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Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues

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SUMMARY

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Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues

The consumer data industry—generally referred to as credit reporting agencies or credit bureaus—collects and subsequently provides information to firms about the behavior of consumers when they participate in various financial transactions. Firms use consumer information to screen for consumer risks. For example, lenders rely upon credit reports and scores to determine the likelihood that prospective borrowers will repay their loans. Insured depository institutions (i.e., banks and credit unions) rely on consumer data service providers to determine whether to make available checking accounts or loans to individuals. Some insurance companies use consumer data to determine what insurance products to make available and to set policy premiums. Some payday lenders use data regarding the management of checking accounts and payment of telecommunications and utility bills to determine the likelihood of failure to repay small-dollar cash advances. Merchants rely on the consumer data industry to determine whether to approve payment by check or electronic payment card. Employers may use consumer data information to screen prospective employees to determine the likelihood of fraudulent behavior. In short, numerous firms rely upon consumer data to identify and evaluate potential risks a consumer may pose before entering into a financial relationship with that consumer.

Greater reliance by firms on consumer data significantly affects—and potentially limits—consumer access to financial products or opportunities. Specifically, negative or derogatory information, such as late payments, loan defaults, and multiple overdrafts, may stay on consumer reports for several years and lead firms to deny a consumer access to credit, a financial product, or a job opportunity. Having a nonexistent, insufficient, or stale credit history may also prevent credit access.

Accordingly, various policy issues have been raised about the consumer data industry, most notably including the following:

- How to address inaccurate or disputed consumer data provided in consumer data reports;
- How long negative or derogatory information should remain in consumer data reports;
- How to address differences in billing and collection practices that can adversely affect consumer data reports, an issue of particular concern with medical billing practices;
- How to ensure that consumers are aware of their rights and how to exercise them in the event of a consumer data dispute;
- Whether uses of consumer data reports outside of the financial services, such as for employment decisions, adversely affect consumers and should be limited;
- Whether the use of *alternative* consumer data or newer versions of credit scores may increase accuracy and credit access; and
- How to address data protection and security issues in consumer data reporting.

Congress has shown continuing interest in these and other policy questions surrounding the consumer data industry, particularly in its regulation and whether such regulation currently provides sufficient protection to consumers. In the 116th Congress, the House Financial Services Committee marked up six bills to address many of these concerns: H.R. 3614, H.R. 3618, H.R. 3621, H.R. 3622, H.R. 3629, and H.R. 3642. Topics covered under these bills were part of draft legislation—the Comprehensive Credit Reporting Reform Act of 2019 (CCRRA)—released by Chairwoman Maxine Waters in February 2019.

Contents

Introduction 1
The Consumer Data Industry and Specialty Services 2
Consumer Reporting Services 2
Credit Scoring Services 5
Existing Consumer Protections and Regulation of CRAs 8
Policy Issues 9
Inaccurate or Disputed Information 9
Length of Time to Retain Negative Information 10
Inconsistent Billing and Reporting Practices: Medical Tradelines 12
Consumer Rights in the Credit Reporting System 14
Appropriate Purposes for Using Credit Bureau Data: Employment Decisions 15
Consumers with Limited Credit Histories and Use of *Alternative* Scoring Methods 15
Data Protection and Security Issues 18

Contacts

Author Information 19

Introduction

The consumer data industry collects and subsequently provides information to firms about behavior when consumers conduct various financial transactions. Firms use this data to determine whether consumers have engaged in behaviors that could be costly or beneficial to the firms. For example, lenders rely upon credit reports and scoring systems to determine the likelihood that prospective borrowers will repay their loans. The data may also be used to predict consumer behaviors that would financially benefit firms.

Although the general public is likely to be more familiar with the use of credit reporting and scoring to qualify for mortgage and other consumer loans, the scope of consumer data use is much broader. Insured depository institutions (i.e., banks and credit unions) rely on consumer data service providers to determine whether to make checking accounts or loans available to individuals. Insurance companies use consumer data to determine what insurance products to make available and to set policy premiums.[1] Some payday lenders use data regarding the management of checking accounts and payment of telecommunications bills to determine the likelihood that a consumer will fail to repay small-dollar cash advances. Merchants rely on the consumer data industry to determine whether to approve payment by check or electronic payment card. Employers may use consumer data information to screen prospective employees to determine, for example, the likelihood of fraudulent behavior. In short, numerous firms rely upon consumer data to identify and evaluate the risks associated with entering into financial relationships or transactions with consumers.

Reliance by firms on consumer data significantly affects consumer access to financial products or opportunities. For example, negative or derogatory information, such as multiple overdrafts, involuntary account closures, loan defaults, and fraud incidents, may influence a lender to deny a consumer access to credit. Further, such information may stay on a consumer's reports for several years. The inclusion of negative information may be particularly limiting to consumers under circumstances in which such information is inaccurate or needs to be updated to reflect more current and possibly more favorable financial situations. Furthermore, consumers may find the process of making corrections to consumer data reports to be time-consuming, complex, and perhaps ineffective. The exclusion of more favorable information, such as the timely repayment of noncredit obligations, from standard credit reporting or scoring models may also limit credit access.

This report first provides background information on the consumer data industry and various specialty areas. The report examines one prominent specialty area—consumer scoring—and describes various factors used to calculate credit scores. Next, the report provides a general description of the current regulatory framework of the consumer data industry. Finally, the report discusses selected policy issues pertaining to consumer data reports. Specifically, the report addresses policy issues concerning (1) inaccurate or disputed consumer data provided in consumer data reports; (2) how long negative or derogatory information should remain in consumer data reports; (3) differences in billing and collection practices that can adversely affect consumer data reports, an issue of particular concern with medical billing practices; (4) consumers' rights; (5) whether uses of credit bureau data outside of the financial services, such as for employment decisions, adversely affect consumers and should be limited; (6) whether the use of *alternative* consumer data or newer versions of credit scores may increase accuracy and credit

[1] See CRS Report RS21341, *Credit Scores: Credit-Based Insurance Scores*, by Baird Webel.

access; and (7) how to address data protection and security issues in consumer data reporting. For each policy issue, the report addresses corresponding legislative and regulatory developments.

In the 116th Congress, credit reporting and the consumer data industry is a topic of interest.[2] On February 26, 2019, the House Financial Services Committee held a hearing on the consumer data industry, entitled, "Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System." House Financial Services Committee Chairwoman Maxine Waters released two draft bills before the hearing: the Comprehensive Credit Reporting Reform Act of 2019 (CCRRA)[3] and the Protecting Innocent Consumers Affected by a Shutdown Act.[4]

In July 2019, the House Financial Services Committee marked up and ordered reported six bills,[5] substantially similar to parts of CCRRA: the Restricting Credit Checks for Employment Decisions Act (H.R. 3614—substantially similar to Title II of CCRRA); the Free Credit Scores for Consumers Act of 2019 (H.R. 3618—substantially similar to Title VI of CCRRA); the Student Borrower Credit Improvement Act (H.R. 3621—substantially similar to Title III of CCRRA); the Restoring Unfairly Impaired Credit and Protection Consumers Act (H.R. 3622—substantially similar to Titles IV and VIII of CCRRA); the Clarity in Credit Score Formation Act of 2019 (H.R. 3629—substantially similar to Title V of CCRRA); and the Improving Credit Reporting for All Consumers Act (H.R. 3642—substantially similar to Titles I and VII of CCRRA). Where relevant, this report discusses the approach these bills would take to addressing the policy issues examined.

