provided examples of how even small corrections of erroneous data can dramatically improve an applicant's credit scores. In one case, a married couple referred to his firm had a three-year credit history with no late payments, according to LeFebvre. Their "mid-FICO" score, the score typically used to price mortgages, was 731, qualifying them for close to the lowest rates in the market.

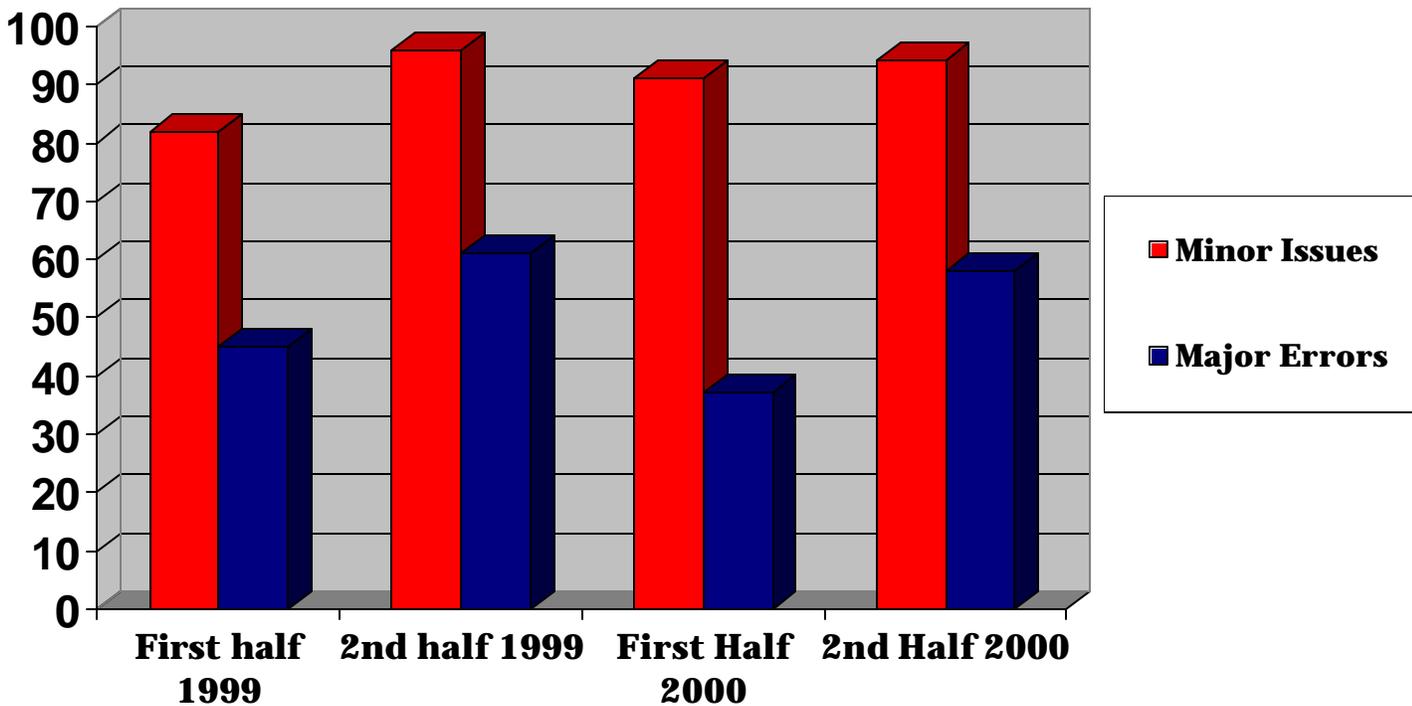
But when a creditor erroneously reported a missed \$10 payment on an account, according to LeFebvre, the couple's scores plunged into the 500s, throwing them into a high-rate, high-fees bracket.

People with relatively brief credit histories tend to be affected most dramatically by erroneous negative items in their files, according to Fair Isaac. LeFebvre got the errors corrected on the couple's files, returning them to eligibility for a prime market rate on their loan.

The upshot for you as a borrower? Always order copies of your three credit reports well in advance of any mortgage application and check for mistakes. (If you live in Maryland, Colorado, Massachusetts, New Jersey, Georgia or Vermont, you can request a copy of each of your credit files free every year.) Equally important, when your loan officer uses an electronic system to underwrite your application, ask whether you are being quoted the best rate available in the marketplace. If not, demand to see the credit data that caused you to be priced higher.

