

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

**CREDIT REPORTS: CONSUMERS' ABILITY TO DISPUTE AND
CHANGE INACCURATE INFORMATION**

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES

Washington, D.C.

June 19, 2007

I. Introduction

Chairman Frank, Ranking Member Bachus, and members of the Committee, my name is Lydia Parnes, and I am the Director of the Bureau of Consumer Protection at the Federal Trade Commission (“Commission” or “FTC”).¹ I appreciate the opportunity to appear before you today to discuss the Commission’s efforts to improve the accuracy of credit report information and to enhance consumers’ ability to dispute and correct inaccurate information. These efforts have included implementation of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) and its accuracy-related provisions.²

The FACT Act amended the Fair Credit Reporting Act (“FCRA”), the federal law that governs the operation of the nation’s consumer reporting system. The Commission shares enforcement authority for the FCRA with the federal banking regulatory agencies (“banking agencies”),³ and has played a central role in interpreting and enforcing the FCRA since its inception.

This testimony will provide an overview of the FCRA and describe the Commission’s efforts to carry out the tasks mandated by the FACT Act. The FACT Act required the Commission, alone or with other agencies, to issue almost 30 rules, guidelines, compliance forms, notices, educational campaigns, studies, and reports. This testimony summarizes our substantial progress to date toward completing these tasks and also summarizes other actions the

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

² Pub. L. No. 108-159, 117 Stat. 1953 (2003).

³ As used here, this term applies to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System (“Federal Reserve”), Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration.

Commission has taken to improve the accuracy of consumer reports and enhance the dispute process. These actions include an aggressive law enforcement program, and extensive consumer and business guidance.

II. The Fair Credit Reporting Act

The FCRA, enacted in 1970, governs the collection, assembly, dissemination, and use of consumer report information⁴ and provides the framework for the credit reporting system in the United States. The FCRA regulates the practices of consumer reporting agencies (“CRAs”), businesses that compile and sell creditworthiness and similar information for use by credit grantors, insurance companies, employers, landlords, and other entities in making eligibility and pricing decisions about consumers. The FCRA is designed to (1) prevent the misuse of sensitive consumer information by limiting access to those who have a legitimate need for it, (2) improve the accuracy and integrity of consumer reports, and (3) promote the efficiency of the nation’s banking and consumer credit systems.

The FCRA imposes duties on the three key types of participants in the credit reporting system: those who provide information about consumers to CRAs (“furnishers”), those who use consumer report information (“users”), and the CRAs themselves. The Act also provides consumers with a number of rights and protections relating to the privacy and accuracy of their personal information.

III. The FACT Act

The FACT Act added a number of new or amended provisions to the FCRA designed,

⁴ Section 603(d) of the FCRA defines “consumer report” as information from a CRA concerning “a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility” for credit, insurance, or other purposes authorized by the FCRA.

among other things, to prevent and assist victims of identity theft and enhance consumer privacy and consumer report accuracy.

A. Identity theft and privacy provisions

Before December 2003, the FCRA did not specifically address identity theft. The FACT Act included significant new provisions to help reduce the incidence of identity theft and to minimize the injury to victims that results from the corruption of their credit histories. First, with respect to prevention, the FACT Act contains provisions to limit the opportunities for wrongdoers to obtain unauthorized access to consumer report information. For example, the Act mandates that businesses dispose of consumer report information in a safe manner.⁵ Merchants must truncate the account number and redact the expiration date on consumers' copies of electronic credit card receipts.⁶ Further, CRAs are prohibited from disclosing medical information in consumer reports, except under specified conditions.⁷

Second, the FACT Act increases consumers' opportunities to review their credit records and spot incipient signs of identity theft before further damage ensues. Consumers have the right to receive a free credit report every twelve months, through a centralized source, from each of the nationwide CRAs,⁸ as well as from nationwide "specialty" CRAs.⁹ Consumers also may purchase a credit score from a CRA,¹⁰ and certain mortgage lenders are required to provide a

⁵ 15 U.S.C. § 1681w.

⁶ 15 U.S.C. § 1681c(g).

⁷ 15 U.S.C. § 1681b(g).

⁸ 15 U.S.C. § 1681j(a)(1)(A)-(B).

⁹ 15 U.S.C. § 1681j(a)(1)(C). Specialty CRAs include tenant and employment screening services, medical records databases, and check verification services.

¹⁰ 15 U.S.C. § 1681g(f).

score without charge to home loan applicants.¹¹

Third, the FACT Act empowers consumers to take steps to limit the damage from identity theft once they become victims. Consumers who have a good faith suspicion that they have been or are about to become victims of fraud or related crimes such as identity theft may place an initial, 90-day fraud alert on their credit files, alerting potential users of their report to exercise special vigilance in opening accounts in the consumers' names.¹² Actual victims may request an extended, seven-year alert if they provide a police report to the CRA. In addition, victims may obtain from creditors the underlying documentation associated with transactions that may have been fraudulent,¹³ block fraudulent information on their credit file,¹⁴ and prohibit creditors from reporting fraudulent information to CRAs.¹⁵

B. Accuracy provisions

The FCRA mandates that CRAs follow “reasonable procedures to assure maximum possible accuracy of the information [they report].”¹⁶ It does not establish an absolute standard of accuracy and does not require CRAs to guarantee that reports are error-free. The FCRA further promotes accuracy by creating a self-help mechanism that empowers consumers to obtain copies of their reports and dispute erroneous or incomplete information. Consumers who suffer adverse action as a result of information in their credit reports have the right to receive

¹¹ 15 U.S.C. § 1681g(g).