The Consumer Data Industry and Specialty Services

This section provides background information on the consumer data industry, which generally includes credit reporting agencies (CRAs), also referred to as credit bureaus (both terms are used interchangeably in this report). This section also provides background on credit scoring, a specialty service the industry provides, including a summary of the key factors known to affect credit scores.

Consumer Reporting Services

According to the Fair Credit Reporting Act (FCRA), which generally regulates the business of credit reporting, CRAs are firms that prepare consumer reports based upon individuals' financial

[2] The Senate has also expressed interest in credit reporting and the consumer data industry. U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Crapo Outlines Banking Committee Agenda for 116th Congress*, prepared by Chairman Mike Crapo, 116th Cong., 1st sess., January 29, 2019, at https://www.banking.senate.gov/newsroom/majority/crapo-outlines-agenda-for-116th-congress.

[3] U.S. Congress, House Committee on Financial Services, *Comprehensive Consumer Credit Reporting Reform Act of 2019 [DRAFT February 21, 2019]*, prepared by Chairwoman Maxine Waters, 116th Cong., 1st sess., February 21, 2019, at https://financialservices.house.gov/uploadedfiles/comprehensive_consumer_credit_reporting_reform_act_02262019.pdf. All references to the CCRRA in this report are to the draft February 21, 2019, version released by Chairwoman Waters.

[4] U.S. Congress, House Committee on Financial Services, *Protecting Innocent Consumers Affected by a Shutdown Act [DRAFT* February 21, 2019*]*, prepared by Chairwoman Maxine Waters, 116th Cong., 1st sess., February 21, 2019, https://financialservices.house.gov/uploadedfiles/protecting_innocent_consumers_affected_by_a_shutdown_act_02262019.pdf.

[5] H.R. 3614, H.R. 3618, H.R. 3622, and H.R. 3642 were marked up and ordered to be reported on July 11, 2019, see https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404020; H.R. 3621 and H.R. 3629 were marked up and ordered to be reported on July 16, 2019, see https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404068.

transactions history data.[6] Such data may include historical information about credit repayment, tenant payment, employment, insurance claims, arrests, bankruptcies, and check writing and account management. Consumer files, however, do not contain information on consumer income or assets.[7] Consumer reports generally may not include information on items such as race or ethnicity, religious or political preference, or medical history.[8]

Equifax, Experian, and TransUnion are the three largest nationwide providers of credit reports.[9] Other CRAs provide a variety of specialized consumer reporting services.[10] Some specialty CRAs collect data regarding payment for phone, utilities (e.g., electric, gas, water), and telecommunication (e.g., cable) services.[11] Utility and telecommunication service providers use the reports to verify the identity of customers and determine downpayment requirements for new customers. Property management companies and rent payment services may report to CRAs that specialize in collecting rent payment data for tenant and employment screening.[12] Some CRAs specialize in consumer reporting for the underbanked, near prime, and subprime consumer segments, including consumers with minimal recorded data.[13] Some CRAs specialize in debt collection (recovering past due funds) and fraud verification data.[14]

[6] P.L. 91-508. Title VI, §601, 84 Stat. 1128 (1970), codified as amended at 15 U.S.C. §§1681-1681x. For the legal definition, see 12 C.F.R. §1090.104, "Consumer Reporting Market," at http://www.ecfr.gov/cgi-bin/text-idx?SID=c13cb74ad55c0e8d6abf8d2d1b26a2bc&mc=true&node=se12.9.1090_1104&rgn=div8. The Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Equal Credit Opportunity Act are all consumer credit protection amendments included in the Consumer Credit Protection Act (P.L. 90-321).

[7] See Bureau of Consumer Financial Protection (CFPB), *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[8] See Federal Reserve Board (FRB), "Federal Fair Lending Regulations and Statutes: Equal Credit Opportunity (Regulation B)," *Consumer Compliance Handbook*, at http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_reg_b.pdf; and Experian, "Basic Questions About Credit Reports and Credit Reporting," *Reports on Credit issue 1*, at https://www.experian.com/assets/consumer-education-content/brochures/Reports_Issue_1.pdf.

[9] For a list of consumer reporting agencies, see "List of Consumer Reporting Agencies," issued by CFPB, at http://files.consumerfinance.gov/f/201501_cfpb_list-consumer-reporting-agencies.pdf.

[10] Some specialty CRAs are subsidiaries of larger CRAs. Examples include the National Consumer Telecom & Utilities Exchange, at http://www.nctue.com/, which is owned by Equifax; and RentBureau, at http://www.experian.com/rentbureau/renter-credit.html, which is owned by Experian.

[11] For example, see National Consumer Telecom & Utilities Exchange, at http://www.nctue.com/.

[12] For example, see Experian RentBureau, at http://www.experian.com/rentbureau/renter-credit.html.

[13] For example, see Clarity Services, Inc., at https://www.clarityservices.com/about/, which focuses on higher-risk borrowers and collects data from financial service providers, such as auto financers, check cashers, prepaid card issuers, peer-to-peer micro lenders, and small dollar credit lenders.

[14] See Consumer Data Industry Association (CDIA), "About CDIA," at https://www.cdiaonline.org/about/index.cfm?unItemNumber=515.

Examples of Specialty CRA Services: Checking Accounts and Check Verification

When an individual applies for a checking account, a depository institution typically pays a fee to purchase a credit report from a specialty CRA. This is a component of the initial fixed costs the depository institution incurs to begin a financial relationship with a new customer. The institution can use the information about a prospective customer to determine whether to offer the consumer a checking account and, if so, what range of product features (e.g., check-writing privileges, overdraft protection) to offer the consumer.

Specifically, depository institutions use credit reports to screen for certain types of borrower risks.[15] Banks must verify the identities of their customers as required by the Bank Secrecy Act.[16] In addition, depository institutions look for any incidents of fraudulent activity associated with a prospective customer.[17] Depository institutions typically reject consumers when they discover problems verifying identity or incidents of fraud. Next, depository institutions look for information about past banking relationships, particularly to see if any financial institutions closed checking or other accounts due to their inability to collect overdraft or insufficient funds fees.[18] Although some institutions may choose to reject applicants if they discover adverse information in their credit reports, many institutions may offer these applicants specialized checking accounts with less overdraft coverage and fewer check-writing privileges. Institutions may also offer these applicants prepaid cards as a substitute for a checking account. The information the institutions obtain from CRAs may also allow them to infer the probability of cross-selling (or arguably preapproving access to) other financial products (e.g., mortgages, credit cards, savings accounts) to new customers.

Some specialty CRAs help facilitate consumer payments by check. For example, if a customer wants to use a check to pay for purchases, a merchant can electronically and quickly request check authorization from a specialty CRA that provides information at the point of sale (at the cash register).[19] The specialty CRA collects payment history and check-writing patterns, and the merchant pays a check authorization fee to obtain an instant recommendation of accept or decline.[20]

Firms that use consumer reports may also report information to CRAs, thus serving as *furnishers*. A *tradeline* is an account attached to a particular consumer that is reported to a CRA by a furnisher.[21] A tradeline serves as a record of the transaction (payment) activity associated with the account. Furnishing tradelines is voluntary, and furnishers are not required to submit tradelines to all CRAs. Furnishers also have different business models and policies, resulting in different reporting practices. Some furnishers may report all unpaid customer obligations that were deemed

[15] See ChexSystems, "ChexSystems—Credit System for Checking Accounts," Crediful, at https://www.crediful.com/chexsystems/.