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## EXHIBIT C



## AAA Credit Study #2

“Percentage of major errors and other minor issues that would affect a Consumers Credit Scores”

This data is based on using our AAA Credit Score, which compares data between the three National Credit Repositories. The AAA Credit Score checks for flaws and credit grantor problems within the credit scoring system.

**NOTE:** Our AAA Credit score cannot check for errors in the consumers credit file in which all three national repositories report the same common credit grantor errors without the help and assistance of the consumer. Those types of errors are not reported in our study.

**EXHIBIT D**

# AAA CREDIT SCORE! Copyright © 2000, all rights reserved

Please be advised that your client: FLINTSTONE, FRED and FLINTSTONE, WILMA (report #49197) is a Candidate for ADVS/CDVS and may have their Fico score Recalculated

The overall AAA Credit Score is: **POOR** Copyright © 2000, all rights reserved ®  
(excellent, good, fair, poor, fail)

ADVS (B) score is: **91** and is a: **A** on our “ADVS” grading system.

CDVS (B) score is: **79** and is a: **C** on our “CDVS” grading system.

ADVS (CB) score is: **57** and is a: **F** on our “ADVS” grading system.

CDVS (CB) score is: **63** and is a: **D** on our “CDVS” grading system.

The Breakdown between Borrower and Co-Borrower per Bureau for ADVS is as follows:

XPN“B”: **HIGH**      XPN “CB”: **LOW**

TU “B”: **MED**      TU “CB”: **MED**

EFX “B”: **HIGH**      EFX “CB”: **LOW**

The following are reason codes for our AAA Credit Scoring model & ADVS/CDVS grading system:

- A: Last reporting dates differ by standard on Rev/Opn*
- B: Last reporting dates differ by standard on all acct's*
- C: Known creditors, that effect a consumers Fico scores and meets standard*
- D: Credit limits on Rev/Opn acct's differ by standard*
- H: Paying record differs by more than standard and late's within guidelines*
- J: ECOA codes that meet standard*
- L: Consumers have BK tradeline and meet standard on trade lines*
- M: Trade lines show past due status and meet standard*
- N: Consumers don't show Bankruptcy in PB and differs by standard*
- Q: Consumers have more file var's than standard*
- T: Rev/Opn acct's above standard and balance ratio above standard*

**REMEMBER:** Our AAA Credit Score model and ADVS/CDVS grading system does not take into consideration error's that our AAA scoring model can't see or does not know are inaccurate without the help of the consumer. Our scoring model is designed to provide Mortgage Lenders and Consumers a way to check the accuracy of the Fico score and determine what if anything needs to be done on behalf of your consumer. While this score is to be used only as a “GUIDE” only to test the validity of the Fico score. Please keep in mind “WE CAN NOT” predict the final outcome of your consumers Fico score due to “FAIR ISAAC'S” proprietary practices.

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## EXHIBIT E

### UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

*In the Matter of*

**FIRST AMERICAN REAL ESTATE SOLUTIONS, LLC,**

**a limited liability company. File No.**

#### **AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of First American CREDCO, Inc. ("CREDCO"), a corporation. On November 30, 1997, CREDCO's consumer reporting business was reorganized as an operating division of First American Real Estate Solutions, LLC, a limited liability company ("First American" or "proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between First American Real Estate Solutions, LLC, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a limited liability company organized under the laws of California, with its principal office or place of business at 150 Second Avenue North, Suite 1600, St. Petersburg, Florida, 33701.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true. While proposed respondent believes that this agreement and entry of the order are in its interest, proposed respondent specifically denies the allegations of the complaint, other than the jurisdictional facts, and denies that it or CREDCO violated any law as alleged in the complaint or otherwise.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

#### **ORDER**

##### **DEFINITIONS**

For the purposes of this order, the following definitions shall apply:

1. The term "Fair Credit Reporting Act" ("FCRA") refers to the Fair Credit Reporting Act, as amended by Public Law 104-208 (Sept. 30, 1996), 15 U.S.C. §§ 1681-1681u, and as amended in the future.
2. The terms "person," "consumer," "consumer report," "consumer reporting agency," and "file," are defined as set forth in Sections 603(b), (c), (d), (f), and (g), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), (c), (d), (f) and (g).
3. Unless otherwise specified, "respondent" shall mean First American Real Estate Solutions, LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.

