

**Testimony of
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At a Hearing On

**Who's Keeping Score? Holding Credit Bureaus
Accountable and Repairing a Broken System**

**Before the U.S. House of Representatives
Committee on Financial Services**

The Honorable Maxine Waters, Chairwoman

26 Feb 2019

Chairwoman Waters, Mr. McHenry, members of the committee. My name is Edmund Mierzwinski, Senior Director for Federal Consumer Programs at the U.S. Public Interest Research Group, which serves as the federation of state PIRGs, which are member-based, non-profit, non-partisan research and advocacy organizations around the country.

1. Summary

Thank you for the opportunity to testify today on the important matter of Fair Credit Reporting Act (FCRA) reform. The law was passed in 1970 and has been amended over the years. It regulates the activities of consumer reporting agencies (CRAs), commonly called credit bureaus. What is a CRA, or credit bureau? We like one court's description of the behemoth Experian as a "company that traffics in the reputations of ordinary people."¹

We have prepared a rough timeline of some major consumer reporting problems that have led to state or federal policymaker reforms and enforcement actions by the Federal Trade Commission or Consumer Financial Protection Bureau. The list also includes enforcement actions by state attorneys general and consumer protection attorneys, who each play a critical role in reining in the CRAs. The timeline is attached as an appendix to this report. We hope it is helpful and I can answer questions about any of its items.

I first testified before this committee² on credit reporting mistakes in 1989, at a time when several states and the Federal Trade Commission (FTC) were conducting investigations and negotiating consent decrees with several large consumer reporting agencies³ due to a troubling pattern of consumer complaints over both their mistakes and their recalcitrance and failure to correct the mistakes after consumers exercised FCRA-mandated dispute rights.

That 1989 hearing was the first real effort by Congress to rein in the credit bureaus since passage of the original act in 1970. Since then, Congress has continually conducted oversight and, in response to industry's indifference to the problems it causes for consumers seeking financial or employment opportunity, has enacted significant reforms in 1996, 2003 and 2010.

¹ See <https://caselaw.findlaw.com/us-9th-circuit/1209375.html>

² House Banking Committee, Subcommittee on Consumer Affairs and Coinage, Hearings on Fair Credit Reporting, 13 Sept 1989. (After the Gramm-Leach-Bliley Act of 1999, the full committee's name was changed to Financial Services Committee.)

³ "Credit bureau" is a widely used colloquial term for Consumer Reporting Agencies regulated under the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 *et seq.* The so-called Big 3 bureaus, Equifax (formerly Retail Credit Company), Experian (formerly TRW) and TransUnion now qualify as Nationwide Consumer Reporting Agencies (15 U.S.C. § 1681a(p)) and face greater responsibilities under the act. Many other firms, including specialty CRAs offering check cashing and bounced check databases, employment background checks, tenant screening, medical insurance and other services are regulated under the act's definitions. However, the Big 3 continue to grow, with their recent acquisitions of competitors: for example, Experian acquiring Clarity Services, Equifax buying DataX and TransUnion buying FactorTrust, all in the last few years. The 3 smaller firms fashion themselves as alternative databases operating in the subprime space.

States Lead the Way

Critically, each federal reform was preceded by major accomplishments at the state level. A key part of my message today is that continued state leadership in all areas – from climate change to credit reporting and privacy and digital rights more broadly– is critical to the advancement of this nation’s policies to improve consumer welfare, health and safety and liberty.

Numerous states emulated California’s pioneering auto emissions rules, protecting the environment for us and future generations. As you know, those state rules are currently under administrative threat. The pioneering 2018 California Consumer Privacy Act is now under attack in the Commerce committees of both houses by a phalanx of powerful corporate interests led by Google, Facebook, Amazon and the telco/cable ISPs. If they win preemption of state laws, consumers and citizens lose, forever.

The big CRAs were early advocates of eliminating the right of states to protect their citizens. If the credit bureaus and banks had succeeded **in 1992** in their brazen House effort to reverse the FCRA’s longstanding standard that the FCRA serve as a floor of protection, not a ceiling, and at that time 27 years ago successfully preempted all state laws related to credit reporting, we would not have nationwide free credit reports, we would not have access to our credit scores, we would not have identity theft protections, we would not have data breach notices, and we would not have the free nationwide credit freezes finally enacted in 2018.⁴ Congress only acts to protect consumers after a disaster (cue 2008 financial collapse) or after several states act first. Industry’s goal is to take state innovators and consumer cops off the credit bureau beat.

In this testimony, in addition to detailing the need for consumer reporting reform, we call on Congress to ensure that Equifax finally pays a price for its massive 2017 data breach affecting over 148 million consumers.

Finally, we offer our strong support to the two draft bills from Chairwoman Waters and other members, which are before the committee today. The first, a new version of the Chairwoman’s Comprehensive Consumer Credit Reporting Reform Act, is a response to the problems posed to all consumers by the failure of the consumer reporting system. That system is dominated by its Big 3 members – Experian, Equifax, and TransUnion -- as self-appointed gatekeepers to financial and employment opportunity. Their lack of innovation and propensity toward mistakes perpetuates injustices and denies opportunity to many, especially lower-income consumers and people of color. The second bill, the “Protecting Innocent Consumers Affected by a Shutdown Act,” will force the CRAs to lend a hand to the restoration of the financial lives of the government employees and contractors harmed by the recent extended shutdown. Since 1989, I have observed the arrogant attitude of the CRAs. They’ve always claimed that mistakes, let alone credit problems, aren’t their fault; they simply report what they are told. It is literally the Bart Simpson defense: “It’s not my fault.” They won’t change unless you make them. Passage of these two bills will make them change.