[16] P.L. 91-508.

[17] Fraud may include, but is not limited to, identity theft and check kiting. Real Time Identity Check is a specialty CRA used for this purpose; see Access Payment Systems, "Real Time Check Verification," at http://www.accesspaymentsystems.com/real-time-check-verification/. Another specialty CRA used for this purpose is Early Warning, which offers a product known as *Deposit Chek*, at https://www.earlywarning.com/solutions/payment/deposit-chek.html#real-time-deposit-chek-service. In the payment system, fraud occurs when an unauthorized person accesses the value associated with a payment vehicle. See Mark Furletti and Stephen Smith, *The Laws, Regulations, and Industry Practices That Protect Consumers Who Use Electronic Payment Systems: ACH E-Checks & Prepaid Cards*, Federal Reserve Bank of Philadelphia, Payment Cards Center Discussion Paper, DP05-04, March 2005, at http://www.philadelphiafed.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2005/ConsumerProtection.pdf.

[18] For ChexSystems, which is owned by parent company Fidelity National Information Services (FNIS), this product is known as QualiFile. See Aldrich Bonnefin & Moore, "Impact of QualiFile Scores on FCRA Adverse Action Notices," at http://www.ablawyers.com/aldrich-11-23.PDF. For Early Warning, this product is known as *Deposit Chek* at https://www.earlywarning.com/solutions/payment/deposit-chek.html#real-time-deposit-chek-service.

[19] Certegy, which is owned by parent company FIS (see http://www.fisglobal.com/products-retailpayments), and Telecheck (see http://www.firstdata.com/telecheck/) are specialty CRAs often used to obtain check authorization at the point of sale (i.e., the moment customers pay for their purchases).

[20] The fee paid by the merchant is analogous to the merchant discount fee that merchants pay when accepting credit or debit card payments. See CRS Report R41913, *Regulation of Debit Interchange Fees*, by Darryl E. Getter.

[21] See Experian, "Glossary of Credit Terms," at http://www.experian.com/credit-education/glossary.html.

uncollectible and written off their balance sheets; some report when money balances owed surpass minimum threshold levels; some report only the principal balances owed minus the penalties and fees; and others may report all monies owed. Furnishers also have discretion over the types of obligations they wish to report.[22]

Benefits to users of consumer data increase as more individual companies choose to participate as furnishers, but furnishers do incur costs to report data. To become furnishers, firms must be approved and comply with the policies of a CRA, such as fee registration requirements.[23] The transfer of consumer data involves security risks, and many CRAs have adopted standardized reporting formats and requirements approved by the Consumer Data Industry Association (CDIA) for transferring data.[24] Furnishers must be able to comply with industry data transfer requirements or some CRAs are unlikely to accept their data. Compliance may require investing in technology compatible with the computer systems of a CRA. Compliance costs may be more burdensome for smaller firms, causing some to choose not to be furnishers. In addition, entities that elect to become furnishers face legal obligations under the FCRA.[25] The FCRA requires furnishers to report accurate and complete information as well as to investigate consumer disputes. Hence, reporting obligations could possibly, under some circumstances, result in legal costs, which may also influence a firm's decision to become a furnisher.

Business models and policies of CRAs are also different. Different CRAs may collect the same information on the same individuals but adopt different conventions for storing the information. One CRA may report a delinquent debt obligation separately from the penalties and fees whereas another CRA may choose to combine both items into one entry. Consequently, consumer reports obtained from different CRAs on the same consumer are likely to differ due to different policies adopted by furnishers, CRAs, or both.

Credit Scoring Services

A consumer score is a (numeric) metric that can be used to predict a variety of financial behaviors.[26] Consumer credit scores are prepared for lenders to determine, for example, the likelihood of loan default. Other consumer scores can be prepared to predict the likelihood of filing an insurance claim, overdrawing a bank account, failing to pay a utility bill, committing fraud, or a host of other adverse financial behaviors. Consumer scores are typically computed using the information obtained from one or more consumer reports. Rather than maintaining a repository of credit records, some firms are primarily engaged in the production of consumer

[22] A community bank, for example, may choose to report delinquencies on consumer loans rather than on commercial loans given that it may have greater information regarding the cash flow circumstances of its larger commercial borrowers. See Federal Trade Commission (FTC) and FRB, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006, at http://www.federalreserve.gov/boarddocs/rptcongress/fcradispute/fcradispute200608.htm#toc4.

[23] For examples of some furnisher requirements, see Experian, "Reporting to Credit Agencies," at http://www.experian.com/consumer-information/reporting-to-credit-agencies.html.

[24] The approved formats add security (privacy) protections to the data transfer process. See CDIA, "Metro 2 Format for Credit Reporting," at https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/.

[25] See FTC, "Consumer Reports: What Information Furnishers Need to Know," at https://www.ftc.gov/system/files/documents/plain-language/pdf-0118_consumer-reports-what-information-furnishers-need-to-know_2018.pdf.

[26] The predictability power of consumer scores, assuming no significant changes in consumer repayment patterns, may last for approximately one year to two years. For examples of various types of scores and corresponding estimated months of predictive power, see TransUnion, "Scores Overview," *TransUnion Scores*, at http://www.transunion.com/docs/financialServices/FS_ScoresOverview.pdf.

scores.[27] Hence, consumer scoring can be considered a specialty service in the consumer data industry. For example, if a user of a consumer report subsequently wants a consumer score, it may be charged an additional fee.

Given the variety of different financial behaviors to predict, there are many consumer scores that can be calculated. Consumer scores for the same individual and behavior calculated by different scoring firms are also likely to differ. Consumer scoring firms may have purchased consumer information from different CRAs, which have their own policies for storing and reporting information. Each scoring firm has its own proprietary statistical model(s), meaning that each firm decides what consumer information should be included and excluded from calculations. Each firm can choose its own weighting algorithms. For example, included information can be equally weighted, or heavier weights can be placed on more recent information or on information otherwise deemed more pertinent. Sometimes the consumer scoring firm selects the appropriate weighting scheme, and sometimes the requestor of a consumer score may provide instructions to the preparer. Hence, consumers may not see the actual scores used until *after* the decisionmaking firms release them, particularly in cases when customized scores were requested and used in the decisionmaking process.

[27] FICO (see http://www.fico.com/en/) and VantageScore (see http://www.vantagescore.com/) are examples of firms that specialize in the production of credit scores; their primary business is not to compile consumer reports.

Some Factors Frequently Used to Calculate Credit Scores[28]

Lenders, whether for mortgages or other forms of consumer loans (e.g., credit card loans, installment loans, and automobile loans), rely upon credit scores, which are calculated to represent the risk of delinquency or default of consumers seeking credit. To calculate a credit score, credit scoring models generally obtain the following factors from a credit report.