I.

**IT IS ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, preparation, assembly, maintenance, and furnishing of consumer reports and files, shall comply with Section 611 of the FCRA, 15 U.S.C. § 1681i, including but not limited to the following provisions:

A. Subject to Section 611(a)(3), 15 U.S.C. § 1681i(a)(3), if the completeness or accuracy of any item of information contained in a consumer's file at respondent is disputed by the consumer and the consumer notifies respondent directly of such dispute, respondent shall reinvestigate free of charge and record the current status of the disputed information or delete the information from the file, as required by Section 611(a)(1), 15 U.S.C. § 1681i(a)(1);

B. As required by Section 611(a)(2), 15 U.S.C. § 1681i(a)(2), but subject to Section 611(a)(3), 15 U.S.C. § 1681i(a)(3),

1. Before the expiration of the five (5)-business-day period beginning on the date on which respondent receives notice of a dispute from a consumer in accordance with Section 611(a)(1), 15 U.S.C. § 1681i(a)(1), respondent 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 respondent has received from the consumer; and

2. Respondent shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by respondent from the consumer after the five (5)-business-day period referred to in paragraph B.1. above and before the end of the thirty (30)-day period beginning on the date on which respondent receives the notice of the dispute directly from the consumer;

C. As required by Section 611(a)(4), 15 U.S.C. § 1681i(a)(4), in conducting any reinvestigation under Section 611(a)(1), 15 U.S.C. § 1681i(a)(1), with respect to disputed information in the file of any consumer, respondent shall review and consider all relevant information submitted by the consumer in the period described in Section 611(a)(1)(A) with respect to such disputed information;

D. As required by Section 611(a)(5)(C), 15 U.S.C. § 1681i(a)(5)(C), respondent shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that has been deleted (other than information that has been reinserted after the person furnishing the information certifies that the information is complete and accurate, as required by Section 611(a)(5)(B)(i), 15 U.S.C. § 1681i(a)(5)(B)(i));

E. Respondent shall provide written notice to the consumer of the results of the reinvestigation of any item disputed by the consumer under Section 611(a), 15 U.S.C. § 1681i(a), not later than five (5) business days after the completion of the reinvestigation of the item, as required by Section 611(a)(6), 15 U.S.C. § 1681i(a)(6), including but not limited to:

1. A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information ("dispute statement"), as required by Section 611(a)(6)(B)(iv); and

2. A notice, as required by Section 611(a)(6)(B)(v), that the consumer has the right to request that respondent provide either a notification that the item has been corrected or deleted, or the consumer's dispute statement described in paragraph E.1. above or a codification or summary of that dispute statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information (a) within two years prior to the consumer's request, for employment purposes; or (b) within six months prior to the consumer's request, for any other purpose;

F. If the reinvestigation under Section 611(a), 15 U.S.C. § 1681i(a), does not resolve the consumer's dispute, respondent shall permit the consumer to file a dispute statement, as required by Section 611(b), 15 U.S.C. § 1681i(b);

G. As required by Section 611(c), 15 U.S.C. § 1681i(c), whenever a consumer files a dispute statement pursuant to paragraph I.F. above, respondent shall include the consumer's dispute statement, or a codification or summary of the dispute statement, in all subsequent consumer reports that respondent prepares concerning the consumer that contains the information in question, unless respondent has reasonable grounds to believe the dispute statement is frivolous or irrelevant; and

H. Respondent shall, at the request of the consumer, provide a notification, as required by Section 611(d), 15 U.S.C. § 1681i(d), that a disputed item has been corrected or deleted, or the consumer's dispute statement or a codification or summary of that dispute statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information (a) within two years prior to the consumer's request, for employment purposes; or (b) within six months prior to the consumer's request, for any other purpose.

## II.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall for five (5) years maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records demonstrating respondent's compliance with the terms and provisions of this order.

## III.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such personnel hired after such date within thirty (30) days after the person assumes such position or responsibilities.

## IV.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the entity name or address. Provided, however, that, with respect to any proposed change in the entity about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

## V.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, within sixty (60) days after the date of service of this order, and, thereafter, within thirty (30) days of such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

## VI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of: 1. Any Part in this order that terminates in less than twenty (20) years; 2. This order's application to any respondent that is not named as a defendant in such complaint; and 3. This order if such complaint is filed after the order has terminated pursuant to this Part. *Provided, further*, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.