¹² 15 U.S.C. § 1681c-1.

¹³ 15 U.S.C. § 1681g(e).

¹⁴ 15 U.S.C. § 1681c-2.

¹⁵ 15 U.S.C. § 1681s-2(a)(6).

¹⁶ 15 U.S.C. § 1681e(b).

notification of the actions,¹⁷ obtain copies of their credit reports at no charge,¹⁸ and dispute inaccurate information in their reports with the CRA.¹⁹ The consumer’s filing of a dispute triggers an obligation on the part of the CRA and the furnisher of the contested information to investigate the dispute and make any appropriate deletions or modifications to the report.²⁰

The FACT Act added several new provisions to improve the accuracy of consumer reports. The FACT Act facilitates consumers’ access to their credit reports by granting them the right to free annual reports, and gives identity theft victims a number of new remedies for eliminating fraudulent information from their reports. The Act also requires furnishers to establish reasonable policies and procedures to comply with guidelines to be specified by the federal agencies regarding the accuracy of the information furnishers submit to CRAs.²¹

In addition, several FACT Act provisions are designed to improve the effectiveness of the dispute process and thus enhance the accuracy of consumer reports. First, the Act supplements the adverse action process by adding a new notification requirement for creditors, the so-called “risk-based pricing notice.” Creditors must send this notice when, based on a credit report, they offer material terms that are materially less favorable than the most favorable terms available to a

¹⁷ 15 U.S.C. § 1681m.

¹⁸ 15 U.S.C. §§ 1681g, 1681j.

¹⁹ 15 U.S.C. § 1681i(a)(1)(A).

²⁰ 15 U.S.C. §§ 1681i(a), 1681s-2(b). Under the FCRA, CRAs must convey a dispute about the accuracy or completeness of information in a consumer report to the furnisher of that information for investigation. The CRA also must send to the furnisher all relevant information about the dispute supplied by the consumer. Upon receipt of the dispute, furnishers must (i) review the information provided by the CRA, (ii) make appropriate corrections if the disputed information is inaccurate or incomplete, and (iii) provide the corrections to all nationwide CRAs that received the inaccurate or incomplete information.

²¹ 15 U.S.C. § 1681s-2(e).

substantial proportion of consumers from or through that creditor. Like the adverse action notice, this notice will alert consumers to the role their credit reports played in receiving less favorable terms, thereby encouraging them to obtain copies of their reports and review them for possible inaccuracies.²² Second, the FACT Act grants consumers the right to dispute the accuracy of their consumer reports directly with the furnisher of the disputed information, under circumstances to be determined by the FTC and the banking agencies.²³ Third, the FACT Act requires financial institutions that regularly furnish information to CRAs to provide a notice to consumers when they furnish negative information.²⁴ Fourth, the Act prohibits furnishers from re-reporting disputed information found to be inaccurate or incomplete.²⁵

Accuracy in consumer reporting always has been a primary goal of the FCRA. As businesses and other entities continue to make greater use of consumer reports in granting credit, employment, insurance, rentals, and other products or services, it is critical that the information in the reports be as accurate as possible and that consumers' dispute rights be effective. This is all the more important for victims of identity theft, the consequences of which can include fraudulent information corrupting the victim's credit report. The Commission works to enhance consumer report accuracy in three ways - promulgation of rules and studies under the FACT Act, law enforcement, and education and guidance to consumers and businesses.

IV. Commission Actions Implementing the FACT Act

As noted above, the FACT Act assigned the Commission the responsibility, alone or with

²² 15 U.S.C. § 1681m(h).

²³ 15 U.S.C. § 1681s-2(a)(8).

²⁴ 15 U.S.C. § 1681s-2(a)(7).

²⁵ 15 U.S.C. § 1681s-2(b)(1)(E).

one or more other agencies, to promulgate approximately twenty implementing rules, guidelines, compliance forms, and notices, and conduct nine studies and issue reports to Congress.²⁶ After the enactment of the FACT Act, the FTC created an internal FACT Act implementation working group, comprised of staff from all parts of the agency, including the Bureau of Consumer Protection, Bureau of Economics, and Office of General Counsel.²⁷ At any given time, the Commission has about 15-20 staff assigned to FACT Act implementation. Through these efforts, the FTC has completed the FACT Act implementation activities assigned solely to it, with limited exceptions.²⁸ In addition, the Commission and its sister agencies have made substantial progress in completing their required joint tasks.

A. Rules, guides, forms, and notices

The FTC and other agencies have completed most of the FACT Act-mandated rules, guides, forms, and notices, while a few are still in progress. The most significant tasks in which the Commission participated, and their current status, are listed below.

²⁶ Some of the studies must be conducted multiple times over a period of years. In addition to these requirements, the FACT Act directs the Commission to consult on four other rules or studies for which other agencies are responsible, conduct two educational campaigns, and serve as a member of the Financial Literacy and Education Commission.