- **Payment history**. A lender is concerned about the borrower paying past credit accounts on time. The payment history includes information related to late or missed payments, how late, how much was owed, bankruptcies, foreclosures, lawsuits, and wage garnishments. Negative information on a credit report negatively affects a credit score.
- **Credit utilization**. This factor provides information regarding the amount of outstanding debt a consumer has accumulated relative to his or her credit limit. An individual with $3,000 in charges on a credit card with a $5,000 limit would have a credit utilization rate of 60%. A high credit utilization rate negatively affects a credit score.
- **Length of credit history**. The more experience an individual has using credit, the easier it is for a lender to determine how well or poorly additional credit will be managed. Calculating credit scores may be impossible for "invisible" consumers (i.e., consumers with either no credit history or an insufficient credit history).
- **New credit accounts or requests**. There are two types of inquiries. A *soft* inquiry occurs when consumers request to check their credit reports, typically for accuracies or to dispute information, but there is no corresponding request for credit. Users of credit reports do not receive information regarding soft inquiries. A *hard* inquiry occurs when consumers apply for credit, and action is required by users of credit reports, typically to make approval or rejection decisions. Hence, making numerous different credit requests, particularly over a short period of time, generally can negatively affect a score. If a consumer shops for credit, which would be indicated by applying for the same type of credit within a short period of time (e.g., two to six weeks), then that activity would count only as one hard inquiry in most credit scores.[29] Prescreening, which is used frequently in credit card solicitations, does not count as a "firm offer of credit or insurance" and, therefore, does not affect consumer credit scores.[30]
- **Credit mix.** Demonstrating the ability to manage multiple types of credit obligations (i.e., revolving, installment, mortgage credit, and finance company credit) influences a credit score. For example, the ability to maintain a stable debt-to-income ratio, preferably below 28%, despite having a mix of credit types, indicates the ability to manage credit. Having most of one's credit consist of credit from *indirect lenders,* such as department stores and rent-to-own stores, may not be viewed as favorably in some credit scoring models as credit from *direct lenders*, such as banks and credit unions.

The firm that prepares or user that purchases a credit score can decide how much weight to apply to each factor, and they may include additional predictive factors (e.g., information found on the credit application such as income and employment history) in the calculations. The Equal Credit Opportunity Act, however, prohibits characteristics such as race, sex, marital status, national origin, and religion from being used in credit scoring models.[31] Information for consumers on how to improve and maintain a good credit score is available from the Bureau of Consumer Financial Protection (see http://publications.usa.gov/pdfs/pdf6118.pdf).

[28] See Fair Isaac, "What's In My FICO Scores: How My FICO Scores Are Calculated," at http://www.myfico.com/crediteducation/whatsinyourscore.aspx; and FRB, "Credit Reports and Credit Score," at https://www.federalreserveconsumerhelp.gov/learnmore/credit-reports-and-scores?sc_lang=en.

[29] CFPB, *What effect will shopping for an auto loan have on my credit*? Ask CFPB, June 6, 2016, at https://www.consumerfinance.gov/ask-cfpb/what-effect-will-shopping-for-an-auto-loan-have-on-my-credit-en-763/.

[30] See FRB, "Permissible Purposes of Consumer Reports (FRCA, Section 604) and Investigative Consumer Reports (FRCA, Section 606)," Fair Credit Reporting, at http://www.federalreserve.gov/boarddocs/supmanual/cch/200611/fcra.pdf; CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, p. 9, at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf; and "New Rules for Prescreening," at https://www.bankersonline.com/articles/103643.

[31] P.L. 93-495, Title 5, 88 Stat. 1520; 15 U.S.C. §1691 et seq.

Existing Consumer Protections and Regulation of CRAs

This section provides a brief overview of existing consumer protections and regulation related to credit reporting.

As noted, the Fair Credit Reporting Act, enacted in 1970, is the main statute regulating the credit reporting industry. The FCRA requires "that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information."[32] The FCRA establishes consumers' rights in relation to their credit reports, as well as permissible uses of credit reports. It also imposes certain responsibilities on those who collect, furnish, and use the information contained in consumers' credit reports.[33]

The FCRA includes consumer protection provisions. Under the FCRA, consumers must be told when their information from a CRA has been used after an adverse action (generally a denial of credit) has occurred, and disclosure of that information must be made free of charge.[34] Consumers have a right to one free credit report every year (from each of the three largest nationwide credit reporting providers) even in the absence of an adverse action (e.g., credit denial). Consumers also have the right to dispute inaccurate or incomplete information in their report. After a consumer alerts a CRA of such a discrepancy, the CRA must investigate and correct errors, usually within 30 days. The FCRA also limits the length of time negative information may remain on reports. Negative collection tradelines typically stay on credit reports for 7 years, even if the consumer pays in full the item in collection; a tradeline associated with a personal bankruptcy stays on a credit report for 10 years.[35]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[36] established the Bureau of Consumer Financial Protection (CFPB), consolidating many federal consumer financial protection powers from other federal agencies. The CFPB has rulemaking and enforcement authorities over all CRAs for certain consumer protection laws; it has supervisory authority, or the authority to conduct examinations, over the larger CRAs. In July 2012, the CFPB announced that it would supervise CRAs with $7 million or more in annual receipts, which included 30 firms representing approximately 94% of the market.[37]

The CFPB conducts examinations of the CRAs, reviewing procedures and operating systems regarding the management of consumer data and enforcing applicable laws. In 2017, the CFPB released a report of its supervisory work in the credit reporting system.[38] The report discusses the

[32] 15 U.S.C. §1681.

[33] CRS Insight IN10792, *The Equifax Data Breach: An Overview and Issues for Congress*, by N. Eric Weiss.

[34] See FTC, *A Summary of your Rights Under the Fair Credit Reporting Act*, at https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf.

[35] CFPB, *How long does negative information remain on my credit report?* Ask CFPB, August 4, 2016, at https://www.consumerfinance.gov/ask-cfpb/how-long-does-negative-information-remain-on-my-credit-report-en-323/.

[36] P.L. 111-203, §1011.

[37] CFPB, "CFPB to Supervise Credit Reporting," July 16, 2012, at http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-superivse-credit-reporting/.

[38] CFPB, *Supervisory Highlights Consumer Reporting Special Edition*, Issue 14, 2017, at https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-

CFPB's efforts to work with credit bureaus and financial firms to improve credit reporting in three specific areas: data accuracy, dispute handling and resolution, and furnisher reporting. As the report describes, credit bureaus and financial firms have developed data governance and quality control programs to monitor data accuracy through working with the CFPB. In addition, the CFPB has encouraged credit bureaus to improve their dispute and resolution processes, including making it easier and more informative for consumers.[39]

Recently, Congress has also been interested in improving consumer protections in the credit reporting system, particularly in response to the 2017 Equifax data breach, which exposed personal information of millions of consumers.[40] The 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) established new consumer protections relating to credit reporting, including the right to a free credit freeze. Credit freezes allow consumers to stop new credit from being opened in their name, to protect themselves from fraud and identity theft.

Policy Issues

This section examines selected policy issues pertaining to the use of credit reports and scores in consumer lending decisions. For each policy issue, the report highlights recent legislative and regulatory developments and discusses selected legislative proposals from the 116th Congress that would address the issue.

