TESTIMONY OF

Edmund Mierzwinski
Consumer Program Director
U.S. Public Interest Research Group

ON BEHALF OF:
ACORN
CENTER FOR COMMUNITY CHANGE
CONSUMER ACTION
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION
ELECTRONIC PRIVACY INFORMATION CENTER
IDENTITY THEFT RESOURCE CENTER
NATIONAL CONSUMER LAW CENTER
PRIVACY RIGHTS CLEARINGHOUSE
PRIVACY TIMES
U.S. PUBLIC INTEREST RESEARCH GROUP

BEFORE THE
US SENATE
BANKING COMMITTEE
HONORABLE RICHARD SHELBY, CHAIR

REGARDING

RECOMMENDATIONS TO IMPROVE THE FAIR CREDIT REPORTING ACT

31 JULY 2003

Chairman Shelby, Senator Sarbanes, members of the committee, my name is Edmund Mierzwinski and I am Consumer Program Director for the U.S. Public Interest Research Group. My testimony today is also on behalf of a number of consumer, privacy and community groups including ACORN, Center For Community Change, Consumer Action, Consumer Federation Of America, Consumers Union, Electronic Privacy Information Center, Identity Theft Resource Center, Privacy Rights Clearinghouse, Privacy Times and the low-income clients of the National Consumer Law Center.

Our organizations have all been active on Fair Credit Reporting Act (FCRA) matters for many years, have participated in the debate leading to the 1996 amendments and have published numerous reports and manuals on credit reporting issues.

At the outset, we want to commend the committee for holding a comprehensive set of hearings on the Fair Credit Reporting Act (FCRA). The committee has developed a detailed record on issues ranging from identity theft and credit report accuracy to the uses of information by affiliates. We are pleased that the Senate Banking Committee has elected to consider our recommendations for reform before preparing its own FCRA reform bill for consideration.

The above-mentioned groups believe that a careful review of that hearing record would show that broad, comprehensive reforms are necessary to guarantee that credit reports and credit scores are accurate, that the privacy of consumers is maintained and that identity theft is stopped. We also believe that the industry witnesses seeking extension of the 1996 preemption amendments to the FCRA have failed to make their case that state authority to regulate these areas of the FCRA should be taken away, let alone taken away permanently.

The House Committee on Financial Services has already approved a bill, HR 2622, that takes some steps to prevent identity theft and protect privacy but fails to adequately address all the problems identified in its own comprehensive hearings. Yet, the House committee has also chosen to permanently extend the temporary preemption provisions of the 1996 FCRA amendments. Because that bill's reforms, taken together, are modest compared to its sweeping diminution of state authority, we cannot support it.

The House bill, HR 2622, helps identity theft victims after they become victims, but its provisions to prevent identity theft are modest. Its intent as introduced to provide free credit reports including credit scores was laudable, but in committee action industry-sought amendments to both allow a charge for credit scores and also limit the free credit report on request requirement to "national" credit bureaus severely reduced the provision's benefit. HR 2622's slight improvements to furnisher liability standards ignore the problem of incomplete reporting by creditors that results in lower credit scores. HR 2622 also fails to give consumers the tools necessary to clear up mistakes on their credit reports. Despite a detailed record demonstrating the need to significantly improve the law, the proposed bill instead defers many actions until proposed studies by various agencies are completed.[1]

The House failed to address the growing gap in FCRA protection posed by growing use of affiliate-shared information for decision-making, outside the protections of the FCRA. Last month, in this room, Citigroup stated that it: "is able to use the credit information and transaction histories that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit.[2]" Despite House knowledge of Citigroup's statement before this committee that it uses affiliate-shared information to assist in credit decision-making, the House took no action to more strictly regulate affiliate sharing, nor to provide consumers greater adverse action and dispute rights when their confidential customer records are used to profile them or make credit decisions.

The record of both committees has also demonstrated that nearly every reform considered or included in HR 2622 is based on previous state actions. So, it is troubling that the combination of the House bill's modest protections with its permanent extension of preemption means that states will no longer be able to solve many credit reporting and privacy problems. The impact of permanently eliminating that state authority to innovate and respond to local problems and conditions should be carefully considered.

In addition, these problems may be exacerbated if it is in fact the House's intent, by inserting many of its modest reforms into sections of the FCRA already covered by the preemption language in 1996, to **expand** the preemption provisions of 1996.

On preemption, if it was not going to sunset the provisions, as we recommend, the House committee should have done the following:

(1) Reiterated Congress's prior intention that the FCRA does not prevent states from exercising the right conferred on them by Gramm-Leach-Bliley to regulate information sharing, including information sharing among affiliates;

(2) Only extended preemption until the proposed studies are completed and then provided a new sunset date, for example, two or at most four years from now; and

(3) Confirmed that is <u>not</u> Congressional intent that the modest identity theft and other improvements to the FCRA in HR 2622 would preempt past or future state action in these areas.

Providing for a preemption sunset would make more sense than permanent preemption since the Congress could once again have a robust and healthy review of the rapidly-changing technologies and uses of information and other important matters the two committees have been debating. Without the trigger of a preemption sunset, it is doubtful that the Congress will again overcome the legislative inertia necessary to review the FCRA in the future.

As to the need for a grandfather clause clarification on identity theft laws, for example, we offer the following: California law implementing a credit card number truncation requirement that takes effect 1 January 2004. If any final Congressional legislation includes the House credit card truncation provision with its 2007 compliance date, are California and other earlier timetable laws preempted? These types of troubling problems have not been addressed in any House debate or legislative history.

In addition, as the testimony of U.S. PIRG[3] and the Vermont Attorney General's Office[4] described in June, a clear reading of legislative history shows that the 1996 preemption of the definition of affiliate-sharing was intended to be construed narrowly to prevent companies sharing information from being treated as credit bureaus.[5]

Unfortunately, reiterating this prior intent is even more necessary because this week a U.S. district judge partly overturned local financial privacy ordinances in several California cities.[6] The court argued that the FCRA's preemption provision was controlling, despite the clear legislative history of the Sarbanes amendment to the Gramm-Leach-Bliley Act granting states the authority to enact stronger financial privacy laws. If upheld, this decision will have a chilling effect on the right of states to protect their citizens from privacy invasions. As the Vermont Attorney General's Office testimony described above details, the decision, if allowed to stand, could also have a devastating impact on state efforts to regulate the insurance industry's sharing of medical information.