²⁷ In early 2006, the Bureau of Consumer Protection implemented an internal reorganization. Before 2006, the Bureau's Division of Financial Practices was responsible for privacy and security generally, including FACT Act implementation, and protecting consumers in the financial services marketplace. As part of its reorganization, the Division of Financial Practices was split into a new Division of Financial Practices, focusing on consumer protection in the financial services marketplace, and a new Division of Privacy and Identity Protection, focusing on privacy and security, including FACT Act implementation. The purpose of this reorganization was to refocus resources on each of these programs.

²⁸ Three activities are ongoing: the final Circumvention Rule is still in interim form; the Commission continues to monitor the marketplace in determining a credit scoring fee; and, although the Commission has begun the complaint-sharing program with credit reporting agencies and referred 20,000 complaints, it is working to resolve some anomalies and will submit its first annual report to Congress shortly. See further discussion in sections A and B above.

1. Completed Tasks

- *“Circumvention” Rule.* Pursuant to section 211(b) of the FACT Act, on February 24, 2004, the Commission published an interim final rule that barred nationwide CRAs from reorganizing or taking other steps to avoid their duties to provide free credit reports.
- *“Free Credit Report” Rules.* Section 211(a) and (d) of the FACT Act directed the Commission to issue regulations requiring that (i) nationwide CRAs establish a centralized source through which they must make free annual file disclosures to consumers, and (ii) nationwide specialty CRAs establish a streamlined process for consumers to request such disclosures. On June 24, 2004, the Commission published final rules implementing these provisions. Since December 1, 2004, the nationwide CRAs have issued over 52 million free file disclosures under this program.²⁹ The Commission has acted aggressively to uphold the integrity of the free report program, including bringing two actions against a company that offered “free” credit reports tied to the purchase of a credit monitoring service, through the web site “freecreditreport.com.”³⁰
- *“Identity Theft” Rules.* Section 111 of the FACT Act directed the Commission to define the terms “identity theft” and “identity theft report” for the purposes of various identity-theft related provisions of the Act. In addition, section 112 required the Commission to establish by rule the duration of active duty alerts available to members of the armed services and to define what constitutes “appropriate proof of identity” for certain purposes. On November 3, 2004, the Commission published final rules implementing these provisions.
- *“Records Disposal” Rule.* Pursuant to section 216 of the FACT Act, on November 24, 2004, the Commission and other agencies published coordinated final rules requiring proper disposal of consumer report information. These rules require entities to take reasonable measures to dispose of covered information in a manner that reduces the risk of identity theft.
- *“Summary and Notices.”* Pursuant to section 211 of the FACT Act, on November 30,

²⁹ Agency Information Collection Activities; Submission for OMB Review; Comment Request, 72 Fed. Reg. 14575, 14576 (Mar. 28, 2007).

³⁰ *FTC v. Consumerinfo.com, Inc.*, SACV05-801AHS(MLGx) (C.D. Cal. Aug. 15, 2005); *FTC v. Consumerinfo.com, Inc.*, SACV05-801AHS(MLGx) (C.D. Cal. Jan. 8, 2007). In the original case in 2005, the Commission charged, among other things, that the defendants, affiliates of the nationwide CRA Experian, had deceptively mimicked the FACT Act free report program. The stipulated order required the defendants to make prominent disclosures that their program is not associated with the free annual report program and provide a link to the official web site for that program, www.annualcreditreport.com. The defendants also agreed to pay \$950,000 in disgorgement, and to provide refunds to dissatisfied past customers. In the 2007 case, the Commission alleged that Consumerinfo had violated the 2005 order. The new order prohibits the company from suggesting that it is affiliated with the FACT Act program, and includes a \$300,000 judgment for consumer redress.

2004, the Commission published standard forms that CRAs must give to consumers when providing them with their credit reports, summarizing consumers' rights under the FCRA. The Commission also issued forms that CRAs must provide to information furnishers and consumer report users summarizing their FCRA duties. These forms were revisions to forms previously prescribed by the Commission in 1997.³¹

- *“Identity Theft Summary.”* Pursuant to section 151 of the FACT Act, on November 30, 2004, after consultation with the banking agencies, the Commission published a model form that CRAs must provide to identity theft victims, summarizing victims' FCRA rights.
- *“Prescreen Opt-Out Notice” Rule.* Section 213(a) of the FACT Act directed the Commission, in consultation with the banking agencies, to prescribe a simple and easy-to-understand notice that creditors and insurers must include in written “prescreened” offers. On January 31, 2005, the Commission published such a notice, which informs consumers of their right to opt out of prescreened offers and explains the process for doing so.
- *“Identity Theft Forms and Procedures” Guidance.* On April 27, 2005, the Commission published guidance to implement section 153 of the FACT Act, which directed the Commission, in consultation with the banking agencies, to develop a model form for identity theft victims to use to contact creditors and CRAs.
- *Medical Information Rule.* Section 411 of the FACT Act amended the FCRA to prohibit creditors from obtaining or using medical information in determining a consumer's eligibility for credit, except as permitted by regulations to be issued by the banking agencies (but not including the FTC). The agencies issued final regulations on November 17, 2005. The Commission had provided extensive written comments to the banking agencies to aid in the rulemaking proceeding.
- *Nationwide Identity Theft Campaign.* Last year, the Commission launched a nationwide identity theft education program mandated by the FACT Act, centered around the themes “Deter, Detect, and Defend.” This campaign includes information about how victims can mitigate the damage caused by identity theft should it occur.