⁴ In 1992, after Congressional consumer champions could not remove an amendment inserted in committee at the behest of the banks and CRAs, preempting all state laws under the FCRA, consideration of the Consumer Credit Reporting Reform Act of 1991, HR3596, was ended by a “House motion to rise” requested by consumer groups. See <https://www.congress.gov/bill/102nd-congress/house-bill/3596>

2. This Story Is About Consumers, Who Are Products, Not Customers, of the CRAs

This story is not simply about three big CRAs (credit bureaus) named Equifax, Experian and Trans Union. It is also about numerous specialty credit bureaus and also about numerous emerging companies that don't know or don't want to admit their products are consumer credit reports regulated under the FCRA.

It is also about the responsibilities of the creditors that voluntarily “furnish” information to CRAs.⁵ Why do they do this? The theory is simple. If more credit files are available about more consumers and contain more trade lines (accounts) about consumer history, then the consumer reporting database will be more valuable to users. Most of the creditor-furnishers of information to the CRAs are also customer-users of the CRAs. The business customers gain the benefit of a larger database; they also have responsibilities as users of credit reports.

Yet, mostly it is about the plight of **consumers** whose financial and other histories are the subjects of credit reports, which are bought and sold without our consent. **We are not their customers; we are their product.** Note that this has not stopped the CRAs from developing a lucrative, multi-billion dollar marketing channel of subscription-based credit monitoring and identity theft protection products designed to play to our fears of low credit scores or imposters stealing our name.⁶

In reality those credit scores are low because the CRAs haven't been forced to do a better job protecting our files from misuse or to keep them accurate or to respond to us properly when we dispute the mistakes. Imposters prevail because of flaws in the credit granting system and debacles such as the Equifax breach that make financial DNA freely available. Instead of carrying out their statutory duties, the CRAs have persisted in ignoring them while simultaneously aggressively hawking a variety of over-priced self-help products.

In 2017, the CFPB fined Equifax \$2.5 million; Transunion \$3 million and Experian \$3 million over deceptive marketing of credit monitoring products by offering deceptively marketing “educational” credit scoring products, not the scores actually used by lenders to make decisions. The CFPB also ordered Transunion to pay \$13.8 million and Equifax to pay \$3.8 million in consumer refunds for using bait and switch trial subscriptions.⁷ If these products had the actual

⁵ Furnishers did not have any duties until 1996 amendments. Duties to provide complete and accurate information are solely enforceable by regulators; private enforcement is available only when furnishers are notified of reinvestigation disputes (See FCRA Section 623, 15 USC 1681s-2).

⁶ This lucrative channel includes identity theft protection and subscription credit scoring products. “The private research firm IBISWorld estimated that the U.S. market for identity theft services was about \$3 billion in 2015 and 2016.” See page 5, “Identity Theft Protection Services,” U.S. GAO, March 2017, available at <https://www.gao.gov/assets/690/683842.pdf>.

⁷ These enforcement actions were carried out under the first confirmed CFPB director, Richard Cordray. News release, CFPB, “CFPB Orders TransUnion and Equifax to Pay for Deceiving Consumers in Marketing Credit Scores and Credit Products,” 3 Jan 2017, see <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/> and News Release, CFPB, “CFPB Fines Experian \$3 Million for Deceiving Consumers in Marketing Credit Scores,” 23 March 2017, see <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-experian-3-million-deceiving-consumers-marketing-credit-scores/>

value affixed to the price (\$19.99/month and up), they would be sold as stand-alone products that would jump off the shelves.

3. What triggered passage of the 1970 Fair Credit Reporting Act?

In 1968 Representative Clement Zablocki (WI) offered an unsuccessful amendment to regulate credit reporting during consideration of the original Truth In Lending Act. Hearings were then held by the Senate and House by Sen. William Proxmire (WI) and Rep. Leonor Sullivan (MO). The complaints that triggered Congressional interest focused on a variety of deprivations by credit bureaus but a key driver of the hearings was complaints about the Retail Credit Company's abusive investigations of consumers applying for insurance policies. The Fair Credit Reporting Act was enacted in 1970 and in 1975, Retail Credit Company changed its name to Equifax.

While the original act restricted the sale of reports to limited purposes, provided certain rights for consumers and imposed responsibilities on credit bureaus and credit report users (but not yet on voluntary "furnishers of information"), some consumer advocates withdrew support when the final law included an industry-supported amendment providing qualified immunity from state defamation laws.

Early Consolidation Led to Mistake Patterns and Lack of Compliance That Continue Today; Sloppy Practices Also Lead to Identity Theft

Following passage of the act and the acceleration of industrial computerization, local and state credit bureaus began a first major wave of consolidation that resulted in 5, then 3 national CRAs by the early 1990s. A series of early 1990s reports by U.S. PIRG, Consumer Union (now Consumer Reports) and certain non-aligned CRAs confirmed widespread complaints.⁸ U.S. PIRG, through FOIA requests, found credit bureau complaints led all others to the FTC in the early 1990s.⁹ The consolidation of databases written in different programming languages and

⁸ James Williams of Consolidated Information Services, a New York area retail mortgage credit reporting agency, in 1991 analyzed 1500 reports from the three big bureaus and found errors in 43 percent of the files. It and other smaller resellers of consumer credit reports are regulated by the FCRA; they are also customers of the Big 3, which are also known as data repositories. Over time, the number of these resellers, which in the 1980s and 1990s had an important role in conducting manual underwriting (line-by-line human review of consumer credit reports) has dwindled and their business models have changed, under pressure from the CRAs. But they have produced at least one other study of accuracy. See, for example, Consumer Federation of America and the National Credit Reporting Association, "Credit Score Accuracy and Implications for Consumers," 17 Dec 2002, at https://consumerfed.org/pdfs/121702CFA_N CRA_Credit_Score_Report_Final.pdf. This detailed study of credit scores derived from over 500,000 consumer credit files also provides a useful history of other studies of credit reporting accuracy and a discussion of the migration of credit and, especially, mortgage decision-making from manual to automated underwriting.