While we intend to work with House consumer and privacy champions to ameliorate HR 2622 on the House floor, we believe that the Senate Banking Committee process offers consumers the best hope for improvements to the law. In addition to our recommendations on preemption above, we urge the committee to take a variety of actions detailed in an appendix to this testimony. Here are the highlights:

Give consumers more information. When a consumer is denied credit on the basis of a credit report, give him or her the right to automatically obtain from that lender a copy of the subscriber report and score used to deny credit. Employment applicants already have a similar right under the FCRA. This provision, coupled with the annual free credit report on request, and deletion of the House provision allowing a charge for companion credit scores, will be a powerful incentive to improve accuracy. As the Federal Trade Commission has recommended, give consumers adverse action notices when they accept counter-offers for credit at a higher price. We also recommend that consumers be given adverse action notices – and FCRA review and dispute rights -- when information is used in the new affiliate-sharing and decision-making world described in Citigroup's testimony before this committee last month.

Give consumers better private enforcement rights and strengthen agency enforcement.

- Give consumers the right to go to a court and seek injunctive relief to stop a credit bureau from selling faulty credit reports about them.
- Give consumers the right to seek minimum statutory damages of $100-$1,000 per violation of the FCRA, as other consumer laws provide, so that they don't have to prove their actual damages to a court. This provision is especially critical for identity theft victims, who often spend hundreds of hours over a period of years trying to clear their good names. While the cost of emotional distress is significantly greater than $100-$1000, the threat of specific damages would be a powerful incentive to force creditors and credit bureaus to clean up the credit reporting system's accuracy.
- Require the major credit bureaus to provide the FTC and state Attorneys General with detailed annual reports on the accuracy and privacy of their databases, including information on their testing of the veracity of their record-keeping, statistical information on the completeness and accuracy of the information provided by furnishers (creditors) and information about the number of and disposition of consumer complaints. Require the FTC to publish a summary of these records to the public that is adequate to assist the development of public policy and to help consumers make choices about which credit report to request, while of course maintaining the sanctity of reasonable and legitimate trade secret information.

The remainder of our testimony will discuss in detail the problems identified in the Senate hearings. While we use HR 2622's positive and negative provisions as a starting off point, we urge the committee to paint with a fresh brush and create a better bill. At the end of this testimony, we provide a comparison of HR 2622's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

1) Any Reform Bill Must Guarantee The Accuracy of Credit Reports And Prevent Identity Theft

A) During the hearings the committee heard detailed testimony about the factors that cause credit report inaccuracies.

Some of the mistakes on consumer reports are the result of mis-merged file information, when the bureau simply adds one consumer's account to another's file. Other mistakes result from fraudulent accounts of identity thieves being mistakenly added to an innocent consumer's report. Still others result from coding or reporting errors where a consumer's on-time payments are falsely listed as late. Surprisingly, some of the "errors" are intentional, where a creditor seeks to deflate its own consumers' credit scores.

In particular, the committee reviewed the findings of a study of the credit files of 500,000 consumers, the most comprehensive study[7] of credit reports ever completed. That study, produced jointly by the Consumer Federation of America, along with the National Credit Reporting Association[8], found that 29% of consumers had discrepancies in their credit reports obtained from each of the three national repositories resulting in a variance of 50 points or more in their credit scores. Another key finding of this study, using a conservative analysis, was that at least 8 million Americans would likely be mis-categorized as sub-prime and pay tens of thousands of dollars in excess interest payments over the 30-year life of a mortgage.

I would also like to reference into the hearing record House testimony and recent detailed reports from civil rights groups, including the Center for Community Change,[9] NAACP Washington Bureau,[10] the National Urban League Institute for Opportunity and Equality[11] and the National Fair Housing Alliance,[12] that credit scoring models be made more transparent and subject to independent verification both to ensure accuracy and to demonstrate that the scoring models do not result in a disparate racial impact among protected classes and comply fully with the nation's fair lending laws. See also, for example, the detailed 2002 report "Risk or Race?" by the Center for Community Change, which finds that "African-Americans and Hispanics are disproportionately represented in the sub-prime home refinance mortgage market" and supports the position that these disparities cannot be attributed solely to risk.[13]

Similarly, the committee heard in the testimony[14] of U.S. PIRG and CFA that a growing number of credit card companies are "risk re-pricing" their existing customers, often on a monthly basis and raising the interest rates of some consumers to as much as 25% APR, solely on the basis of either a reduced credit score or an alleged late payment to a different creditor. Errors in credit reports or defects in credit scoring models could easily affect such a harsh decision-making tool, as the New York Times pointed out in a Page One story.[15]

In addition, the testimony of both CFA and the U.S. Public Interest Research Group has described how some of the nation's largest credit card companies are intentionally failing to report complete information on their customers in an effort to "game" the credit scoring models, thereby deflating their customers' credit scores. This anti-competitive behavior has been a subject of regulatory scrutiny, as documented in the record testimony. Further, following one of these revelations, the American Banker newspaper obtained information from Capital One that it continues in these practices.[16] These shocking and unethical practices were elaborated on in detail during questioning by Senators at Tuesday's hearing.

Further, testimony before the committee regarding recent research conducted by the Federal Reserve Board provided confirmation of the consumer groups' major findings that credit reports are inaccurate and that creditors ("furnishers of information" in the FCRA) were intentionally withholding full information about their customers.[17]

B) The Committee Heard Testimony That The 1996 Amendments Intended to Make It Easier For Victims Of Errors and Identity Theft To Clear These Mistakes Haven't Worked

Then, the committee heard detailed testimony from the Identity Theft Resource Center[18] on behalf of identity theft victims describing the difficulties consumers face when they try to resolve these errors in their credit reports. The ITRC and the victims, as well as U.S. PIRG and CFA, provided detailed proposals to make it easier for consumers to correct mistakes and to enforce the law when mistakes were not corrected.

The direct testimony of Captain John Harrison[19] (U.S. Army, ret.) was especially compelling as he documented in this room that he simply could not convince the credit bureaus to remove 61 separate and obviously fraudulent accounts from his credit report and that the emotional impact of the problem had affected his ability to hold a job. Mr. Chairman, only one creditor reached out to try to help him. That is unacceptable.

A widely cited survey, Nowhere To Turn[20], by California PIRG and the Privacy Rights Clearinghouse documented in 2000 that identify theft victims who contacted our organizations had spent an average of $808 out-of-pocket and 175 hours over a period of two years or more trying to clear their names of an average of $17,000 in fraudulent accounts.

Recent data show that the problem of identity theft is getting worse, not better.