2. Tasks still in progress

Certain of the agencies' FACT Act tasks are still in progress. The agencies are actively working on each task and are committed to completing them as quickly as possible.

³¹ Section 211(c) of the FACT Act specifically required the Commission to revise the consumer summary form. The Act did not require revision of the furnisher or user notices, but various changes to the FCRA introduced by the FACT Act rendered the existing forms obsolete.

- *“Affiliate Marketing” Rule.* Section 214 of the FACT Act requires the FTC, the banking agencies, and other agencies to promulgate coordinated rules to provide consumers with notice and a right to opt out of affiliates’ use of certain personal information for marketing purposes. A proposed rule was issued for comment in 2004, and the agencies are completing work on a final rule.
- *“Furnisher” Rules.* Section 312 of the FACT Act requires the Commission and the banking agencies to promulgate two rules relating to furnishers of information to CRAs: (i) coordinated rules to prescribe guidelines and regulations to ensure the accuracy and integrity of information furnished to CRAs,³² and (ii) a joint rule identifying circumstances under which furnishers must investigate a dispute in response to a consumer’s direct request.³³ The agencies published an Advanced Notice of Proposed Rulemaking for both of these rules on March 22, 2006.³⁴ Agency staffs are evaluating the comments and, as specified by the FACT Act, considering the costs and benefits of possible new obligations on furnishers.
- *“Risk-based Pricing” Rule.* Section 311 of the FACT Act requires the FTC and the Federal Reserve to issue joint rules prescribing the form, content, time, and manner of delivery of risk-based pricing notices. The rules also must define certain terms used in the statutory provision, provide for exceptions to the notice requirement, publish a model notice, and determine the timing of the notice. The agencies have conducted extensive outreach to stakeholders to learn more about the feasibility and cost of different approaches to effectuating the notice requirements, and are in the process of drafting proposed rules that will be issued for public comment.
- *Credit Score Fee Determination.* Section 212(b) of the FACT Act requires the Commission to determine a “fair and reasonable” fee that CRAs may charge for a credit score. On November 3, 2004, the Commission published an Advanced Notice of Proposed Rulemaking seeking public comment on various approaches to determining the fee. The Commission is continuing to monitor the credit score market to ensure that the market remains vigorous and competitive.³⁵
- *“Red Flags” Rules.* Section 114 of the FACT Act requires the Commission and banking

³² 15 U.S.C § 1681s-2(e).

³³ 15 U.S.C. § 1681s-2(a)(8).

³⁴ Interagency Advance Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 71 Fed. Reg. 14419 (Mar. 22, 2006), *available at* <http://www.ftc.gov/os/2006/03/interagencyANPRfrn.pdf>.

³⁵ Currently, many credit reporting agencies appear to be charging fees under \$10 to obtain a credit score.

agencies to promulgate guidelines and regulations requiring creditors to establish reasonable procedures to identify identity theft risks. In addition, section 315 of the FACT Act requires the agencies to prescribe regulations to provide guidance for reasonable policies and procedures by users of consumer reports when they are notified of a discrepancy between the address in a consumer's credit file and that on a credit application. On July 18, 2006,³⁶ the agencies published a Notice of Proposed Rulemaking for both rules, with a 60-day comment period that closed on September 18, 2006. The agencies have reviewed the comments and are preparing recommendations for final rules.

- *Complaint Sharing Program.* Section 313(a) of the FACT Act directed the Commission to establish a complaint sharing program, either voluntarily or by regulation, with the nationwide CRAs.³⁷ Under this program, the Commission must refer to the CRAs consumer complaints it receives in which the consumer alleges that the CRA failed to properly resolve a dispute filed by the consumer. The CRAs are required to review the complaints, report back to the Commission on the actions taken as a result of the review, and maintain records sufficient to show compliance. Finally, section 313 requires the Commission to submit an annual report to Congress on the information gathered under the program.

In early 2004, the Commission staff reached agreements with each of the three nationwide CRAs on the operation of the complaint referral program. Beginning in April 2004, Commission staff began forwarding to the CRAs on a monthly basis relevant consumer complaints from the Commission's complaint database.³⁸ Since the initiation of the program, the Commission has forwarded nearly 20,000 consumer complaints to the CRAs.

As required under the program, the CRAs have reported on a sample of the selected complaints on a quarterly basis. However, the reported data have contained some anomalies, and the Commission staff is working to address them. The Commission expects that the anomalies will be resolved soon, at which time it will submit its first annual report to Congress.

B. Studies and reports

The Commission, alone or with one or more other agencies, has completed six FACT Act-

³⁶ Interagency Notice of Proposed Rulemaking: Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 71 Fed. Reg. 40786 (July 18, 2006), available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-6187.pdf>.

³⁷ 15 U.S.C. § 1681i(e).

³⁸ See FTC press release, "FTC Will Refer Consumer Complaints to Credit Bureaus" (Apr. 23, 2004), available at <http://www.ftc.gov/opa/2004/04/cra.htm>.

mandated studies and transmitted reports to Congress.³⁹ All of the completed studies relate to the accuracy of consumer reports. Some of the study obligations are ongoing, requiring periodic reports over several years. Two studies are still in progress.