Inaccurate or Disputed Information

The accuracy of consumer information in consumer data reports has been an ongoing policy concern. Inaccurate information in a credit report may limit a consumer's access to credit in some cases or increase the costs to the consumer of obtaining credit in others. In 2012, the Federal Trade Commission (FTC) reported that 26% of participants in a survey of credit report accuracy were able to identify at least one potentially material error on at least one of approximately three different credit reports prepared using their consumer information.[41] After the reports were corrected, 13% of participants in the FTC study saw one or more of their credit scores increase. For those who saw an increase, over 40% of their scores rose by more than 20 points, which could increase the likelihood that the consumer would be offered less expensive credit terms.

Credit reporting inaccuracies may occur for various reasons. Consumers may inadvertently provide inaccurate data when applying for financial services. Furnishers may inadvertently input inaccurate information into their databases. Matching information to the proper individual poses challenges, such as in cases when multiple individuals have similar names and spellings. In some

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[39] The credit bureaus' efforts to make disputes easier and more informative for consumers include (1) online portals to submit disputes and upload attachments of supporting documentation; (2) improvements to their call center scripts and training regarding solicitation of relevant information from consumers with disputes; (3) no longer requiring that consumers obtain or purchase a recent consumer report before investigations; and (4) notice to consumer of dispute results, including investigation results. CFPB, *Supervisory Highlights Consumer Reporting Special Edition*, Issue 14, 2017, pp.9-11, at https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

[40] Equifax, "Equifax Announces Cybersecurity Incident Involving Consumer Information," press release, September 7, 2017, https://investor.equifax.com/news-and-events/news/2017/09-07-2017-213000628.

[41] See FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2012, at https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

cases, the information may be properly matched, but the individual could be a victim of fraud or identity theft.

The predictive power of consumer data, or the ability to accurately predict a consumer's likelihood to default on a loan, would be enhanced to the extent that consumer tradelines are regularly updated with correct and current information. As mentioned in the previous section, the CFPB has recently encouraged credit bureaus and financial firms to improve data accuracy in credit reporting. For example, since 2014, the CFPB has required the largest consumer reporting firms to provide standardized accuracy reports on a regular basis.[42] The accuracy reports must specify the frequency that consumers dispute information, list furnishers and industries with the most disputes, and provide dispute resolution information. According to the CFPB, the top 100 furnishers provide 76% of tradeline information to the largest nationwide CRAs, and the furnishers regularly update the account status of reported tradelines.[43] In addition, the larger CRAs have also made improvements to the communication tool they use to facilitate the dispute resolution process between consumers and furnishers.[44] Further, effective July 1, 2017, the CRAs enhanced public record data standards for the collection and timely updating of civil judgements and tax liens.[45] Public record data must contain minimum identifying information (i.e., name, address, and Social Security number or date of birth) and must be updated at least every 90 days; otherwise, the tax lien and civil judgment information will no longer be reported. The accuracy of credit reports, nonetheless, ultimately depends upon consumers to monitor and dispute any discrepancies.

Two marked-up bills would address some concerns relating to inaccurate or disputed data by establishing new consumer rights around the dispute process. H.R. 3642 would guarantee consumers more information about dispute investigations and would grant consumers the right to appeal disputes to credit bureaus, thus formalizing the process.[46] It also would explicitly establish consumers' right to seek injunctive relief, a legal remedy where a court requires future behavior change (e.g., removing adverse information from a credit record).[47] H.R. 3622 would provide credit restoration to consumers who are the victims of some predatory activities, such as deceptive lender acts or fraud.[48]

Length of Time to Retain Negative Information

Policymakers have also considered the appropriate length of time negative information should be allowed to remain on a credit report. Negative information generally refers to delinquencies or

[42] See CFPB, "Prepared Remarks of CFPB Director Richard Cordray at the Medical Debt Collection Hearing," December 11, 2014, at http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-medical-debt-collection-hearing/. A sample accuracy report may be found at http://files.consumerfinance.gov/f/201412_cfpb_sample-accuracy-report.pdf.

[43] See CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, p. 14, at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[44] The CRAs use a web-based tool, the Online Solution for Complete and Accurate Reporting (e-OSCAR), to investigate credit reporting disputes. e-OSCAR is owned and operated by four companies: Equifax, Experian, Innovis, and TransUnion. See http://www.e-oscar.org/.

[45] See Consumer Data Industry Association, "New Public Record Credit Reporting Standards to Begin July 1, 2017; Civil Judgments and some Tax Liens to be removed from many credit reports," press release, June 28, 2017, at http://s3.amazonaws.com/rdcms-cdia/files/production/public/PDFs/CDIA.NCAP.July1Changes.6.28.pdf.

[46] H.R. 3642, §§101-107.

[47] H.R. 3642, §110.

[48] H.R. 3622, §§104 -107.

defaults, which typically remain on credit reports for seven years. Negative information in a credit report often results in a consumer appearing to pose a greater risk of default or other negative behavior. This may lead a consumer to either pay more for financial services or, in some cases, be denied access to credit entirely. Limiting a consumer's access to certain financial services, such as depository checking accounts or lower cost loans, may disproportionately affect the consumer's cost of engaging in financial transactions. Similarly, the use of consumer data reports by potential employers, discussed further below, may limit job opportunities that could arguably help applicants overcome financial challenges and thereby improve their credit histories.[49]

Retaining negative information on credit reports for an extended period of time may pose benefits and detriments. On the one hand, under circumstances in which the underlying information in a consumer data report is inaccurate or out of date, consumers may improperly be considered to pose a greater risk to a firm. In that case, the consumer may be offered costlier credit options (or even face denials of credit) that do not accurately reflect the consumer's actual risk of default. In other cases, consumers also may unfairly be considered to pose a greater risk now due to circumstances in the past that they have since overcome. On the other hand, the longer information remains on the credit report arguably allows lenders to see long-term trends that may be helpful for distinguishing between a rare occurrence and a consistent pattern in a consumer's behavior. Shorter or insufficient periods of time in which negative tradelines appear on consumer reports may also compromise the ability to compute reliable scores. If lenders view credit reports and scores as unreliable due to premature removal of negative information, they could increase downpayment requirements across the board for all credit applicants or reduce loan amounts. In short, lenders who are uncertain about data reliability might adopt stricter underwriting and lending policies. In addition to restricting credit access generally, this could reduce competition by allowing lenders with an established relationship and more information on a consumer to provide more favorable terms to that consumer than other companies. In addition, the Association of Certified Fraud Examiners (ACFE) found that poor credit can signal criminal activity, and earlier removal of negative information may make it more difficult for an organization to detect fraud, which may be particularly costly for small businesses and nonprofit organizations.[50]

Many preparers and users of credit scores have adopted weighting schemes that place less weight on older information in a consumer data report. Maintaining longer (rather than shorter) durations of negative tradelines on reports allows preparers to make greater use of variable-weighted algorithms to calculate scores, which may be useful when the importance of a weight needs to be modified over time. In addressing this policy issue, H.R. 3622 would shorten the time period that adverse information could remain on a person's credit report by three years (such that it remains on the report for a total of four years), among other things.[51]

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[49] See Dana Dratch, "States Weigh Limits on Credit Checks for Employment," CreditCards.com, at http://www.creditcards.com/credit-card-news/states-weigh-limits-credit-checks-for-employment-1282.php.