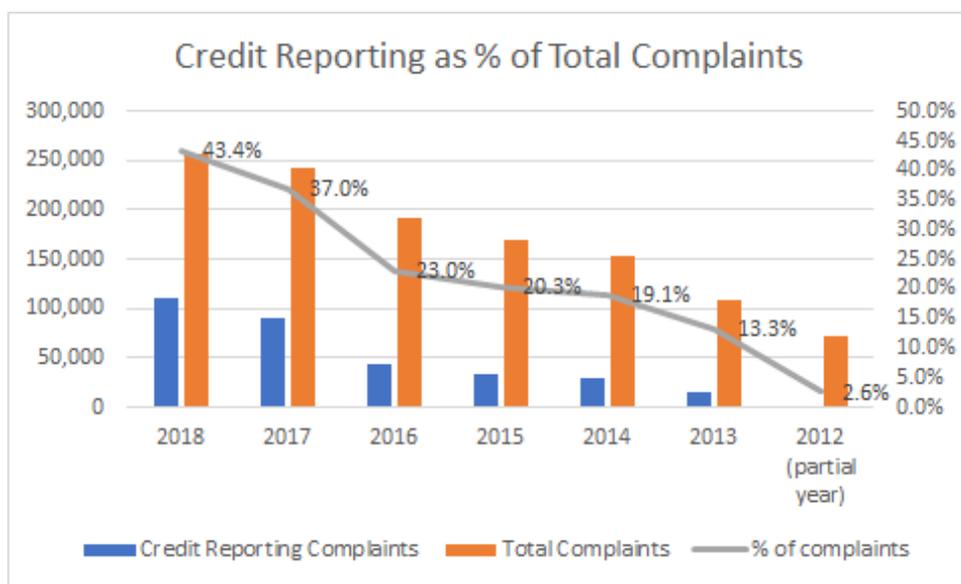
⁹ See the following state PIRG reports: *Nightmare On Credit Street (Or How The Credit Bureau Ruined My Life): Case Studies Documenting Consumer Complaints and Recommendation For Amending the FCRA*, June 12, 1990; *Don't Call; Don't Write; We Don't Care*, 1991, which reviewed 156 consumer report complaints on file at the FTC and revealed that the average duration of complaints against a credit bureau was 22.5 weeks, or almost 6 months; and *Public Enemy #1 at the FTC*, October 1993. Based on a Freedom of Information Act request, the 1993 report found that between 1990 and 1993, problems with credit bureaus was the leading cause of complaints to the FTC (30,901, 20.6%). *Public Enemy* also found

non-standard reporting formats – along with lax enforcement of the law – certainly contributed to the problems identified by the FTC, state attorneys general, Congress and consumer groups.

The mistakes and problems we found in the early 1990s continued. In the mid-1990s, we documented the rise of identity theft, which left more consumers struggling with the credit report dispute process.¹⁰ ID theft was fueled by the easy availability of Social Security Numbers and a security flaw in the credit granting process. An identity thief doesn't need to obtain your credit report (which requires you to verify a lot of identifying information, try it). The thief simply applied for credit in your name, with your SSN and his/her address. The retailer or creditor, a trusted third party to the CRAs, obtains your credit report and issues credit in your name, to the imposter using your SSN, at the imposter's address.

In 2013, the Federal Trade Commission found that 26% of consumers had at least one mistake that “might affect their credit scores” in one of their credit reports and 5% of all consumers had “errors on one of their three major credit reports that could lead to them paying more for products such as auto loans and insurance.”¹¹

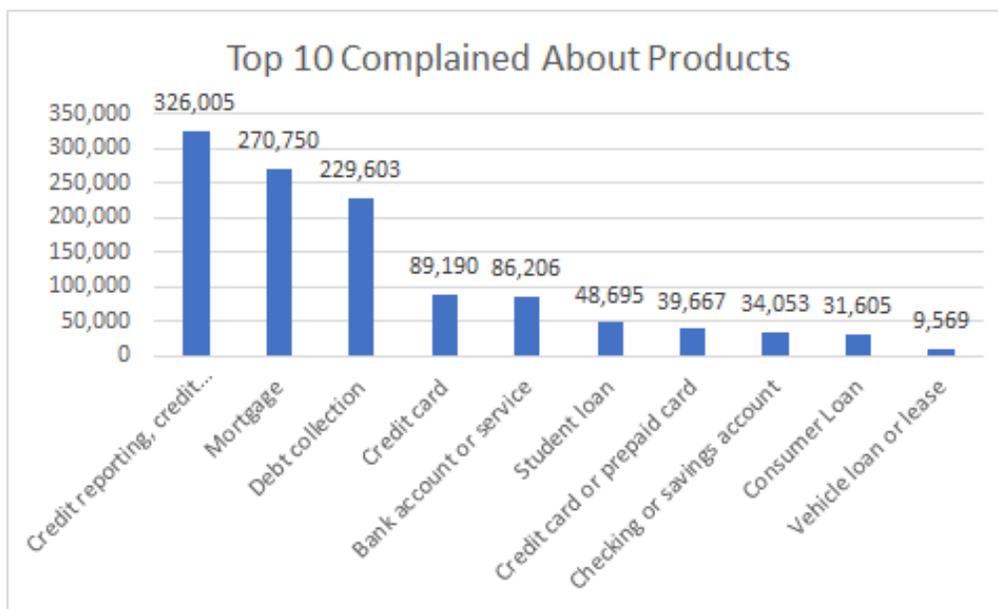
U.S. PIRG's regular reviews of the very important CFPB Public Consumer Complaint Database have most recently found the following, with 85% of all credit reporting complaints directed at Equifax, Experian and TransUnion:



that 44% of complaints concerned mixed files, and that among those, 64% involved the mixing of data with total strangers. We have published additional reports on consumer reporting errors, disputes and complaints in 1998, 2004 and 2014.

¹⁰ See CALPIRG and U.S. PIRG, “Identity Theft: The Consumer X-Files,” 1996, and “Identity Theft II: Return to the Consumer X-Files” and CALPIRG and the Privacy Rights Clearinghouse, “Nowhere to Turn: Stories from Identity Theft Victims,” 2000.

¹¹ Federal Trade Commission, “In FTC Study, Five Percent of Consumers Had Errors on Their Credit Reports That Could Result in Less Favorable Terms for Loans,” 11 Feb 2013, see <https://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports>



The public CFPB Consumer Complaint Database is a critical tool for consumers, academics and other researchers and even competitors to make consumer financial markets work better.¹² Efforts by special interest groups to kill it must be rejected.¹³

4. The Failures of the FTC To Bring the CRAs to Heel Over 40 Years

The Federal Trade Commission fought the credit bureaus with one hand tied behind its back from 1970-2010. The FTC had no or little rulemaking authority under the FCRA nor did it have supervisory or examination authority—the right to look inside the black box of CRA operations at any time to determine compliance and stop problems before the problems became worse.

Since 1970, we are only aware of one public civil penalty imposed by the FTC against the three CRAs for violating the FCRA. In 2000, in an action called Operational Busy Signal, the 3 were fined a total of \$2.5 million for not having enough human staff to answer the complaint hotlines.¹⁴ In 2007, under the FTC Act, not the FCRA, Experian subsidiaries were fined \$300,000 for violating a consent decree issued in 2005 for deceptive marketing of its credit report monitoring subscription products.

¹² Since 2013, U.S. PIRG has released more than a dozen reports analyzing complaints in the database, on subjects including credit reports, and on categories of consumers, including the targeting of servicemembers by financial predators. See <https://uspig.org/page/usp/reports-cfpb-gets-results-consumers>

¹³ Our June 2018 report, “Shining A Light on Consumer Problems: The Case for Public Access to the CFPB Complaint Database,” summarizes why the database must remain open. See <https://uspig.org/reports/usp/shining-light-consumer-problems>

¹⁴ In 2000, Experian and TransUnion were fined \$1 Million and Equifax \$500,000 for a total of \$2,500,000 in the FTC’s “Operation Busy Signal,” for failing to comply with a 1996 amendment to have adequate humans on hand to answer complaint calls.

Creation of the new Consumer Financial Protection Bureau, established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, largely remedied these deficiencies. The CFPB was given full rulemaking over 19 different consumer laws, including the FCRA.¹⁵ The CFPB also has other authorities that the FTC lacks, including the right to impose penalties at any time¹⁶ and supervisory or examination authority¹⁷—the right to look inside the black box of covered firms at any time to determine compliance and stop problems before the problems became worse.

The CFPB has exercised robust research,¹⁸ examination and supervisory authority over the consumer reporting markets.¹⁹ Yet, in one curious exception, with relevance to the Equifax breach, authority over CRA data security was retained by the FTC in Section 1031 of the Dodd-Frank Act. Title V of the Gramm-Leach-Bliley Act of 1999 had given the FTC authority to write rules establishing data security responsibilities for non-bank financial firms, including CRAs. Its data security rule is known as the “Safeguards Rule.”²⁰ While the CFPB is reportedly pursuing an Equifax investigation and likely can defend its data security actions under its other authorities, it makes sense to transfer GLBA Title V authority to the CFPB, as recommended by the National Consumer Law Center in recent testimony before the committee.²¹

¹⁵ The FTC retains joint authority over the FCRA, in addition, it retained a number of its own staff expert in the FCRA; annually the two agencies sign a Memorandum of Understanding concerning their shared FCRA duties.

¹⁶ Although FTC can impose penalties for any violation of the FCRA or the Fair Debt Collection Practices Act, it can only impose civil penalties under either its core authority under the FTC Act or its GLBA requirements after a firm is found to be in violation of an FTC-imposed consent decree.