- First, the FTC has documented in testimony before the committee that identity theft was the leading complaint to the commission in each of the years 2000, 2001 and 2002 and that complaints virtually doubly in 2002.
- Second, a study released just yesterday by Alan Westin, author of the seminal 1967 book *Privacy and Freedom*, and director of the 1975-76 U.S. Privacy Commission, found that "33.4 million Americans say they have been victims of identity theft or fraud since 1990, with over 13 million since January 2001 and rising." Westin projects that annual costs of identity theft to consumers average $1.5 billion dollars per year since January 2001.[21]
- Third, unpublished research by the Identify Theft Resource Center being conducted as a followup to the report "Nowhere To Turn," will show that it now takes victims even longer and costs them even more to clear up even more fraudulent accounts.[22]

As a coda to the detailed record documenting the difficulties consumers face clearing their names, the committee heard detailed testimony from Mr. David Jokinen, a businessman-professor-consumer who has been declared dead, not once but several times, by the credit bureaus, and of his unfortunate adventures involved in clearing his name: "I will share with you my 2-year nightmare of being declared a "dead man walking." It's a little harder to get credit when the [r]epositories report you as "deceased.[23]"

All humor aside, the witness documented that the bureau errors had cost him thousands of dollars in excess costs and delayed loans.

At the end of this testimony, we provide a comparison of HR 2622's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

3) Any Reform Bill Must Guarantee Privacy

The House and Senate committees heard record testimony about a number of other privacy problems.

A) Affiliate Sharing

First, testimony by U.S. PIRG, the Vermont Attorney General's Office and Fordham Law Professor Joel Reidenberg[24] described how the 1996 FCRA exempts affiliate sharing only from the definition of credit report and also preempts states from amending that provision only as it applies to making those communications into consumer (credit) reports.[25]

California and its cities continue to seek stronger financial privacy laws. Although a state legislative proposal, SB 1, offered by State Senator Jackie Speier, has not passed, several local ordinances have been enacted. Unfortunately, a district judge overturned similar local financial privacy rules in San Mateo and Daly City yesterday following a court challenge from Bank of America and Wells Fargo, backed by the Comptroller of the Currency (OCC).

The banks were granted partial summary judgment on their claim that the FCRA preempted state or local action regulating affiliate sharing, although the provisions of the ordinances dealing with third party sharing were upheld. We expect and will support the cities' appeal. Yet we also expect the banks to appeal, making a National Bank Act claim that even the third-party sharing is preempted. We believe it is now appropriate for the Congress to consider a narrow amendment to FCRA reiterating the 1996 Congressional intent to construe the preemptive effect of the 1996 FCRA amendment narrowly and to also make it clear that the Sarbanes amendment to the 1999 Gramm-Leach-Bliley Act is the paramount federal rule on financial privacy, **all** other laws (FCRA, NBA and any others) notwithstanding.

Your action is especially critical because several California organizations including Consumers Union, Consumer Action, AARP, CALPIRG and the Consumer Federation of California seek to qualify a March 2004 ballot initiative, after the proposed expiration of FCRA preemption, requiring opt-in consent before affiliate sharing for secondary purposes.

The affiliate sharing exception has another flaw. It also allows detailed experience and transaction information to be shared and used for adverse actions without triggering the FCRA's consumer protection rights,[26] in the circumstance where the information is shared among corporate affiliates. Experience and transaction information could include details from credit card and checking account purchases, mortgage balances and payment histories, bank account and brokerage balances and other deposit account usage information and relationships with co-signers, if any.

As the FTC, in an official position paper released in 1994 before the 1996 amendments,[27] stated on affiliate sharing:

> "Because the subject of information sharing with affiliates has not been the subject of Congressional hearings, the factual basis for the provision is not necessarily available and the Commission cannot easily evaluate its pros-and-cons. The Commission believes, however, that caution is the best approach in considering whether to create what may become a significant exception to the consumer protections provided by the FCRA. It may be preferable to defer creation of any exceptions to the FCRA's protections for affiliate sharing until Congress has an opportunity to study this issue and its implications more carefully."

Unfortunately, Congress did not actually build a hearing record on affiliate sharing before it created this controversial loophole in 1996. It now appears that the FTC's concern that a "significant exception" to FCRA's protections would be created was correct.

In testimony on June 26th before this committee, Citigroup stated that it: "is able to use the credit information and transaction histories that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit.[28]"

The growing use of affiliate sharing under GLB for profiling and credit decision-making, as confirmed by the Citigroup Senate testimony, will lessen the public benefits of the FCRA. When credit decisions are made on the basis of affiliate-shared information, consumers do not have the same bundle of rights as they do under FCRA. As internal creditor databases increase in size and predictive value, either credit decisions or other profiling decisions (whether to even offer a consumer a certain class of product, for example) will more and more be made under the GLB regime. These adverse actions will not result in triggering the same disclosures and rights that consumers obtain under the FCRA. These changes in the marketplace, which are already occurring, mean that consumers may not have the same credit rights in the future.

B) Any reform bill must improve the inadequate regulation of pre-screened solicitations

Credit bureaus also sell under-regulated pre-screened lists of consumers derived from credit reports, for credit and insurance related purposes. Pre-screened opt-out notices are hard to find and harder to read; the opt-out mechanism is overly complex and, for a permanent opt-out, a consumer must make a call, receive a notice in the mail, sign it, stamp it and return it.[29] The unnecessary complexity contrasts starkly with the much simpler national Do Not Call list recently implemented by the FTC which has received overwhelming consumer response.

C) Any Reform Must Address Medical Privacy Problems

Testimony by CFA has documented how medical information could be improperly inferred from trade lines in credit reports, a problem which could be resolved by coding of the information. Detailed House testimony from the Electronic Privacy Information Center[30] and Georgetown University Health Policy Institute assistant professor Joy L. Pritts[31] documented how neither the FCRA nor the GLB prevent the sharing of confidential medical information among corporate affiliates, including banks. Commendably, HR 2622 narrows this affiliate-sharing loophole significantly although we recommend additional changes (see recommendations below). While HR 2622 appears to address the coding problem as marked up in full committee, we understand that the coding amendment may be removed before floor action.

D) Any Reform Must Protect Workers From Unfair Investigations

Another major flaw with H.R. 2622 is its treatment of employment related investigative reports. The bill would simply exclude such reports from the definition of consumer reports. This amendment eviscerates the current protections under the FCRA for workers. While we agree that changes are necessary to address investigations based on employee misconduct, the proposed amendments are not balanced. Workers who are victims of false accusations must be protected as well. Whistleblowers and workers attempting union organizing drives must also be protected. Yet, investigations of employees without notice to the employees, even after the fact, have the potential to deter legal worker conduct and intimidate employees. We recommend a more comprehensive and balanced means of addressing the issue of employee misconduct and investigations into such conduct, along the lines of the FTC proposal from 2000, or the proposed changes that were negotiated between all interested parties in 2000, when a similar attempt was made to undercut employee protections in the FCRA.[32]

At the end of our testimony, we provide a comprehensive list of provisions designed to improve the FCRA's accuracy, identity theft and privacy provisions and compare these to the provisions in HR 2622.

