Prepared Statement of the Federal Trade Commission on the Fair Credit Reporting Act

Before

the House Committee on Financial Services

Washington, D.C.
July 9, 2003

Mister Chairman and members of the Committee, my name is Timothy J. Muris, and I am Chairman of the Federal Trade Commission ("Commission" or "FTC"). I am pleased to present the Commission's views on amending the Fair Credit Reporting Act ("FCRA").(1) The Commission endorses the FCRA amendments and other statutory changes proposed by the Treasury Department on June 30, 2003, including permanent renewal of the uniform national standards in Section 624 of the FCRA.

The national consumer reporting framework the FCRA established has played a central role in the expansion of consumer credit, which in turn has contributed so much to the nation's economy. Making the uniform national standards permanent would help ensure the continued effectiveness of our national consumer reporting system.(2)

At the same time, it is critical that our credit system protect the rights of consumers in the privacy, security, and accuracy of their financial information. More types of businesses are using consumer reports than ever before. The Commission supports the legislative amendments proposed by the Treasury Department, which provide important protections for consumers. The proposals include:

- provisions aimed at helping consumers prevent, detect, and mitigate the harms that result from identity theft;(3)
- free annual access to consumer reports and better information about credit scores for consumers; and
- enhanced rights to adverse action notices that better comport with modern credit practices.

The Commission recommends two additional FCRA amendments: (1) a modest strengthening of the duties of information furnishers and (2) changes to the obligations of employers when investigating employees.

I. Economic Growth, Consumer Reporting, and the FCRA x

The Commission supports the Treasury Department proposals for amending the FCRA. We believe these proposals would (1) ensure the continuing viability of the FCRA's uniform national framework that has been a cornerstone of our consumer credit-driven economy, and (2) improve the FCRA to the benefit of consumers, especially in preventing and mitigating the ravages of identity theft and other fraud. We also support the related initiatives to combat identity theft, and recommend two further legislative refinements to the FCRA.

A. *Making the FCRA's uniform national standards permanent*

The FCRA currently provides uniform standards and preempts state laws with respect to (1) the prescreening of consumer reports, (2) the time within which CRAs must investigate consumer disputes, (3) the adverse action duties of users of consumer reports, (4) the duties of furnishers, (5) the age of information allowed in consumer reports, (6) the exchange of information among affiliated companies, and (7) certain consumer disclosures.< The impact of removing the uniform national standards might not be the same for each standard, and of course would depend on what actions individual states decided to take. Nonetheless, the entire package of national standards mandated by Congress in 1996 has proven effective. Acc T* [(f)15( )4(r)4(ep)p,h(e.)1o13(pe7 Td (c)-3(o)13(m)-er)4(di)1smover2( )13( )-13(a)13r

In conjunction with making permanent the uniform national standards, the Commission supports the following proposals to amend the FCRA, Currently, the definition of "adverse action" for credit transactions is imported into the FCRA from the Equal Credit Opportunity Act ("ECOA").[19] Under the ECOA definition, there is no adverse action in many situations when the consumer is offered less favorable terms, such as a higher interest rate, because of information in her consumer report. For example, there is no adverse action when the consumer accepts a "counteroffer" that includes those less favorable terms. The ECOA definition does not adequately address modern credit markets, in which consumers do not necessarily apply for specific credit terms, but rather for the best terms for which they can qualify. In turn, creditors offer terms tailored to the consumer's risk profile, which may often mean a higher price than would otherwise have been the case but for the consumer's consumer report. Yet, under current law, consumers who accept this

1. The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.

2. It is important to keep in mind that, notwithstanding its title, the Fair Credit Reporting Act has always covered more than what are conventionally termed "credit reports." It applies generally to any information collected and used for the purpose of evaluating consumers' eligibility for products and services that they want. Thus, the FCRA has always applied to insurance, employment, and other non-credit consumer transactions. *See*

12. IPI Report, at pages 40-53. *See also* Turner testimony, at 4: "Full-file credit reporting, made possible by the preemptive provisions of the FCRA, enables lenders to distinguish different degrees of risk far better than older, less sophisticated techniques."

13. If the states had different obsolescence standards, CRAs would have to implement different retention and deletion procedures for consumers in each such state, and when a consumer moved from one state to another, the file would have to be adjusted. Given the high degree of transience and consumers with more than one address (*e.g.*, students or retirees), the effect of one state's enactment of a more restrictive obsolescence standard would inevitably affect consumers beyond that state's borders. While CRAs could adopt the most restrictive obsolescence standard and apply it nationally for ease of compliance, that would result in a costly loss of data to lenders nationwide. Those lenders who operate only in the state with a restrictive obsolescence standard would lose data necessary to assess risk accurately - they would not be able to spot the poor risks as easily, which would increase their credit losses, requiring them to raise prices for everyone, including the good risks. Multistate lenders might be able to charge lower prices, but only by spreading their increased losses to their customer base in other states, with the net effect that consumers 2(h)(abl)13(e t)209 Tw 0 -017(es)-3ould inev- ah1a

24. Identity theft victims tell us that it is often helpful to obtain application information on fraudulent accounts as a part of their own investigation into the circumstances of the theft. For example, they might recognize the handwriting on the application or be able to prove that it is not their own.

25. In practice, furnishers sometimes investigate disputes received directly from consumers because they are required in some circumstances not to report, and to correct, inaccurate information. *See* FCRA §§ 623 (a)(1) and (2). But furnishers have no affirmative obligation to investigate these disputes. Thus, if a consumer contacts the creditor only by telephone to dispute, and the creditor previously supplied to the consumer an address to submit disputes, it is not liable under FCRA Section 623(a)(1) for continuing to report this information, even if it is inaccurate.

26. The Commission testified to this effect before this Committee in 2000. *See* Testimony of Debra Valentine Before the Subcommittee on Financial Institutions of the House Banking and Financial Services Committee, May 4, 2000, at
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