[50] See Michelle Long, "Internal Controls for Small Businesses to Reduce the Risk of Fraud," Intuit, at http://longforsuccess.com/wp-content/uploads/2010/09/Good-Internal-Controls.pdf; and Association of Certified Fraud Examiners (ACFE), Report to the Nations on Occupational Fraud and Abuse: 2012 Global Fraud Study, Fraud Q&A with James Ratley, President and CEO of the ACFE, at https://www.acfe.com/uploadedFiles/ACFE_Website/Content/rttn/2012-report-to-nations.pdf. Approximately 36% of fraudsters live beyond their means and 27% undergo personal financial difficulties. See *Preventing and Detecting Fraud in Not-For-Profit Organizations*, at https://www.kellerowens.com/wp-content/uploads/2012/07/Fraud-Booklet-2012-Revised-Version.pdf.

[51] H.R. 3622, §101.

Rehabilitation of Education Loans

Borrowers who default on some federal student loan programs (defined as not having made a payment in more than 270 days) have a one-time loan rehabilitation option.[52] A loan rehabilitation (as opposed to a loan consolidation) requires a defaulted borrower to make 9 on-time monthly payments during a period of 10 consecutive months.[53] The loan is considered rehabilitated if the borrower satisfies the requirements, and then the loan may be reinstated. In addition, the borrower's credit report is generally updated to show that the loan is no longer in default (or the default record would be eliminated); however, the information pertaining to the late payments that led up to the rehabilitation would still remain for seven years.[54]

By contrast, students who default on private loans are less likely to receive a rehabilitation option.[55] P.L. 115-174, Section 602, allows a borrower a one-time opportunity to remove a reported default on a qualified (private) student loan from a credit report if the borrower satisfies the requirements of loan rehabilitation programs that private lenders may be willing to offer (with the approval of prudential regulators), which is analogous to the procedures followed when federal student loans are in default.[56] However, depositories (i.e., banks and credit unions), which are regulated for safety and soundness, treat their student loans like all other private consumer loans. Private student loans must still satisfy underwriting requirements, typically requiring co-signers who become responsible for the loans if the students are unable to repay. After 120 days past due (closed-end), consumer loans held by depositories are treated as uncollectible.[57] The Office of the Comptroller of the Currency also points out: "Banks have some latitude to offer similar federal workout programs to private student loans. Banks, however, should do so while adhering to safety and soundness requirements and following existing banking guidance and GAAP."[58] Apart from safety and soundness requirements, the information pertaining to the late payments that led up to the rehabilitation would likely remain on the students' credit reports for seven years even if the default records were removed. Hence, this information would still be likely to be incorporated in students' credit scores.

H.R. 3621 would require credit bureaus to remove adverse information for private student loan borrowers who have demonstrated a history of repayment, similar to federal student loans. Private lenders currently have discretion in offering rehabilitation; under CCRRA, however, all private student loan borrowers would have the right to obtain loan rehabilitation. This provision would increase the ability of private student loan borrowers to receive rehabilitation. Because this practice would likely increase costs on financial institutions, as discussed above, this provision might reduce the willingness of lenders to originate private student loans.[59]

Inconsistent Billing and Reporting Practices: Medical Tradelines

Another policy issue that often arises in connection with credit reporting is that different holders of consumer debt bill differently and report to the CRAs differently. Inconsistent reporting

[52] See CFPB, "What does it mean to 'default' on my federal student loans?" press release, August 4, 2016, at https://www.consumerfinance.gov/ask-cfpb/what-does-it-mean-to-default-on-my-federal-student-loans-en-649/.

[53] See CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

[54] See Experian, "I've defaulted on my students loans. Should I consider loan rehabilitation?" press release, October 18, 2016, at https://www.experian.com/blogs/ask-experian/defaulted-on-student-loans-should-i-consider-loan-rehabilation/.

[55] CFPB, *Private Student Loans*, Report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Financial Services, and the House of Representatives Committee on Education and the Workforce, August 29, 2012, at http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

[56] P.L. 115-174, §601 prohibits a private student loan lender from accelerating a debt or declaring a default against a student loan borrower upon the bankruptcy or death of a co-signer. Section 601 also releases a co-signer from the debt obligation upon the death of the student.

[57] After 120-180 days, a depository firm may hire a debt collector, who receives a percentage of the collected amount, or sell the defaulted loan outright to a collection agency. The debt collection process is guided by the Fair Debt Collection Practices Act (P.L. 90-321).

[58] See Office of the Comptroller of the Currency, *Comptroller's Handbook*, Version 1.0, May 2016, p. 34, at https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/student-lending/pub-ch-student-lending.pdf.

practices result in variation of the timing with which unpaid debts appear on consumer reports. For example, medical providers may assign unpaid bills to debt collectors or sell outstanding debts to debt buyers. Some medical providers may assign or sell the debt after 60 days, but some may do so after 30 days (by comparison, most bank credit card delinquencies are assigned or sold after 180 days). Some firms may turn obligations over to collections as a tool to encourage consumers to settle unpaid balances, blurring the distinction between billing and collecting policies.[60] Debt collectors or buyers subsequently furnish negative information to CRAs, causing tradeline accounts to appear on consumer reports.

The CFPB used a random sample of approximately 5 million consumers as of December 2012 to determine what types of tradeline accounts were reported most frequently and the amounts.[61] The CFPB found that approximately 33% of credit reports surveyed had collection tradelines, and approximately 52% of those collection tradelines were related to medical collections. After medical obligations, the CFPB found that the remaining collection tradelines of significant relevance were associated with unclassified debts (17.3%), cable or cellular bills (8.2%), utilities (7.3%), and retail stores (7.2%). All other categories of collectible tradelines were approximately 2% or less of the survey. For 85% of the respondents, the amounts owed for medical debt were for less than $1,000. In short, more than half of collection tradelines were associated with medical debt, and they were for relatively small amounts. Specifically, the median amount owed for the medical collection tradelines was $207, and 75% of all medical collection tradelines were under $490.

One form of consumer debt—medical debt—is most often disputed by consumers and raises specific policy issues related to inconsistent billing and reporting practices. According to the CFPB study, consumers are unlikely to know when and how much various medical services cost in advance, particularly those associated with accidents and emergencies. People often have difficulty understanding co-pays and health insurance deductibles.[62] Consequently, consumers may delay paying medical obligations as they either assume their insurance companies will pay or attempt to figure out why they have been billed, which often results in medical debt appearing unpaid on credit reports.

Regulators and industry have taken actions that may reduce medical tradelines and their associated negative effects on consumer credit data. On December 31, 2014, the Internal Revenue Service (IRS) announced a final rule requiring the separation of billing and collection policies of nonprofit hospitals.[63] Under the rule, hospitals that have or are pursuing tax-exempt status are required to make reasonable efforts to determine whether their patients are eligible for financial assistance before engaging in "extraordinary collection actions," which may include turning a debt over to a collection agency (thus creating a medical tradeline) or garnishing wages. In short,

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[59] For more information, see CRS Report R45339, *Banking: Current Expected Credit Loss (CECL)*, by Raj Gnanarajah.

[60] See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, December 2014, p. 36, at http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf. Other firms may not immediately employ a collections strategy to encourage repayment of obligations for fears of reputational risk.

[61] See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, December 2014, at http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[62] Confusion about costs and co-pays may increase when medical care is administered outside of a consumer's state of residence, given that health insurers and providers determine costs that vary and are influenced by state regulations. See CRS In Focus IF10043, *Introduction to Financial Services: Insurance*, by Baird Webel.