4) Conclusion

While HR 2622 includes several laudable provisions, it does not address all the important problems identified in that committee's detailed hearing record. Too many of the largest problems are deferred to studies, rather than solved. For example, instead of solving the completeness problem, as we recommend, the issue is deferred. Instead of shortening reinvestigations, the issue is deferred. Instead of banning the use of credit scores in insurance, the issue is deferred to a study.

Yet, some prominent members of the House committee are already calling the bill a "landmark" identity theft reform and a "comprehensive" solution, hoping that its modest positive provisions provide enough cover to achieve industry's goal of preempting state laws permanently. That is disappointing. Conversely, the Senate Banking Committee has an historic opportunity to do a better job of protecting privacy, ensuring the accuracy of credit reports and preventing identity theft without trampling on the rights of the several states to continue to be part of the solution.

Industry witnesses refer to a number of white papers and pseudo-academic documents purporting to prove that either eliminating state preemption or providing greater financial privacy protections will cost the economy "billions of dollars." In our view, these papers are based on specious assumptions. Harvard Law School Professor Elizabeth Warren, co-author of several major peer-reviewed studies of the impact of bankruptcy on consumers, has written an extensive article criticizing the use of such "proprietary" research (data not available or peer-reviewed, paid for by industry associations that hire academic "research" centers) to make public policy.[33]

We generally agree with industry that a uniform national law would be the most efficient, provided it is adequate. But the best way to get to **adequate uniformity** is to retain state authority. Congress has not demonstrated a propensity for enacting uniform consumer protection laws that are adequate, except when driven by the threat of state actions. If Congress fails to solve the problem, or new problems arise, the states can act more quickly to resolve the problem and provide a template for additional federal action by the Congress. Alternatively, we would need to wait for a privacy Enron, or a consumer Exxon Valdez, before Congress acted again, and that is the wrong way to make public policy.

We hope to work with the Senate, and with Members of the House, to significantly improve HR 2622's provisions on identity theft, privacy and accuracy and to eliminate HR 2622's unfair preemption of state laws. We hope that the Senate alternative to HR 2622 more properly reflects the national consensus identified in the recent CFA consumer survey that Congress needs to do a better job protecting consumers while preserving state authority.

5) APPENDIX:

Consumer Groups' List of Minimum Consensus Reforms To Fix The FCRA and Comparison to HR 2622 as A Benchmark

Provide Consumers With Greater Rights to Enforce the Law:

1. Provide consumers injunctive relief, minimum statutory (liquidated) damages and attorney's fees for successful actions. HR 2622 does not address at all changing the FCRA so that consumers can ask a court to stop a credit bureau from reporting false negative information.

2. Provide consumers with minimum statutory (liquidated) damages of $100-$1000 for each violation. Some courts have ruled that a violation of the FCRA has not occurred unless a consumer can prove actual damages. More generally, the difficulty in proving actual damages has acted as a barrier to consumers being able to retain counsel to enforce the law. Further, it is difficult to prove certain actual damages, such as the value of the loss of your good name in identity theft situations. HR 2622: no improvement to existing law.

3. Increase the standard of care for furnishers (creditors) to avoid making errors.
The McCarthy amendment added in the House (also sponsored by Rep. Frank) establishes a good standard for furnishers to reinvestigate inaccurate information when requested to do so by the consumer. Requiring furnishers to reinvestigate their own information and ensure that it is accurate, after being notified by consumers that their information is incorrect is essential to making the FCRA work the way it was intended to.

It is important to make several changes to this requirement. The most important is to establish the requirement in a different place in the statute. Currently the amendment is placed in §623(a) (15 U.S.C. §1681s-2(a)), rather than in § 623(b). This is incorrect, it should be placed in Section 623(b) which already deals with the obligations of furnishers upon notice of a dispute.

While the House bill, with the McCarthy amendment provides consumers the important right to dispute directly with the furnisher, it leaves consumers no recourse when the reinvestigation is inadequate and does not correct the disputed information. Section 623(a) provides no private right of enforcement. The FTC specifically recommended that the consumer's right to request a furnisher to reinvestigate disputed data must be in subsection (b), in order to create an affirmative duty on the furnisher.

3. Maintain voluntary reporting, but require furnishers that report to abide by a completeness standard to prevent creditors from gaming the credit scoring system and deflating their

customers' credit scores to prevent them from shopping around. HR 2622, in full committee, was amended to improve FCRA Section 623(a)'s weak standard for furnishers to avoid inserting inaccurate information into credit reports. While the House used the stricter Massachusetts standard of care (that was grandfathered into the 1996 FCRA amendments) as a template for this amendment, it deleted important provisions from the Massachusetts law's requirement for "complete" reporting.

4. Give consumers an FCRA right to contact furnisher directly to initiate reinvestigation. Add duties on "furnishers and users" to improve accuracy and conduct 1681(i) reinvestigations. HR 2622 takes steps in this direction. It includes a version of the FTC and Treasury Department recommendation that allows consumers to initiate a re-investigation by directly contacting a furnisher (creditor). However there is no requirement that furnishers report disputes to the appropriate CRAs.

5. Shorten the act's 30-45 day reinvestigation period to 10 – 15 days. The bureaus already provide shorter reinvestigations in certain circumstances. The credit bureaus have a well-documented system that provides "concierge" services for certain classes of consumers. VIPs and consumers who are suing the bureaus generally can get complaints resolved more quickly. However, the most efficient reinvestigation systems are provided for consumers working with certain mortgage entities, where rapid re-scoring can gain a correction in 24-48 hours. Yet Section 303 of HR 2622, "Prompt Investigation of Disputed Consumer Information," only requires the Federal Reserve System and the FTC to study the extent to which reporting agencies are complying with the current procedures and time lines under the FCRA for the prompt investigation and correction of disputed accuracy. Amendments shortening the reinvestigation period in certain circumstances were rejected.

6. Require regular, formal oversight and internal review of credit scoring algorithms and models to ensure full compliance with FCRA, ECOA and Fair Housing laws. This critical reform provision is not in any way addressed by HR 2622.

7. Require FTC and other regulators to fully enforce the existing requirement to consider all information relevant to consumer's dispute, including information provided by the consumer. Require CRAs to reject findings of so-called furnisher reinvestigations that conflict with such relevant information provided by the consumer. This critical reform provision is not in any way addressed by HR 2622.