- *Accuracy study.* Section 319 of the FACT Act requires the Commission to undertake a long-term study of the accuracy and completeness of consumer reports over an 11-year period. The Commission is required to submit reports on this study to Congress biennially starting in December 2004. The Commission's first report, submitted on December 29, 2004, described in detail the nation's consumer reporting system, the challenges in assuring accuracy and completeness in that system, the applicable FCRA provisions, and the Commission's efforts to enforce those provisions and educate consumers and businesses about their rights and duties.⁴⁰ The first report also reviewed previous studies of accuracy by other parties and outlined the Commission's plan for a pilot study to determine the feasibility of a national accuracy survey. The Commission's second report, submitted on December 5, 2006, described the results of the pilot study and the methodological difficulties that arose in executing it.⁴¹ The report recommends performing a second pilot study. The Commission asked for public comment on the proposed new pilot study on October 19, 2006, and published a second notice (required by the Paperwork Reduction Act) on February 6, 2007.
- *Four specific accuracy proposals.* On December 9, 2004, the Commission reported to Congress on four specific proposals for improving the accuracy of consumer reports, as required by section 318 of the FACT Act.⁴² The report notes that there are a number of reasons why a consumer report may not be a complete, accurate representation of a consumer's credit history. First, a data furnisher may submit information to the CRA that is incorrect or incomplete, or may not provide any information at all. Second, a furnisher may send correct information, but the CRA may not place it in the correct person's file. Third, a CRA may send to a subscriber a consumer report that pertains to the wrong person, or may not be able to find the file.⁴³

³⁹ As noted earlier, the FACT Act mandated additional studies for which the Commission is not responsible.

⁴⁰ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, 18-20 (Dec. 29, 2004), available at <http://www.ftc.gov/reports/facta/041209factarpt.pdf>.

⁴¹ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 5, 2006), available at http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf.

⁴² See <http://www.ftc.gov/opa/2004/12/factarpt.shtm>.

⁴³ See *supra* note 40.

The FACT Act required the Commission to consider four specific proposals for improving the accuracy of consumer reports.

- # “*Data Matching.*” Should CRAs be required to increase the number of points of information (e.g., name, address, Social Security number) that they must match to ensure that the consumer is the correct individual to whom a consumer report relates? The report concludes that there are considerable uncertainties in calculating the costs and benefits of requiring several matching points, and notes that it is unclear whether the benefits to consumers would outweigh the costs. Requiring the matching of additional data points could lead to more instances of “fragmented” files, where, as a result of minor discrepancies in matching information, multiple partial files for an individual consumer are created.
- # “*Negative Information.*” Should consumer report users be required to provide notice to consumers when they furnish negative information to a CRA? The report discusses the costs and benefits of this requirement and concludes that it would be premature to impose such a requirement.
- # “*Same Report.*” Should CRAs or creditors be required, when adverse action about a consumer is taken based on his credit report, to provide to the consumer a copy of the same report as that upon which the creditor took the adverse action? The report concludes that this requirement would impose substantial costs to obtain uncertain (and likely limited) benefits, and therefore recommends against its adoption.
- # “*Common Unreported Financial Transactions.*” What are common financial transactions, not generally reported to CRAs, the reporting of which would be useful in evaluating creditworthiness, and how can that reporting be encouraged? The report notes the benefits of reporting nontraditional credit transactions for many consumers who lack a traditional credit history, but concludes that any additional legislation would be premature given the rapid development of nontraditional credit reporting in the marketplace.

Although the Commission has not learned of any information that would change the conclusions of these studies, it continues to stay abreast of market conditions to determine whether these conclusions should be modified.

- *Dispute study.* Section 313(b) of the FACT Act required the Commission and the Federal Reserve to conduct a study of the extent to which CRAs and furnishers are complying with the consumer dispute provisions of the FCRA. The agencies issued the study report on August 9, 2006.⁴⁴ It includes a detailed discussion of the responsibilities

⁴⁴ Federal Trade Commission & Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006) (“Dispute Study”), available

of CRAs and furnishers in the dispute process. The report also describes concerns voiced by some commenters about the quality of the CRAs' and furnishers' investigations.⁴⁵ The report does not recommend additional administrative or legislative action, but rather that the recent FACT Act provisions intended to improve the dispute process be given time to take effect.⁴⁶ The Commission and the Board will continue to monitor the performance of the dispute process, effectuate the new FACT Act dispute-related provisions, and explore possible improvements to the system.

- *Credit and insurance score study.* Section 215 of the FACT Act requires the Commission and the Federal Reserve, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including mortgages, auto loans, credit cards, and property and casualty insurance. Section 215 further directs the agencies to study the extent to which the use of scores and scoring models could result in negative or differential treatment of protected classes under the Equal Credit Opportunity Act, and the extent to which the use of underwriting systems could achieve comparable results through the use of factors with less negative impact. The agencies have gathered data from the credit and insurance industries and are completing the study report, with release expected this summer.
- *Affiliate-sharing study.* Section 214 of the FACT Act requires the Commission and the banking agencies to conduct an ongoing study of the affiliate-sharing practices of financial institutions and other creditors or users of consumer reports. The agencies must submit reports to Congress every three years. On August 21, 2006, the agencies published a Federal Register Notice seeking comment on the proper methodology for collecting the information required for the study. The agencies have reviewed the comments and are drafting a survey instrument.