¹⁷ Congress gave the CFPB supervisory authority over banks > \$10 Billion Dollars in asset size and over payday lenders, non-bank mortgage companies and private student lenders of any size. It also gave the Bureau, under Section 1024 of the Dodd-Frank Act, authority to write rules granting itself authority to supervise larger participants in other important financial markets. It has used the authority several times; notably, its first larger participant rule, in 2012, was over the consumer reporting markets. <https://www.federalregister.gov/documents/2012/07/20/2012-17603/defining-larger-participants-of-the-consumer-reporting-market>

¹⁸ See “Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation’s largest credit bureaus manage consumer data,” December 2012, <https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/>

¹⁹ See “Supervisory Highlights: Consumer Reporting Special Edition,” 2 March 2017 <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-consumer-reporting-special-edition/>

²⁰ See <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/safeguards-rule>

²¹ See page 8, Testimony of Chi Chi Wu, National Consumer Law Center, House Financial Services Committee “Continuation of Hearing Examining the Equifax Breach,” 25 October 2017, <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400866>

5. Equifax Showed Gross Indifference to its Responsibilities to Protect Consumer Information; Its Data Breach Response Made Things Worse

Several Congressional committees have held hearings and/or issued staff reports detailing the Equifax breach. U.S. PIRG's own September 2018 report, "Equifax Breach One Year Later," summarized the following major problems:²²

Had Equifax not been so careless, the breach may never have happened. Four months before the hacking, Equifax could have fixed a known security vulnerability in the widely-available and used Apache Struts open-source platform. Innumerable warnings from government security agencies and private experts were not acted on.

As explained in our report, the company also botched its response by:

- Delaying public notification for at least six weeks
- Setting up an online search tool that provided faulty results to those who used it about whether they were affected by the breach
- Initially understaffing its call center
- Initially including arbitration language that forced consumers to sign away their rights to a day in court
- Directing consumers to a fake website
- Failing to provide consumers full protection from new account identity theft -- which it still hasn't done. (See Appendix A for a summary of Equifax's offerings to consumers in response to the breach and how they fall short of protecting consumers.)

Despite all the outrage and media attention last year, Congress has done little except make security freezes free, and even then, done so in a manner favorable to Equifax and the other CRAs, by preempting the right of states to enact stronger freeze protections going forward. Of course, the idea of the freeze didn't come from Congress, it came from 50 state freeze laws passed between 2003 and 2018. The idea of the free freeze also was jump-started by several free freeze amendments to existing state laws passed after the 2017 Equifax breach but before Congress passed S2155 in May 2018. That law created several minor consumer protections—but both the preemptive free freeze right and a military credit monitoring “right without a remedy” if monitoring was not provided were imperfect efforts. The comprehensive Waters CCRRA reform will cure both these problems. Congress should never preempt the states, especially at the behest of powerful special interests.

Also, critically important, Equifax has neither been held accountable nor paid a price for its breach. Further, this sensitive information, including Social Security numbers and birth dates, is still out there, with the potential to wreak havoc for the majority of consumers in perpetuity.

6. It Is Critical to Pass the Two Bills Before the Committee Today

Finally, we offer our strong support to the two discussion drafts from Chairwoman Waters and her co-sponsors before the committee today. The first, the Comprehensive Consumer Credit

²² Mike Litt, U.S. PIRG, "Equifax Breach: One Year Later: How to Protect Yourself Against ID Theft & Hold Equifax Accountable," 6 Sept 2018, available at <https://uspirg.org/reports/usp/equifax-breach-one-year-later>

Reporting Reform Act (CCRRA) of 2019, is a new version of the Chairwoman's longstanding effort to correct flaws in the consumer reporting system. It is a broad and thoughtful response to the problems posed to all consumers by the failure of the consumer reporting system, dominated by its Big 3 members as self-appointed gatekeepers to financial and employment opportunity. These firms have demonstrated for years that they lack the key incentives to do their jobs. Their failures perpetuate injustices that raise costs for nearly everyone and deny opportunity to many.

The second bill, the "Protecting Innocent Consumers Affected by a Shutdown Act," will force the CRAs to lend a hand to the restoration of the financial lives of the government employees and contractors harmed by the recent extended shutdown.

Since 1989, I have observed the bad attitude of the CRAs. They've always claimed that mistakes, let alone credit problems, aren't their fault; no, they claim "we simply report what we are told and if it is wrong, or negative, so what." They won't change unless you make them. The shutdown bill will make them take action to help people harmed through no fault of their own. The CCRRA addresses endemic problems in the consumer reporting system.

Title I of CCRRA: New Right of Appeal Critical to "Fixing the Dispute Process"

I will never forget the plea to the FTC by one of the consumers highlighted in U.S. PIRG's first report on credit bureau errors and failure to fix them. In 1990, the consumer asked: "It says "Item Remains, Confirmed By Source." What is this source!?" A review of several narratives in the CFPB public consumer complaint database finds similar unanswered complaints from consumers continue today:

"Experian states that the information remains..." [or] "Equifax completed the investigation yet this item still remains on my Equifax Credit Report..." [or] "According to TransUnion 's updated credit file on XX/XX/2017 (# XXXX), XXXX # XXXX should be removed XX/XX/2017. As of XX/XX/2017, this item remains..." [or] "their responsibility must consist of something more than merely parroting information received from other sources..." [or] "I have asked Experian to provide the name of the data furnisher or third party source who verified this information so that I can contact them directly. Experian refuses to provide this information..." [or] "I have disputed this account several times online and in writing with no resolution. This account still remains on my credit report..."

So, the dispute system, despite efforts in 1996 and 2003 to fix it, is still broken. Title I of the CCRRA makes significant improvements. Most notably, for the first time, it establishes a right to appeal disputes. Title I also includes new matching procedures and other requirements to prevent disputed information from being routinely reinserted into consumer reports. Until now, greater weight has been placed on the opinion of "the source" furnisher than the consumer and less weight has been placed on whether an actual reinvestigation ever occurred, or whether the furnisher and CRA computers simply agreed that they both contained the same data, even if it was wrong.

Title II of CCRRA Limits the Use of Consumer Reports for Most Employment Decisions

Several states, including California, Colorado, Maryland and Oregon, and cities such as Chicago and New York have restricted the use of consumer reports for employment decisions. Further, the industry has admitted in testimony that it cannot show a relationship between a consumer's credit report and job performance.