8. Reinstate 2-year discovery rule (or 7 years after violation) statute of limitations to sue credit bureaus, but ensure that protections apply to all victims, not only ID theft victims. HR 2622 does not address this provision. In 2001 in *TRW vs. Andrews* the Supreme Court held that consumers could only sue a credit bureau for 2 years following a violation, not two years following discovery of the violation. While a variant of the 2002 provision that passed the Senate as part of S. 1742 (Cantwell) provision is included in this year's S. 22 (Daschle), it is defective at the request of the credit bureaus and would only apply to identity theft victims. In the last Congress, we understand that Senator Cantwell agreed to this limitation to avoid Banking Committee jurisdiction and delay of her bill; we do not see that as an issue at this time. We believe that the proper way to reinstate the discovery rule is to apply it to all victims, to make it 2 years after discovery with a maximum of seven years (the same period bureaus can generally issue reports containing negative information). The provision should also include an estoppel provision so that

when a credit bureau intentionally misrepresents any information required, an action may be brought at any time within two years following discovery of the misrepresentation.

9. Eliminate reseller and specialized credit bureau exceptions. The House bill would exempt resellers and certain specialized credit bureaus from certain of the bill's provisions. While the industry has been successful in convincing several states to adopt similar language in their identity theft reforms, this provision is opposed by consumer groups, by identity theft victim organizations, and, we understand, by the National Credit Reporting Association, which represents many resellers. We believe that the intent of the provision is to undercut the FTC's strict enforcement stance in the First American Credco[34] consent decree—which held that resellers should be treated the same as any other credit bureau. Credco should not be undercut by HR 2622.

We also believe that while the Carson amendment to HR 2622 commendably clarified that resellers could still assist in reinvestigations, we are troubled by that bill's CDIA and FTC-backed provision encouraging all reinvestigations to be coordinated through the three national repositories' automated reinvestigation system. That automated system, incorporated in the 1996 amendments, was intended to expedite better reinvestigations. Instead, as detailed in the direct testimony before this committee of Evan Hendricks, editor and publisher of Privacy Times, the automated reinvestigation system has enabled the bureaus and furnishers to communicate "reason codes" by email while ignoring detailed dispute files provided by aggrieved consumers.[35] This was in no way what Congress ordered the industry to do.

10. Require FTC annual audit of credit bureaus. Require the major credit bureaus to provide the FTC and state Attorneys General with detailed annual reports on the accuracy and privacy of their databases, including information on their testing of the veracity of their record-keeping, statistical information on the completeness and accuracy of the information provided by furnishers (creditors) and information about the number of and disposition of consumer complaints. Require the FTC to publish a summary of these records to the public that is adequate to assist the development of public policy and to help consumers make choices about which credit report to request, while of course maintaining the sanctity of reasonable and legitimate trade secret information.

Give Consumers More Information About Their Reports

1. Provide an annual free credit report that includes a credit score on request of any consumer, expand the opportunities for certain consumers to gain additional free reports, and cap prices of credit report monitoring and alert services. Since reports are often full of mistakes and can be sold into commerce for credit purposes without consent[36] consumers deserve the right to audit them for free before they are sold. Since scores are used interchangeably with reports and are a mathematical summary of your report, free reports should include scores. Commendably, HR 2622 would make annual free credit report rights granted for many years in six states (Colorado, Georgia, Maryland, Massachusetts, New Jersey and Vermont) the law of the land. However, the proposal was undercut in two ways. First, the provision now allows bureaus to charge a "reasonable fee" for credit scores. USA Today has reported that direct-to-consumer sales by credit bureaus will reach $1 billion this year, according to a leading investment banker. The story states: "Prices range from $13 for one report with a credit score to $100 a year for ongoing monitoring of multiple credit files. Frances Morris of Newark, Ohio, pays $160 a year to monitor

her credit files and those of her husband, Raymond.[37]" Since the reports and scores are used interchangeably by lenders, and often sold to consumers as package, the utility of the free credit report is now undercut.

Second, the Baker amendment to HR 2622 provided that free credit reports would only be provided on request by national bureaus, not all credit bureaus. Other credit bureaus need only to continue to provide free reports on request from potential fraud victims, indigent consumers and unemployed consumers,.

Instead, any Senate bill should provide for a free credit report and score annually on request to any consumer from any credit bureau. All credit bureaus should also be required to provide additional free reports to potential fraud victims, indigent consumers and unemployed consumers, as FCRA Section 612(c) now provides.

Further, since the bureaus have aggressively capitalized on the identity theft epidemic (that their practices are partly responsible for) by selling expensive credit reporting monitoring services for as much as $99-120/year, Congress should cap the price of these services at as little as $9-29/year. Notably, recent press reports have accused at least one of the bureaus of using deceptive marketing of "free credit reports" to sell these services.[38]

2. Provide consumers with <u>detailed</u> explanations as to why credit is denied or less-than-favorable terms are offered. HR 2622 requires only a minimal summary or explanation credit scores. In its study of credit score accuracy, CFA found that approximately seven in ten credit reports indicated that the primary factor contributing to the credit score was "serious delinquency," "derogatory public record," "collection filed," or some combination of these factors. This generic and extremely vague information provided by creditors when they take an adverse credit action is too general to be helpful, especially for most sub-prime borrowers, who by definition have some credit blemishes. Instead, lenders should be required to identify any specific entries (trade lines) that are lowering a consumer's score and indicate the impact on the consumer (either the point value deducted for that entry or the proportional impact relative to other derogatory entries.)

Any Senate bill provision similar to the House bill's credit scoring disclosure requirements (which are based on California law) should not only not allow fees, but should not preempt broader state credit score disclosure rules. In the 107th Congress, S 1242 (Allard-Schumer) also adopted California law nationwide, but preempted all other state credit score laws, even though its applicability was limited to mortgage lending.

3. Give consumers the right to automatically obtain a credit report and score directly from a lender when an adverse action is taken. HR 2622 does not address this important reform. Consumers face two problems when they request a credit report (and score) from a credit bureau. First, any adverse actions previously taken were based on a subscriber credit report provided to the lender. The subscriber report is often provided based on a limited number of matching data points and is more likely to contain inaccurate or mis-merged information about other consumers than a report requested by a consumer, since a consumer must provide a detailed match of name, address, and Social Security Number. Second, a score derived from that consumer report will probably differ from the score the subscriber obtained from the less accurate report.

The FCRA already requires that employers contemplating adverse actions show consumers a copy of their report. The FCRA should be amended so that after a lender takes an adverse action, the consumer would automatically receive from that subscriber a copy of the subscriber report and score used in the adverse action.

Giving consumers access to the subscriber report, which is much more likely to contain false negative information would have a great impact on credit report accuracy. Providing a report immediately following denial would also be a powerful educational tool for consumers.