[63] See Department of the Treasury, Internal Revenue Service, *New Requirements for 501(c)(3) Hospitals Under the Affordable Care Act*, at https://www.irs.gov/charities-non-profits/charitable-organizations/requirements-for-501c3-hospitals-under-the-affordable-care-act-section-501r.

tax-exempt hospitals must allow patients 120 days from the date of the first billing statement to pay the obligation before initiating collection procedures.[64] The IRS rule only impacts nonprofit hospitals, but, on September 15, 2017, the three major credit reporting agencies—Experian, Equifax, and TransUnion—established a 180-day (6 month) waiting period before posting a medical collection of any type on a consumer credit report.[65] In addition, P.L. 115-174, Section 302, amended the FCRA to provide credit reporting protections for veterans as follows:

- CRAs must exclude certain medical debt incurred by a veteran from his or her credit report if the hospital care or medical services relating to the debt predates the credit report by less than one year.
- CRAs must remove from the credit report a veteran's fully paid or settled medical debt previously characterized as delinquent, charged off, or in collection.
- CRAs must establish a dispute process and verification procedures for veterans' medical debt.
- Active duty military personnel receive free credit monitoring.

H.R. 3622 would impose restrictions on the appearance of medical collections on consumer credit reports, extending the CRA's 2017 rule to 365 days.[66] It would also require expedited removal of all fully repaid or settled medical debts and exclude all debts related to medically necessary care.[67]

Consumer Rights in the Credit Reporting System

Consumers sometimes find it difficult to advocate for themselves when credit reporting issues arise because they are not aware of their rights and how to exercise them. According to a CFPB report, some consumers are confused about what credit reports and scores are, find it challenging to obtain credit reports and scores, and struggle to understand the contents of their credit reports.[68] The CFPB receives more credit reporting complaints than complaints in any other industry it regulates.[69] Currently, the CFPB provides financial education resources on its website to help educate consumers about their rights regarding consumer reporting. The credit bureaus' websites also provide information about how to dispute inaccurate information, and consumers can contact them by phone or mail.

H.R. 3618 would require that CRAs provide free credit scores and explanations of those scores to consumers in their annual free credit report. In addition, consumers would be entitled to these free credit reports at other times, for example, whenever they apply for a new mortgage, auto loan, or student loan, or if a consumer's identity is stolen. The report and score used to make underwriting decisions in connection with these events would be provided to the consumer. H.R. 3642 would

[64] See Department of the Treasury, Internal Revenue Service, "Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirements of a Section 4959 Excise Tax Return and Time for Filing the Return," 79 *Federal Register* 78954-79016, December 31, 2014.

[65] See Experian, "Medical Debt and Your Credit Score: Here's What You Need to Know," press release, August 8, 2017, at https://www.experian.com/blogs/ask-experian/medical-debt-and-your-credit-score/.

[66] H.R. 3622, §103.

[67] H.R. 3622, §103.

[68] CFPB, *Consumer Voices on Credit Reports and Scores*, February 2015, https://files.consumerfinance.gov/f/201502_cfpb_report_consumer-voices-on-credit-reports-and-scores.pdf.

[69] CFPB, *Complaint Snapshot: Mortgage*, January 2019, pp. 3-6, at https://files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortage_2019-01_liwsYNV.pdf.

direct the credit bureaus to give consumers more information on dispute rights, and it would require hard inquiries to be limited for a longer 120-day shopping window for certain consumer credit products[70] (as described in the box "Some Factors Frequently Used to Calculate Credit Scores" above).

Appropriate Purposes for Using Credit Bureau Data: Employment Decisions

Policy questions exist regarding the appropriate uses of credit bureau data, particularly for uses outside of extending credit to consumers.[71] For example, credit information can be used for employment decisions. According to the Society for Human Resource Management (a human resources professional society), in 2012, almost half of surveyed organizations in their membership used credit background checks on some of their job applications.[72] Employers report that they use this information to reduce the likelihood of employee theft or embezzlement and to reduce legal liability for negligent hiring. [73] To comply with the FCRA, employers must inform an applicant that his or her credit report is a part of a hiring decision, and acquire the applicant's written permission to obtain the report. If an applicant is denied a job, or if the employer takes another adverse action due to information on a credit report, then the applicant must be given a copy of the report and a summary of their FCRA rights.[74]

Whether the use of credit information in employment decisions unnecessarily harms prospective job applicants is debatable. For some occupations, past financial difficulties may increase the likelihood, for example, that the employee could be bribed or compromised in some way; however, this information may not be essential for success in all occupations. Currently, many states limit employers' use of credit information for employment decisions.[75] H.R. 3614 would ban the use of credit information for employment decisions, unless required by law or for a national security investigation.

Consumers with Limited Credit Histories and Use of *Alternative* Scoring Methods

The CFPB estimates that credit scores cannot be generated for approximately 20% of the U.S. population due to their limited credit histories. The CFPB distinguishes between different types of consumers with limited credit histories.[76] One category of consumers, referred to as *credit*

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[70] H.R. 3642, §205.

[71] Whether credit information should be used in insurance decisions is also a topic of congressional interest, see H.R. 1756.

[72] Society for Human Resource Management, *Background Checking—The Use of Credit Background Checks in Hiring Decisions*, July 19, 2012, at https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/creditbackgroundchecks.aspx.

[73] Ibid.

[74] FTC, *Using Credit Reports: What Employers Need to Know*, October 2016, at https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-employers-need-know.

[75] Rosemarie Lally, *Using Workers' Credit Information Increasingly Prohibited*, Society for Human Resource Management, July 28, 2015, at https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/states-credit-history.aspx.

[76] See Kenneth P. Brevoort, Philipp Grimm, and Michelle Kambara, *Data Point: Credit Invisibles*, CFPB, May 2015, at http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

invisibles, have no credit record at the three largest credit bureaus and, thus, do not exist for the purposes of credit reporting. According to the CFPB, this group represents 11.0% of the U.S. adult population, or 26 million consumers. Another category of consumers do exist (have a credit record), but they still cannot be scored or are considered *nonscorable*. Nonscorable consumers either have insufficient (short) histories or outdated (stale) histories. The insufficient and stale unscored groups, each containing more than 9 million individuals, collectively represent 8.3% of the U.S. adult population, or approximately 19 million consumers according to the CFPB. Younger adults may be part of the credit invisible or nonscorable population because they lack a sufficient credit history. As consumers get older, however, the problem of being credit invisible or belonging to the insufficient part of the nonscorable group typically declines, but may begin to reoccur after the age of 60. Older adults, who may have considerably reduced their credit usage, perhaps as they prepare to enter retirement years, may encounter the problem of having stale credit records.[77] Because credit scoring models vary by firms, consumers that cannot be scored by some models might still have the ability to be scored by other models; thus, the state of being nonscorable may depend upon the credit reporting data records and scoring models used.

Borrowers with missing or impaired credit histories may be able to improve their ability to get reliable credit scores by using credit building loans, such as *secured credit cards* that require either security deposits as collateral for the amount of the line of credit or links to checking or savings accounts, thereby allowing lenders to recover funds if payments are missed. The security deposit is refunded if borrowers do not miss payments. Secured credit card lending can help borrowers build or repair their credit histories, assuming that the more favorable customer payment activity is reported to credit bureaus. In addition, the use of alternative credit scores may also help the credit invisibles because other types of consumer payment activity (discussed below) may be predictive in regard to how borrowers would manage credit. In short, options that increase the ability to calculate scores for the invisible or currently nonscoreable consumer groups could allow lenders to better determine the quantity and scope of financial relationships they can establish with such groups.