C. The Identity Theft Task Force

In May 2006, President Bush established the Identity Theft Task Force.⁴⁷ The Task Force's mission was to create a strategic plan for improving the effectiveness of the federal government's efforts to combat this pernicious crime, specifically with respect to identity theft awareness, prevention, detection, and prosecution. The Task Force, comprised of representatives at <http://www.ftc.gov/os/comments/fcradispute/P044808fcradisputeprocessreporttocongress.pdf>.

⁴⁵ See Dispute Study at 27.

⁴⁶ See Dispute Study at 7, 34, and Appendix F.

⁴⁷ Executive Order 13,402 (May 10, 2006).

of seventeen federal agencies, including the FTC, transmitted its strategic plan to the President on April 17, 2007.⁴⁸ The plan contains over 60 recommendations of actions that can be taken to attack identity theft at each stage of its life cycle. Broadly, the recommendations include:

- keeping sensitive information out of the hands of thieves by, among other things, improving data security in the public and private sectors;
- making it more difficult for thieves to use the information they obtain to steal identities by enhancing customer verification and authentication techniques;
- helping victims recover from the experience; and
- taking away the fruits of the crime by strengthening efforts to prosecute the thieves.

As part of its plan to improve victim recovery, the Task Force recommended that the Task Force agencies with relevant authority assess the effectiveness of existing tools available to identity theft victims pursuant to the FACT Act, including victims' rights to place fraud alerts, block fraudulent information on their credit reports, and obtain business records relating to fraudulent accounts. The FTC, along with other relevant agencies, have begun this assessment, and plan to complete a report by 2008.

V. Other Commission Efforts to Enhance the Accuracy of Consumer Reports

In addition to carrying out its responsibilities under the FACT Act, the Commission has used its law enforcement powers, as well as outreach to consumers and businesses, to enhance consumer report accuracy.

A. Law Enforcement

The Commission monitors the operation of the credit reporting system to identify and investigate possible law violations. Although it does not have examination or auditing authority,

⁴⁸ Available at <http://www.ftc.gov/opa/2007/04/idtheft.shtm>.

the Commission has pursued an aggressive law enforcement program to ensure that CRAs, furnishers, and consumer report users comply with their accuracy-related responsibilities under the FCRA. Over the past decade, the Commission has brought over twenty cases alleging violations of the FCRA, resulting in civil penalties totaling over \$19 million.

The Commission has filed several actions alleging that CRAs failed to follow reasonable procedures to ensure the accuracy of the reports they sold or failed to meet their dispute process duties. For example, in cases filed in 2000 against the three principal nationwide CRAs - Equifax, Experian, and TransUnion - the Commission alleged that the companies violated the FCRA by failing to maintain adequate personnel to respond to consumers registering disputes by telephone, resulting in busy signals, excessive hold times, and the blocking of calls from particular locations. The CRAs agreed to consent decrees requiring them to maintain adequate personnel, conduct audits to ensure future compliance, and pay a total of \$2.5 million in civil penalties.⁴⁹ More recently, the Commission brought an action against Far West Credit, a Utah-based CRA that allegedly failed to use reasonable procedures to ensure accuracy.⁵⁰ The

⁴⁹ *United States v. Equifax Credit Info. Services, Inc.*, No. 1:00-CV-0087 (N.D. Ga. 2000); *FTC v. Experian Mktg. Solutions, Inc.*, No. 3-00CV0056-L (N.D. Tex. 2000); *United States v. Trans Union LLC*, 00C 0235 (N.D. Ill. 2000). More recently, the Commission alleged that Equifax had violated its consent decree and obtained another Order requiring it to pay \$250,000 in disgorgement. *United States v. Equifax Credit Info. Services, Inc.*, Civ. No. 1:00-CV-0087 (N.D. Ga. 2003). *See also Trans Union Credit Info. Co.*, 102 F.T.C. 1109 (1983); *FTC v. TRW Inc.*, 784 F. Supp. 361 (N.D. Tex. 1991); *Equifax Credit Info. Services, Inc.*, 120 F.T.C. 577 (1995). Separately, the Commission brought an action last year against data broker and CRA ChoicePoint, Inc., charging that it failed to properly investigate the legitimacy of prospective purchasers of its consumer reports and other sensitive data files as required by the FCRA. As a result of these failures, ChoicePoint allegedly sold over 160,000 consumer files, including thousands of credit reports, to identity thieves posing as customers. The order settling the case required ChoicePoint to undertake specific procedures to monitor and oversee its customers, pay a civil penalty of \$10 million, and provide an additional \$5 million for redress to consumers who may have suffered identity theft as a result of ChoicePoint's actions. *United States v. ChoicePoint, Inc.*, CV-0198 (N.D. Ga. Jan. 30, 2006).

⁵⁰ *United States v. Far West Credit, Inc.*, Civ. No. 2:06-CV-00041 (D. Utah 2006).

Commission's complaint alleged that Far West inserted into consumer reports facially dubious information from an interested party without adequately verifying the information. In settling the case, Far West agreed to put in place reasonable procedures to assure the maximum possible accuracy of information in consumer reports that it prepares, and to pay \$120,000 in civil penalties.