4. Require creditors to identify any counter-offer or offer of credit at less than the most favorable terms as an “adverse offer,” as has been called for by the Federal Trade Commission, requiring provision of an adverse action notice, which triggers all the concomitant FCRA rights. This would include pre-screened “sub-prime” mortgage offers or credit card solicitations that are based on negative or less than favorable credit information. As is well known, the sub-prime credit industry has boomed in the past decade by offering borrowers with blemished or limited credit histories mortgage loans, car loans and credit cards at higher rates and less favorable terms than offered to their “prime” borrowers. As lenders increasingly offer a continuum of loans at different rates and terms, it is more important than ever that consumers have the ability to exercise their FCRA rights to insure that adverse credit information is correct. In the world of “risk-based” pricing, borrowers should know that they are being targeted because of their less than optimal credit history and should be offered the opportunity to check their credit history and change any information that is not accurate or complete. Furthermore, as stated above, many consumers are unwittingly giving up their FCRA rights because they are accepting loans that are legally considered “counteroffers.”

5. Notify consumers when negative information is reported. The House bill, HR 2622, includes a weakened version of a proposal by Rep. Ackerman to guarantee that consumers be warned by their creditors that negative information has been sent to a credit bureau. An even stronger alternative, already law in Colorado, requires that credit bureaus provide an annual notice of rights to consumers. The notice is sent to all consumers who have received one negative item or 8 inquiries generally on their reports. This could be improved by adding a third category—“or had a request for an address change on their reports” (in which case the notice should be sent to the old and new addresses).

Provisions To Fight Identity Theft And Improve Accuracy

1. Give consumers the right to impose security freeze blocking of their credit reports at no charge (blocking of their entire report from access unless a PIN or secret code is provided). HR 2622 only provides to the consumer the ability to "block" fraudulent trade line information resulting from ID theft. Blocking a fraudulent trade line is important, but the right to control access to a credit report is much more significant.

2. Require full name and contact information, including phone number, with all trade lines on credit report. This will make it easier for consumers to investigate complaints. HR 2622 appears to address this, through the Sherman amendment, but does not fully address this important problem. Its provision is too permissive.

3. Require furnishers/bureaus to match 4 points of identification before issuing a subscriber report. HR 2622 does not address this provision, which is arguably the most significant and important change that could be made to deter identity theft. Identity theft and mis-merged files regularly occur because the bureau fails to accurately ensure that an application provided by a subscriber matches the report that is issued. California already requires 3 points of

identification.[39] Sloppy creditor and credit bureau practices in the granting of "instant credit" are the door opened by identity thieves, who take advantage of easy access to the key to your financial identity, your Social Security Number (see #8 below).

4. Impose stricter address change verification requirements. HR 2622's address change provisions are extremely limited and allow the credit bureaus to ignore them unless "substantial variations" occur. Further, the provisions exclude reseller and specialized credit bureaus.

5. Give a consumer a right to put a fraud flag on his or her credit report and impose penalties for bureaus selling/issuing any subscriber report where fraud flag is not prominent. HR 2622 includes a provision making it a violation for a bureau to issue a report without a fraud flag.

6. Impose penalties for a furnisher issuing credit on any report with a fraud flag.
Title II of HR 2622 prohibits the user (requester) of the consumer's report from extending credit in the name of the consumer without first <u>attempting</u> to obtain pre-authorization of the consumer who placed the fraud alert. The provision may be too permissive.

7. Require credit card number truncation. The House bill commendably codifies federally several state laws requiring truncation of credit card numbers on most receipts, to reduce the risk of fraud. However, as noted above, its absurdly long implementation period (2007) ignores more stringent state timetables and even a nationally-announced timetable by the VISA network. Further, these provisions may preempt the shorter timetables and any state laws that require truncation in broader circumstances.

8. Get the Social Security Number out of circulation. HR 2622 does not address the ubiquity of Social Security Numbers. Social security numbers are the key that opens the door to your financial identity. We believe that the recent DC Circuit, U.S. Court of Appeals decision removing SSNs from credit headers[40], which are unregulated information products sold by the bureaus outside the FCRA, should be codified in federal law as an amendment to the FCRA.[41] We also believe that the Senate Finance Committee should enact the additional provisions included in S 1014 (Bunning) from the 107th Congress, which would prohibit businesses from coercing consumers into providing their SSN as a condition as a condition of doing business.

9. Prohibit selling or assigning debt to a debt collector where the consumer is an ID theft victim with respect to that debt. Not addressed by HR 2622.

10. Give victims access to business records of all creditors including telecommunications providers when fraudulent accounts opened. Not addressed by HR 2622. This provision is law in California and is the subject of several bills from the 107th (S 1742) and 108th Congresses (S 22). However, it should be enacted without a reseller exception, as S. 22 includes.

Tools To Protect Privacy

1. Eliminate two-tiered pre-screened credit card and insurance solicitations opt-out. Not addressed by HR 2622. The House bill does not eliminate the current consumer burden of a complex two-tiered opt-out system. Any final law should provide that all opt-outs, not only opt-outs made in writing after returning a "signed notice of election," are permanent until rescinded. Under current federal law, a telephone opt-out is only good for two years.

2. Require pre-screening opt-out to use express, prominent language. Instead of requiring agencies to enforce the existing law requiring disclosures to be prominent, HR 2622 orders the agencies to conduct a rulemaking to improve the disclosure. If Congress goes forward with the rulemaking, it should specify that the agencies must require an express, statutory warning with a specified format.

3. Close loopholes allowing inadvertent disclosure of medical information by bill collectors and other furnishers. While the House bill as approved by committee appears to do this, we understand that the provision may not remain in the bill.

4. Ban sharing of medical information between affiliates without express consent and then only for limited, one-time purposes. The House bill includes a landmark reform that does accomplish much of this goal. The House bill's definition of medical information needs to be expanded. It includes only "information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, etc." It should include mental health information. The narrow definition also may leave some information provided directly to life insurers (e.g., health information that is obtained directly from applicants) vulnerable since it is not within the definition of "medical information." Neither would that information qualify as an "individualized list or description based on a consumer's payment transactions." Since this information does not fit within the amendment to 603(d) it would probably still be excluded from the definition of credit reports and could be shared as either transaction or other information. We also have concerns about the banking agencies receiving authority to determine when disclosures of medical information are necessary. These agencies may not have adequate expertise in the medical area. In addition, as pointed out above, we would urge the committee to reiterate that the states have clear authority under the Gramm-Leach-Bliley Act and FCRA to further regulate affiliate sharing, in particular, by the insurance industry.

5. Ban the use of credit scores in insurance. Consumers with excellent insurance claims records are routinely being non-renewed or having homeowners or auto insurance rates raised on the basis of credit scores, which are based on inaccurate credit reports. HR 2622 does not address this critical issue.