Further, should any consumer be denied employment opportunity in a difficult economy due to a disputed item, or even an actual late payment, on a credit card?²³ The problem is harshest on persons of color and lower income consumers with "thinner" credit reports. Historically, their credit opportunities have not been extended from the national firms that dominate the credit system. Should their job opportunities be similarly diminished by their credit reports?

Title III of CCRRA Improves Rights of Victims of Private Student Loan Borrowers

The title provides new protections for victims, including servicemembers and others, of unfair private student loan practices.

Title IV of CCRRA Makes a Variety of Changes to Rebalance the Reporting of Adverse Items

Credit scoring models prioritize the value of recent trade line information over much older information. Begrudgingly, under order by enforcement actions, the CRAs have also reduced the impact of non-predictive data, such as medical debt, and removed public records known to be full of misinformation. Yet, in general the CRAs have long resisted any changes to the types of information that they can collect or report or how long they can report it, even if it is now known to be non-predictive.

Title IV makes important changes to make reports more accurate and predictive. It shortens the reporting of certain bankruptcies from 10 to 7 years, eliminates reporting of certain public records and reduces the reporting of credit trade lines from 7 to 4 years, among other changes. It greatly reduces the impact of medical debt items, which are often mistaken due to bills that should be the responsibility of slow-pay insurance companies but are sent to collection under the consumer's name. Further, medical debt is the result of getting sick, or laid off, or losing insurance coverage, not due to a propensity toward "spending sprees." Both leading credit scoring models, FICO and VantageScore, a joint venture of the Big 3 CRAs, have already reduced or eliminated reliance on medical debt items.

Title IV also provides protection to victims of for-profit schools and other abusive practices.

Title V of CCRRA Establishes Oversight of Credit Scoring Models and the Use of Non-Traditional Data

Title V gives the Consumer Bureau clear authority to monitor and oversee the validity of credit scoring models to ensure that the often-opaque algorithms are accurate and predictive and do not

²³ See testimony of Chi Chi Wu, National Consumer Law Center, at a "Legislative Hearing on HR3149, the Equal Credit For All Act," Subcommittee on Financial Services and Consumer Credit, 23 Sept 2010, <http://archives-financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1355>

introduce scoring factors that could violate the civil rights or fair lending laws. Further, Title V requires a Consumer Bureau study of the use of non-traditional data in consumer reporting. Alternative data is a shiny new toy you'll hear a lot about, but could have negative or unintended consequences, especially for some of the populations its proponents claim that it will assist.

Title VI of CCRRA Provides for Free Annual Credit Scores and Improves Requirements on Consumer Report User Firms to Promote Consumer Understanding of the Use of Reports and Scores

In the early 1990s the FTC proposed an interpretation that credit scores were, by definition, part of consumer credit reports that should be included in credit report disclosures²⁴ to consumers. Under an industry full-court press, it immediately reneged on this consumer-backed idea.

In 2000, following a joint campaign by realtors and consumer groups, California prohibited clauses in CRA contracts with users such as real estate agents that prevented them from showing credit scores to consumers. Since then, the veil over credit scores has gradually lifted. The CRAs have long-sought to monetize their disclosure, unfortunately also through deceptive marketing of "educational" scores, not the scores actually used by creditors.²⁵ It is past time to provide scores for free as part of the annual free report disclosure first required nationwide by the 2003 FACT Act. Section 604 of the CCRRA provides free credit scores in this and other circumstances.

Title VI also requires various users to provide consumers with additional information to improve their understanding of the consumer reporting system.

Title VII of CCRRA Bans Misleading and Unfair Consumer Reporting Practices

Even though we are not their customers, only their product, nothing has stopped the CRAs from developing a lucrative, multi-billion-dollar marketing channel of subscription-based consumer credit monitoring and identity theft protection products designed to play to our fears of low credit scores or imposters stealing our name.

Our credit scores are low because the CRAs haven't been forced to do a better job protecting our files from misuse or to keep them accurate or to respond to us properly when we dispute the mistakes. Instead of carrying out these statutory duties, the CRAs have persisted in aggressively hawking a variety of over-priced self-help products, often in an unfair or deceptive way.²⁶ Title

²⁴ The FTC did not have any rulemaking authority under the FCRA until limited authorities were granted in the 2003 FACT Act. In previous years, its views were described in often-amended "FCRA Interpretations" and through staff opinion letters.

²⁵ The CFPB used director Richard Cordray's bully pulpit very effectively to nudge more banks and credit unions to greatly expand the availability of free credit scores. Its most recent list is available: Skyricki, Irene, "A new list identifies more ways to access credit scores—for free," CFPB, 16 May 2018, at <https://www.consumerfinance.gov/about-us/blog/new-list-identifies-more-ways-access-credit-scores-free/>

²⁶ For deceptive marketing of subscription products by CRAs, see news release, CFPB, "CFPB Orders TransUnion and Equifax to Pay for Deceiving Consumers in Marketing Credit Scores and Credit Products," 3 Jan 2017, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/> and News Release, CFPB, "CFPB Fines Experian \$3 Million for Deceiving Consumers in Marketing Credit Scores," 23

VII would provide a variety of new protections against unfair and deceptive marketing of these products. Low-value versions of these products are often provided free after a data breach but consumers face a barrage of online and televised ads extolling the supposed virtues of upgrading to a \$19.99/month, or even higher-priced, products. Section 703 gives the Consumer Bureau authority to restrict the prices of the subscription products.