The Commission also has brought actions against furnishers for allegedly reporting inaccurate information to CRAs.⁵¹ For example, in three cases, the FTC alleged that furnishers reported inaccurate dates for delinquent accounts, with the result that the adverse information remained on the consumers' reports for more than the seven-year limit provided under the FCRA.⁵²

The Commission has brought numerous actions against consumer report users. Most involved the failure of users to provide compliant adverse action notices to consumers.⁵³ In two

⁵¹ *United States v. DC Credit Services, Inc.*, No. 02-5115 (C.D. Cal. 2002) (consent decree) (\$300,000 civil penalty); *United States v. Fairbanks Capital Corp.*, Civ. No. 03-12219 (D. Mass. 2003) (consent decree). The FCRA imposed no accuracy or other duties on furnishers until 1997.

⁵² *FTC v. NCO Group, Inc.*, Civ. No. 04-2041 (E.D. Pa. 2004) (consent decree) (\$1.5 million civil penalty); *United States v. DC Credit Services, Inc.*, No. 02-5115 (C.D. Cal. 2002) (consent decree) (\$300,000 civil penalty); *United States v. Performance Capital Management, Inc.*, No. 01-1047 (C.D. Cal. 2000) (consent decree) (\$2 million civil penalty).

⁵³ *E.g.*, *United States v. Imperial Palace, Inc.*, Civ. No. CV-S-04-0963 (D. Nev. 2004); *Quicken Loans Inc.*, FTC Docket No. D-9304, available at <http://www.ftc.gov/os/2003/04/quickendo.htm>; *United States v. Unicor Funding, Inc.*, Civ. No. 99-CV-1228 (C.D. Cal. 1999); *Bruno's, Inc.*, 124 F.T.C. 126 (1997); *Aldi, Inc.*, 124 F.T.C. 207 (1997); *Altmeyer Home Stores, Inc.*, 125 F.T.C. 1295 (1998); *Marshall Field & Co.*, 116 F.T.C. 777 (1993); *Kobacker Co.*, 115 F.T.C. 13 (1992); *Keystone Carbon Co.*, 115 F.T.C. 22 (1992); *McDonnell Douglas Corp.*, 115 F.T.C. 33 (1992); *Macy's Northeast, Inc.*, 115 F.T.C. 43 (1992); *Electronic Data Systems Corp.*, 114 F.T.C. 524 (1991); *Hospital & Health Services Credit Union*, 104 F.T.C. 589 (1984); *Associated Dry Goods Corp.*, 105 F.T.C. 310 (1985); *Wright-Patt Credit Union*, 106 F.T.C. 354 (1985); *Federated Dep't Stores*, 106 F.T.C. 615 (1985). *See also United States v. Norwest Financial, Inc.*, Civ. No. 87 06025R (C.D. Cal. 1987).

recent cases, the Commission alleged that telecommunications carriers had failed to provide adverse action notices when, based on applicants' credit reports, they conditioned the receipt of telephone services on advance deposit or maximum charge limits.⁵⁴ The two companies were ordered to pay a total of nearly \$1.5 million in civil penalties.

The Commission also enforces the Credit Repair Organizations Act (CROA) by aggressively pursuing businesses engaging in fraudulent "credit repair."⁵⁵ By frivolously or fraudulently disputing accurate information in CRA databases, unscrupulous credit repair firms can degrade the accuracy and quality of information in credit reports.⁵⁶

Finally, the Commission staff actively monitors compliance with the FACT Act. As noted earlier, the FTC has filed two actions against Consumerinfo.com for allegedly deceiving consumers about its affiliation with the FACT Act free annual credit report program. The staff currently is pursuing a number of nonpublic investigations of possible violations of several of the new FACT Act requirements.

⁵⁴ *United States v. Sprint Corp.*, Civ. No. 4:04cv361 (N.D. Fla. 2004) (consent decree); *United States v. AT&T Corp.*, Civ. No. 022-3160 (D.N.J. 2004) (consent decree).

⁵⁵ Under Section 404(a)(1)-(2) of CROA, "No person may make any statement, or counsel or advise any consumer to make any statement, [to a CRA] which is untrue or misleading . . . with respect to any consumer's credit worthiness, credit standing, or credit capacity . . . [or] the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete." 15 U.S.C. § 1679b.

⁵⁶ *See, e.g., FTC v. ICR Services, Inc.*, Civ. No. 03-C-5532 (N.D. Ill.2003) (\$1.15 million in consumer redress). The Commission also has conducted several sweeps of fraudulent credit repair operations, including Project Credit Despair (twenty enforcement actions brought by the FTC, U.S. Postal Inspection Service, and eight state attorneys general in 2006); Operation Eraser (32 actions brought by the FTC, state attorneys general, and the U.S. Department of Justice in 1998); and Operation New ID - Bad Idea I and II (52 actions brought by the FTC and other law enforcement agencies in 1999).

B. Consumer and Business Education

A critical part of ensuring consumer report accuracy is educating businesses about their legal obligations and consumers about their rights and remedies. Among other outreach efforts, the Commission has published a large volume of consumer and business education materials designed to assist those complying with the FCRA. The agency's consumer publications include: *Getting Credit: What You Need to Know About Your Credit*,⁵⁷ which among other things explains credit reports and credit scores and how to improve them; *Credit Scoring*,⁵⁸ which explains the system creditors use to determine whether to grant consumers credit; *Building a Better Credit Record*,⁵⁹ which teaches consumers how to legally improve their consumer reports, deal with debt, and spot credit-related scams; *Credit Repair: Self-Help May Be Best*,⁶⁰ which explains how to improve your creditworthiness and lists legitimate resources for low or no cost help; and *How to Dispute Credit Report Errors*,⁶¹ which explains how to dispute and correct inaccurate information on a consumer report and includes a sample dispute letter.