6. Require any agency or business that possesses a citizen's or consumer's computerized data to adhere to a security breach notification law. While the House Financial Services committee held an entire hearing[42] devoted to the serious problem of security breaches, as epitomized by the recent Tri-West, Tele-Data and University of Texas cases, nothing in HR 2622 bill would require data collectors (government or private) to notify consumers of computer hacks or other theft of databases resulting in threats to their privacy. California has enacted legislation requiring minimal notification standards which at a minimum should be adopted by Congress. Senator Feinstein has introduced legislation, S 1350, based on California law. Both the California law and S 1350 include a notification loophole that should be closed.

7. Prohibit risk-based re-pricing (bait and switch). During consideration of HR 2622, a tri-partisan Sanders-Bachus-Maloney amendment to restrict this practice was rejected. Credit card companies should not be allowed to raise their customers' interest rates to penalty rates of 25% APR or more, based on their credit scores or alleged minor delinquencies to a different creditor. The problem is exacerbated by the fact that some of these same credit card companies may also be deflating their customers' credit scores through incomplete reporting.

Protect Employee Privacy

1. Ensure that the use of credit reports for employment investigations does not violate employee privacy, impede whistleblowers or block lawful union organizing. HR 2622, instead, wrongly exempts many employee investigations from the definition of credit report by incorporating the provisions of legislation originally proposed by Rep. Pete Sessions in 2000. This is an unnecessary and far too broad a response to problems which can arise from the requirement to notify all employees of an ongoing, third party investigation in the workplace.

The privacy protections in the FCRA were applied to the employment arena deliberately and appropriately after findings of serious abuses of employees. The investigated employee may be the wrongdoer or the victim. Broad scale exceptions to this important law should not be carved out based solely on the assumption that every investigated employee is guilty. If not guilty, the employee may be more than just mistakenly accused. The accusation against the employee may be malicious and vindictive, because the employee is a woman in a male environment, a union organizer, a minority person, or simply disliked by someone. Any introduction of increased secrecy in employers' third party investigations must be balanced by an understanding that the secrecy can foster injustice as well as help ferret out injustice.

In 2000, after the House Financial Services Committee first held a hearing on the Sessions bill, representatives of consumer groups, (National Consumer Law Center and U.S. PIRG), labor (AFL-CIO), civil rights groups (Lawyers Committee for Civil Rights), and the administration (FTC), met with an assortment of industry groups (including the U.S. Chamber of Commerce, employer representatives, as well as third party investigators). Our joint goal was to produce an alternative proposal to the Sessions bill which would address the legitimate problems articulated by employers using third parties to investigate employee misconduct, while continuing to protect employees from overreaching investigations breaching privacy and basic rights of employees.

After numerous meetings, an alternative proposal had been agreed to *in principle* by all parties, with a number of specific terms still to be worked through. The Congress should revisit that compromise proposal rather than adopt the HR 2622 provisions. The FCRA currently provides important rights to employees in the workplace. There is no justification for a complete reversal of those rights.[43]

2. Ensure that users of consumer reports for employment purposes comply fully with FCRA provisions. HR 2622 does not address this issue. At a minimum, the FTC needs to conduct a study to determine whether employers using credit reports for adverse actions are complying with the act’s expanded 1996 provisions. To our knowledge, the FTC has not found any employer in violation of the FCRA since the early 1990s, even though during the hearings and meetings in 2000 many employers and employer associations claimed to have no idea that the FCRA had any applicability to employment.

[1] In terms of that detailed record, we associate this testimony with the recommendations several of our organizations have made in previous appearances before the committee, as well as with those of the Vermont Attorney General's Office and other pro-consumer witnesses. In particular, just two days ago, the Consumer Federation of America presented the committee with detailed evidence of widespread consumer support for improvement in the law, based on the national findings of a recent statistically valid poll.

[2] Testimony of Martin Wong, General Counsel, Citigroup, before the U.S. Senate Banking Committee, 26 June 03, available at http://banking.senate.gov/03_06hrg/062603/wong.pdf

[3] See direct testimony of U.S. PIRG Consumer Program Director Edmund Mierzwinski before the U.S. Senate Banking Committee, 26 June 2003. http://banking.senate.gov/03_06hrg/062603/mierzwin.pdf

[4] See direct testimony of Vermont Assistant Attorney General Julie Brill before the U.S. Senate Banking Committee, 26 June 2003, at pages 22-27 for detailed discussion. http://banking.senate.gov/03_06hrg/062603/brill.pdf

[5] Throughout, we use the term "credit bureau" as well as the statutory term "Consumer Reporting Agency" or "CRA."

[6] Bank of America, NA vs. City of Daly City, USDC C 02 4343 (ND CA) Decision available at http://www.co.sanmateo.ca.us/vgn/images/portal/cit_609/73485048District%20Court.pdf

[7] "Credit Score Accuracy and Implications for Consumers", December 17, 2002, Consumer Federation of America and the National Credit Reporting Association http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf See direct testimony of Stephen Brobeck, Executive Director, Consumer Federation of America, before the Senate Banking Committee, 10 July 2003, at http://banking.senate.gov/_files/brobeck.pdf

[8] See also the direct testimony of Paul Wohkittel, Legislative Chairman, National Credit Reporting Association, before the Financial Institutions Subcommittee, 4 June 2003 at http://financialservices.house.gov/media/pdf/060403pw.pdf

[9] See direct testimony of Allen Fishbein, General Counsel, Center for Community Change, before the Subcommittee on Financial Institutions, 12 June 2003, at http://financialservices.house.gov/media/pdf/061203af.pdf

[10] Direct testimony of Mr. Hillary Shelton, NAACP, before the House Financial Services Committee, 9 July 2003, at http://financialservices.house.gov/media/pdf/070903hs.pdf

[11] See direct testimony of Dr. William Spriggs, PhD., Director, National Urban League Institute for Opportunity and Equality before the House Committee On Financial Services, 9 July 2003 http://financialservices.house.gov/media/pdf/070903ws.pdf

[12] See direct testimony of Shanna Smith, Executive Director, National Fair Housing Alliance, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403ss.pdf

[13] Executive Summary, "Risk or Race? Racial Disparities and the Sub-prime Refinance Market." A Report of the Center for Community Change, Prepared by Calvin Bradford, Calvin Bradford & Associates, Ltd. May 2002 Available at http://www.communitychange.org/NRP/riskorrace.asp

[14] See direct testimony of Ed Mierzwinski, Consumer Program Director, U.S. PIRG before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403em.pdf

[15] "Surprise Jumps in Credit Rates Bring Scrutiny," by Jennifer Bayot, The New York Times, 29 May 2003, Page 1.

[16] "FCRA Hearing to Shine Spotlight on Credit Process," American Banker, 12 June 12, 2003 by Michele Heller.