Title VII provides additional protections to consumers with limited English proficiency and mandates by law that shopping around, for example, for a good deal on a new car, is not treated in credit scores as multiple applications for credit with multiple “dings” to a credit score. Further Section 707 establishes, for the first time, national registration of national and specialty CRAs to make it easier for the Consumer Bureau, FTC and consumers to hold them accountable.

Highlights of Title VIII of CCRA, Which Provides Additional Consumer Protections

The CRAs have long-imposed barriers on consumers fighting identity theft. Section 801 makes clear that there are a variety of ways a consumer can file a lawful identity theft affidavit, even if their local police do not take identity theft complaints. Most don't.

Section 802 makes improvements to the rights of protected or incapacitated consumers.

Section 803 improves statutory fraud alert rights for both consumers and active duty military personnel.

Section 804 corrects a CRA-driven provision in 2018 amendments that established a free national credit freeze right, but preempted states from providing additional, stronger protections. Section 808 corrects a separate 2018 amendment that provided servicemembers with free credit monitoring, but did not give them a remedy if the services were not provided.²⁷

Title IX makes certain other amendments to ensure that the CRAs and other firms act in the public interest and under the law and requires the Consumer Bureau to complete rulemaking under the CCRRA within two years of passage.

6. Conclusion

This testimony and the attached timeline make an effort to describe how consumer reporting agencies have no incentives to sell accurate credit reports, so they do not. We also concur with the detailed testimony of my consumer and civil rights colleagues on the panel today, as well as the statements for the record submitted by a number of other consumer and civil rights advocates.

To protect consumers and ensure that markets work fairly, a combination of strong federal laws enforced by strong federal agencies must be accompanied by the right of states to respond more quickly to new threats in the marketplace. Further, full enforcement rights by state Attorneys

March 2017, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-experian-3-million-deceiving-consumers-marketing-credit-scores/>

²⁷ The provisions were included in S2155, a deregulatory proposal which became law as the Economic Growth, Regulatory Relief, and Consumer Protection Act (Public Law 115–174).

General and local officials and strong private rights of action so that consumer protection attorneys can act as private attorneys general are also needed. The message is clear. Congress cannot solve every problem. Federal agencies cannot go it alone.

Going forward, we also look forward to working with the committee on newer and emerging problems of consumer protection, privacy and digital rights in the financial marketplace. For example, a large class of nearly unregulated data brokers sells products that are virtually identical to consumer credit reports, but not sold for “credit, insurance or employment purposes,” so remain outside the protections of the FCRA. So-called lead generators sell lists of consumers, including to predatory lenders, derived from tracking their Internet activities. Pre-approved marketing decisions are being made, in real time, based on unregulated “e-scores” and look-alike consumers. Since the reports are not about a particular consumer, the firms contend their products are not regulated consumer reports.

As we point out on our “Digital Data and Consumer Protection Page:²⁸”

“American consumers face new challenges and opportunities to their financial security as our economy is transformed by the convergence of digital media with “Big Data” technologies. Our use of mobile phones, social media, “apps,” and other online tools have created new ways for us to spend, save and borrow money. Powerful forces are at work, however, that can undermine a consumer’s ability to make the best choices and may place those already financially at risk even more vulnerable. The digital data-driven economy continually gathers vast amounts of information on individuals, online and offline, which is used to create a “profile” about our spending habits, behavior and our geo-location. These profiles can be “scored”—an invisible measure known only to the marketer and data brokers—that can determine whether we are offered high interest credit cards, payday and for-profit college loans and even what we may pay at retail and grocery stores. The uses of the information can be positive or, absent any regulation or meaningful protections, lead to discrimination, price manipulation or denied opportunity.”

Thank you again for the opportunity to provide our views to the committee today. I look forward to your questions.

Appendix: Timeline of Significant Credit Reporting Events and Policymaker Responses

²⁸ See <https://uspirgedfund.org/issues/usf/digital-data-and-consumer-protection-ensuring-fair-and-equitable-financial-marketplace>

QUICK TIMELINE OF SELECTED CREDIT BUREAU (or CRA) EVENTS 1960s-TODAY

Date	Problem/Policy	What Was the Problem; What was Response?
Late '60s	CRA Problem	Complaints grow about Retail Credit Corporation (now Equifax) insurance consumer report scandal
1970	Federal Response	Congress holds hearings on scandal; enacts Fair Credit Reporting Act to regulate companies selling consumer reports (called credit bureaus or CRAs)
1980s	CRA Problem	First wave of consolidation of local/regional credit bureaus results in increase in errors in consumer credit reports
80s-early '90s	Both State/Federal Response	Responding to errors, investigations by state attorneys general and FTC result in CRAs brought under consent decrees, no fines
		-- TRW (now Experian) signs multi-state and FTC consent order in 1991
		-- Equifax signs consent orders with states (1992) and FTC (1996)
		-- Trans Union signs consent orders with states in 1992 and FTC in 1994
1989	Federal Response	House Banking Committee (now FSC) holds first hearings in years on credit bureau errors
1991	CRA Problem	TRW (now Experian) incorrectly reports all citizens (3,000) of Norwich, VT area had failed to pay their taxes.
1992 - today	CRA Problem	By early 1990s, consolidations result in powerful gatekeeper "Big 3" national CRAs which now continue to acquire specialty competitors
1992	CRA Problem	Sponsors remove FCRA reform, HR3596, from floor action due to sweeping preemption provision demanded by banks/credit bureaus
Early 1990s	CRA Problem & Bad Policy Response	Use of non-transparent credit scores grows, FTC proposes FCRA interpretation that scores are part of credit reports; under industry pressure, reverses itself.
1992-1996	State Response	States led by Vermont and California enact comprehensive credit report reforms; 7 states provide annual free credit reports (VT, then CO, GA, MA, ME, MD, and NJ)
1994-today	CRA Problem	Rise of instant credit, easy availability of SSNs, other financial DNA, fuel rise of identity theft
1995-present	CRA Problem	Instead of improving compliance, CRAs respond to threat of errors/identity thieves by intensifying scare marketing of credit monitoring add-on products to consumers --now fueling a \$3 Billion/year marketing channel per GAO
1996	Federal Response	Congress finally passes Consumer Credit Reform Act (largely 1992's HR3596), imposes first duties on furnishers [creditors and debt collectors that provide information to credit bureaus] among other reforms. Limited preemption, primarily for new furnisher (bank) duties, to sunset after 8 years.
1998	Federal Response	Congress criminalizes identity theft, bureaus can now claim ID theft not our fault, "it's bad guys."