In addition, one of the key elements of the Commission's comprehensive identity theft education and assistance program is guidance on what victims should do to clean up their credit reports. The Commission's website, www.ftc.gov/idtheft, serves as a comprehensive resource for victims and includes publications and links to testimony, reports, press releases, identity theft-related state laws, and other resources. The Commission also hosts a toll-free hotline, 1-877-ID THEFT, and a secure online complaint form on its website for consumers. The

⁵⁷ Available at <http://www.ftc.gov/bcp/online/pubs/credit/gettingcredit.shtm>.

⁵⁸ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

⁵⁹ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre03.shtm>.

⁶⁰ Available at <http://www.ftc.gov/bcp/online/pubs/credit/repair.htm>.

⁶¹ Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm>.

Commission receives about 15,000 to 20,000 consumer contacts each week seeking information on how to recover from identity theft, or avoid becoming a victim in the first place. Victims who contact the hotline receive counseling from trained personnel on steps they can take to recover from identity theft, including their rights under the FACT Act. In addition, the Commission's identity theft primer⁶² and victim recovery guide⁶³ are widely available in print and online.

As noted above, last year, the Commission launched a nationwide identity theft education program mandated by the FACT Act, centered around the themes "Deter, Detect, and Defend." This campaign includes direct-to-consumer brochures, as well as training kits and ready-made materials (including presentation slides and a video) for use by businesses, community groups, and members of Congress to educate their employees, communities, and constituencies. The Commission has distributed over 3.5 million brochures and 40,000 kits to date. The Commission also has partnered with other organizations to broaden its reach. As just one example, the U.S. Postal Inspection Service recently initiated an outreach campaign to place FTC educational materials on subway cars in New York, Chicago, San Francisco, and Washington D.C.

The Commission also recently helped launch a new website, www.idtheft.gov, which will eventually serve as a centralized government clearinghouse for educational resources for consumers, businesses, and law enforcement on ways to prevent and detect identity theft and help victims recover.

Finally, the Commission has issued a number of publications providing information and advice for consumers on their FACT Act rights. For example, as the free annual credit report

⁶² *Avoid ID Theft: Deter, Detect, Defend*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt01.pdf>.

⁶³ *Take Charge: Fighting Back Against Identity Theft*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt04.htm>.

program took effect in different regions of the country, the FTC issued press advisories and radio public service announcements informing consumers of this new right, and published a “how to” guide on ordering free reports.⁶⁴ The Commission also has issued public warnings about “imposter” sites that pose as the official free report site, www.annualcreditreport.com.⁶⁵ The Commission’s widely-distributed identity theft publications contain comprehensive information on consumers’ FACT Act rights.⁶⁶

The Commission also provides extensive guidance to the business community on its obligations relating to consumer report accuracy. Business publications include *Credit Reports: What Information Providers Need to Know*⁶⁷ and *Using Consumer Reports: What Employers Need to Know*.⁶⁸ The Commission also makes information available to the business community via the FCRA section of its website at www.ftc.gov/os/statutes/fcrajump.shtm, which includes links to the statute and rules, the Commission’s FCRA commentary, staff opinion letters, comments on proposed rules, enforcement and other actions, and educational materials for businesses. In addition, the Commission makes presentations at industry meetings and conferences regarding firms’ consumer report obligations, and Commission staff routinely responds to questions and concerns raised by the business community on an informal basis. Moreover, the Commission has made substantial efforts to educate businesses about their

⁶⁴ See <http://www.ftc.gov/bcp/online/pubs/credit/freereports.shtm>.

⁶⁵ See <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt156.shtm>; <http://www.ftc.gov/bcp/online/pubs/alerts/fakealrt.shtm>.

⁶⁶ See <http://www.ftc.gov/bcp/edu/microsites/idtheft>.

⁶⁷ Available at <http://www.ftc.gov/bcp/online/pubs/buspubs/infopro.shtm>.

⁶⁸ Available at <http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.shtm>.

obligations under the FACT Act. For example, FTC publications provide compliance guidance on such subjects as the Disposal Rule⁶⁹ and the truncation of account numbers on credit and debit card receipts.⁷⁰

VI. Conclusion

The FACT Act significantly increased the protections afforded to consumers in ensuring the accuracy of the information in their consumer reports. The Commission, along with its sister agencies, has made substantial progress in implementing the FACT Act through rulemakings, studies, and other actions. Consumer and business education and, when necessary, law enforcement are also important tools used by the Commission to promote consumer report accuracy.

The Commission is troubled that, despite its efforts, consumers continue to report errors in their credit reports that have made it difficult, or more expensive, to obtain credit, insurance, or employment. The Commission is committed to using all of the tools at its disposal to address consumer report accuracy concerns. We look forward to working with this Committee to protect consumers' rights.

⁶⁹ See <http://www.ftc.gov/bcp/online/pubs/alerts/disposalalrt.shtm>.

⁷⁰ See www.ftc.gov/bcp/edu/pubs/business/alerts/alt007.pdf.