[17] See "An Overview of Consumer Data and Credit Reporting," Avery et al, February 2003, Pages 47-73, Federal Reserve Bulletin http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf Also see Working Paper No. 02-21, "The Development And Regulation Of Consumer Credit Reporting In America" Robert M. Hunt, Federal Reserve Bank of Philadelphia, November 2002. http://www.phil.frb.org/files/wps/2002/wp02-21.pdf

[18] See direct testimony of Linda and Jay Foley, co-directors, Identity Theft Resource Center before the U.S. Senate Banking Committee, 19 June 2003 at http://banking.senate.gov/_files/foleys.pdf

[19] See direct testimony of Captain John Harrison, U.S. Army (ret.) before the U.S. Senate Banking Committee, 19 June 2003 at http://banking.senate.gov/_files/harrison.pdf

[20] The full report, "Nowhere To Turn," by CALPIRG and the Privacy Rights Clearinghouse, May 2000, is available at <http://www.pirg.org/calpirg/consumer/privacy/idtheft2000/>

[21] Press release, 30 July 2003, "Privacy & American Business Survey Finds 33.4 Million Americans Victims of ID Theft; Consumer out-of-pocket expenses total $1.5 billion a year."

[22] Personal communication, Linda Foley, Co-Director of the Identity Theft Resource Center, to Ed Mierzwinski, 29 July 2003.

[23] Direct testimony of David Jokinen, victim, before the Senate Banking Committee, 10 July 2003, See http://banking.senate.gov/_files/jokinen.pdf

[24] See direct testimony of Fordham Law School Professor Joel Reidenberg before the U.S. Senate Banking Committee, 26 June 2003 at http://banking.senate.gov/_files/reidnbrg.pdf

[25] For a detailed analysis of how neither the FCRA nor GLB regulate affiliate sharing, see also the testimony of U.S. PIRG's Ed Mierzwinski, Vermont Assistant Attorney General Julie Brill and Fordham Law Professor Joel Reidenberg at a Senate Banking Committee hearing entitled "Affiliate Sharing Practices and Their Relationship to the Fair Credit Reporting Act" on 26 June 2003 available at http://banking.senate.gov/03_06hrg/062603/index.htm

[26] The 1996 amendments do provide that consumers be provided an extremely limited notice if affiliate shared information is used adversely, but provision of the notice triggers no additional rights. See FCRA Section 615(b)(2). Compare with notice under 615(a) (adverse action based on credit report), which triggers comprehensive rights and duties under Sections 609, 610, 611.

[27] The FTC took an official position on the proposed FCRA amendments in 1994. U.S. PIRG has archived a (scanned) copy of the document, "HR 1015, Federal Trade Commission Analysis and Recommendations, 25 July 1994," at http://www.pirg.org/consumer/credit/ftcanalysishr1015.pdf

[28] Testimony of Martin Wong, General Counsel, Citigroup, before the U.S. Senate Banking Committee, 26 June 03, available at http://banking.senate.gov/03_06hrg/062603/wong.pdf

[29] See PIRG's testimony before the House Financial Institutions Subcommittee, 4 June 2003 for a detailed analysis and a scanned copy of a so-called notice http://financialservices.house.gov/media/pdf/060403em.pdf

[30] Direct testimony of Marc Rotenberg, Director, Electronic Privacy Information Center, before the House Subcommittee on Financial Institutions, 17 June 2003 http://financialservices.house.gov/media/pdf/061703mr.pdf

[31] Direct testimony of Joy Pritts, JD, Assistant Research Professor, Georgetown University Health Care Research and Policy Institute, before the House Subcommittee on Financial Institutions, 17 June 2003 http://financialservices.house.gov/media/pdf/061703jp.pdf

[32] See testimony before the House Financial Services Commitee, 4 May 00, of the National Consumer Law Center and U.S. PIRG, by Margot Saunders of NCLC. The testimony includes an appendix detailing the views of the AFL-CIO. Available at http://financialservices.house.gov/banking/5400sau.htm

[33] Elizabeth Warren, Wisconsin Law Review Vol. 2002, No. 1, "The Market For Data: The Changing Role of Social Sciences in Shaping The Law," Public Law Research Paper No. 038 See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=332162

[34] See the FTC order in the Credco case: *First American Real Estate Solutions vs. FTC*, Docket no. C-3849 decision and order, 27 January 1999, available at http://www3.ftc.gov/os/1999/08/faresorder.htm

[35] See direct testimony of Evan Hendricks, publisher and editor, Privacy Times, before the Senate Banking Committee, 10 July 2003, for detailed rationale. http://banking.senate.gov/_files/hendriks.pdf

[36] Only Vermont requires (oral) consent before procurement of a credit report for credit purposes. Federal law only requires consumer consent for employment uses of reports.

[37] "Consumers boost credit-score industry," Thomas A. Fogarty, USA TODAY, 11/26/2002 available at http://www.usatoday.com/money/perfi/credit/2002-11-24-credit_x.htm

[38] According to the article, "More Girls Than Bargained For," 3 May 2003, The Washington Post, by David Hilzenrath, "The Experian credit reporting bureau's ConsumerInfo.com subsidiary has been the subject of 960 complaints to the" Better Business Bureau over the past three years.

[39] See direct testimony of Evan Hendricks, publisher and editor, Privacy Times, before the Senate Banking Committee, 10 July 2003, for detailed rationale. http://banking.senate.gov/_files/hendriks.pdf

[40] *Trans Union II vs. FTC*, See http://laws.findlaw.com/dc/015202a.html This important appellate decision upheld the constitutionality of the GLB privacy regulations and restricted the sale of non-public personal information, including Social Security Numbers, by credit bureaus outside of the strict FCRA regime.

[41] Section 203 of S 1014 (Bunning), identical to HR 2036 (Shaw) in the 107th Congress would eliminate Social Security Numbers from credit headers by only allowing credit bureaus to sell them as part of regulated credit reports. This matter is in the Financial Institutions Committee's jurisdiction. Section 202 of this bill would prohibit businesses from coercing consumers into providing their Social Security Numbers as a condition of doing business.

[42] Joint Hearing of the Oversight and Financial Institutions Subcommittees on "Fighting Fraud: Improving Information Security," 03 April 2003. See especially testimony of Evan Hendricks, Editor, Privacy Times at http://financialservices.house.gov/media/pdf/040303eh.pdf

[43] See testimony before the House Financial Services Committee, 4 May 00, of the National Consumer Law Center and U.S. PIRG, by Margot Saunders of NCLC. The testimony includes an appendix detailing the views of the AFL-CIO. Available at http://financialservices.house.gov/banking/5400sau.htm