QUICK TIMELINE OF SELECTED CREDIT BUREAU (or CRA) EVENTS 1960s-TODAY

Date	Problem/Policy	What Was the Problem; What was Response?
2000	Federal Response	Big 3 CRAs fined total of \$2.5M (Experian \$1M; Equifax \$500k; TransUnion \$1M) in Operation Busy Signal for failing to comply w/ 1996 amendment to have adequate humans to answer complaint calls
1998-2000	State Response	California realtors join consumer groups to win right for consumers to see their credit scores, previously prohibited by CRA contracts with user companies
2002	State Response	California enacts first data breach notice law
2003	State Response	California develops/enacts credit freeze protection right to deter identity thieves
2003	Federal Response	Congress passes FACT Act; limited bank preemption made permanent; annual free credit reports (but not free scores) included. Few identity theft fixes.
2003-2018	State Response	Following PIRG/Consumers Union model law, 50 states enact credit freeze and data breach notice laws to supplement omissions in FACTA.
2003	Consumer Action	Consumer protection attorney wins first case against a creditor-furnisher for failing to comply with FCRA in dispute investigation
2005	CRA Problem	Equifax spinoff ChoicePoint fined record \$25M by FTC for selling credit reports to identity thieves
2005-2007	CRA Problem	Experian subsidiaries deceptively market subscription-based credit monitoring products by intentionally confusing them w/ free credit report by law
2005-2007	Federal Response	FTC places Experian under consent order in 2005 for deceptive marketing of subscription products, orders \$300k penalty in 2007 for violating 2005 order under FTC Act
1970-2010	CRA Problem	FTC's lack of tools to enforce FCRA leaves consumers at risk of credit and job denial and identity theft as credit bureaus run amuck
2010	Federal Response	Dodd-Frank Act gives CFPB primary authority over FCRA and new tools to regulate/supervise/investigate/enforce violations of the FCRA
2012	Federal Response	In CFPB's first establishment of a "larger participant rule," agency begins examinations (supervision) of large Consumer Reporting Agencies
2012	Federal Response	Major FTC study finds 26% of consumers have errors on at least 1 report; 5% of consumers have a serious error that could cause denial of credit or higher costs for credit
2013	Federal Response	CFPB supervision results in CRAs sharing full consumer complaint files instead of 2-digit summary codes, w/ furnisher creditors in disputes, which advocates contend 1996 amendments had required for over 15 years.
1995-present	CRA Problem	Instead of improving compliance, CRAs respond to sloppy mistake-ridden reports/growth of identity theft by intensifying scare marketing of credit monitoring add-on products to consumers -- now fueling a \$3 Billion marketing channel, per GAO, even though consumers are their products, not their customers

QUICK TIMELINE OF SELECTED CREDIT BUREAU (or CRA) EVENTS 1960s-TODAY

Date	Problem/Policy	What Was the Problem; What was Response?
2017	Federal Response	CFPB fines Equifax \$2.5 million; Transunion \$3 million and Experian \$3 million over deceptive marketing of credit monitoring products by offering "FAKO," not FICO-like, credit scoring products. Also orders Transunion to pay \$13.8 million and Equifax to pay \$3.8 million in consumer refunds for using bait & switch trial subscriptions
2017	Consumer Action	Consumer protection attorneys win \$60 Million jury verdict against TransUnion for falsely labeling 8,000 consumers as terrorists or drug traffickers.
2012-2017	Federal Response	CFPB releases "Key Dimensions report" and several "Supervisory Highlights" reports that document deficiencies in the Big Three CRAs' dispute systems, confirming findings in NCLC's 2009 Automated Injustice report
2014-2017	Both State/Federal Response	CFPB supervisory actions and a 31-state Attorney General settlement eliminate tax liens and civil judgements (often posted with inaccurate identifying information) from reports, raising credit scores for 12 million; and reduce the negative impact of medical debt on scores.
2015	CRA Problem	Data breach at Experian involving database used for T-Mobile customers affects 15 million consumers
2017	CRA Problem	Equifax breach: sloppy data security makes SSNs, other sensitive information for 148 million consumers available to outsiders
2019	Federal Response To Breaches	Still Waiting...
2019	Federal Response	Chairwoman Maxine Waters of House FSC Holds Important Hearing To Review Equifax Breach Response and Discuss Necessary Improvements To FCRA

Thanks to Chi Chi Wu of National Consumer Law Center for providing ideas.

U.S. PIRG is responsible for any inaccuracies.