Alternative credit scoring models could potentially increase accuracy by including additional information beyond that which is traditionally included in a credit report. For example, some credit score models do not distinguish between unpaid and paid (resolved) tradelines.[78] Most credit scores are calculated without utility and rent payments information. Arguably, including this information would benefit the credit scores for some individuals with limited or no credit histories, potentially increasing their access to—and lowering their costs of—credit.[79] Conversely, information about medical debts has often been included in credit scores, but the unevenness in medical reporting, as previously discussed, and possibly the consumers' lack of choice in incurring medical debt raises questions about whether medical debt tradelines should be considered reliable predictors of creditworthiness or credit performance.[80] For this reason, some

[77] The CFPB estimated some additional information about these groups by age, income, and race. See Kenneth P. Brevoort, Philipp Grimm, and Michelle Kambara, *Data Point: Credit Invisibles*, CFPB, May 2015, at http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[78] The treatment of paid and unpaid collection tradelines varies among different credit scoring models. See "New FICO Score Model Could Boost Credit for Millions—Medical Bills in Focus," *NerdWallet*, August 8, 2014, at http://www.nerdwallet.com/blog/health/2014/08/08/new-fico-score-boost-credit-medical-bills-focus/.

[79] Experian, *New Study Shows How Alternative Payment Data Helps U.S. Consumers' Credit Profiles*, February 25, 2015, at https://www.experianplc.com/media/news/2015/alternative-data-to-credit-reports-utilities-and-rent-2015/.

[80] See Kenneth P. Brevoort and Michelle Kambara, *Data Point: Medical Debt and Credit Scores*, CFPB, May 2014, at http://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.

newer versions of credit scoring apply less weight to medical debt.[81] In short, developing credit scores with new information might allow lenders to find new creditworthy consumers.

Regulators and Congress have considered the potential for alternative credit scoring. In 2014, the Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac—the government-sponsored enterprises (GSEs) that purchase mortgages in the secondary market—to consider using more updated credit scoring models in their mortgage underwriting.[82] Under P.L. 115-174, FHFA is required to define, through rulemaking, the standards and criteria the GSEs will use for validating credit score models used when evaluating whether to purchase a residential mortgage.[83] If enacted, H.R. 3629 would direct the CFPB to report to Congress on the impact of using nontraditional data on credit scoring.

Full implementation of newer versions of credit scoring models, however, may not occur quickly.[84] In the mortgage market, upgrading automated underwriting systems is costly for the GSEs, FHA, and loan originators. Not all originators will choose to update their automated underwriting systems.[85] Even if alternative credit scoring models were widely adopted, the credit score is not the only variable considered during the underwriting process. Just as several factors are included in the development of a credit score, a credit score is only one of several factors included in an automated underwriting model (also referred to as an underwriting scorecard).[86] The debt-to-income ratio, for example, may still be an important variable for mortgage underwriting. Higher levels of medical and student loan debts may still affect mortgage underwriting decisions.[87] Hence, the use of alternative credit scores may help some borrowers

[81] See John Ulzheimer, "New FICO Score Coming Soon to a Credit Bureau Near You," *Credit Sesame Daily*, August 7, 2014, at http://www.creditsesame.com/blog/new-fico-score-coming-soon/.

[82] See Kevin Wack, "Fannie, Freddie to Evaluate Alternative Scoring Models," *American Banker*, September 22, 2014, at http://www.americanbanker.com/issues/179_183/fannie-freddie-to-evaluate-alternative-credit-scoring-models-1070140-1.html. Similarly, the Federal Housing Administration (FHA), which provides federal mortgage insurance, is also considering whether to use updated versions of credit scoring models. See National Association of Realtors, "HUD Secretary Tells Realtors that FHA is Exploring Alternative to Credit Scoring Models to Expand Mortgage Access," news release, April 1, 2015, at http://www.realtor.org/news-releases/2015/04/hud-secretary-tells-realtors-fha-is-exploring-alternative-credit-scoring-models-to-expand-mortgage.

[83] Specifically, the law allows Fannie Mae and Freddie Mac to employ alternative credit scoring models when purchasing mortgages rather than rely exclusively on the FICO scoring model. See Federal Housing Finance Agency, *FHFA Announces Decision to Stop Credit Score Initiative: No Decision in 2018; Focus Shifts to Implementing New Law*, News Release, July 23, 2018, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Decision-to-Stop-Credit-Score-Initiative.aspx.

[84] See Mary Ellen Podmolik, "Rollout is Slow for FICO's New Credit Scoring Model," *Chicago Tribune*, October 14, 2014, at http://www.chicagotribune.com/classified/realestate/ct-mre-1019-podmolik-homefront-20141014-column.html.

[85] See Adrian Nazari, "How FICO's New Credit Score Will Impact Consumers," *Huffington Post*, September 19, 2014, at http://www.huffingtonpost.com/adrian-nazari/how-ficos-new-credit-score-will-impact-consumers_b_5844530.html.

[86] An underwriting scorecard may include information such as income, assets, and employment history obtained from the borrower's application not taken into account while preparing the credit score. See Federal Deposit Insurance Corporation, *Credit Card Activities Manual, Chapter VIII.-Scoring and Modeling*, March 2007, at https://www.fdic.gov/regulations/examinations/credit_card/pdf_version/ch8.pdf; and Cary Collins, Keith D. Harvey, and Peter Nigro, "The Influence of Bureau Scores, Customized Scores, and Judgmental Review on the Bank Underwriting Decision-Making Process," *Journal of Real Estate Research*, vol. 24, no. 2 (2002), pp. 129-152.

[87] Carrying higher levels of debt may become an equally or, under some circumstances, a more important factor in mortgage approval decisions relative to other factors in light of recently adopted mortgage underwriting requirements. See "How the New FICO Score Model Will Affect Banks," *American Banker*, August 13, 2014, at http://www.americanbanker.com/issues/179_156/how-the-new-fico-score-model-will-affect-banks-1069413-1.html.

close to a threshold or borderline, yet still not translate into significant changes in credit access across the board.

Data Protection and Security Issues

Congressional interest in data protection and security in the consumer data industry has increased following the announcement, on September 7, 2017, of the Equifax cybersecurity breach that potentially revealed sensitive consumer data information for 143 million U.S. consumers.[88] CRAs are subject to the data protection requirements of Section 501(b) of the Gramm-Leach-Bliley Act (GLBA).[89] Section 501(b) requires the federal financial institution regulators to "establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguard—(1) to insure the security and confidentiality of consumer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access or use of such records or information which could result in substantial harm or inconvenience to any customer."[90]

The CFPB does not have the authority to prescribe regulations with regard to safeguarding the security and confidentiality of customer records.[91] Instead, the FTC has the authority to enforce Section 501(b) as the federal functional regulator of nonbank financial institutions, including CRAs.[92] The FTC has promulgated rules implementing the GLBA requirement.[93] Because the FTC has little upfront supervisory or enforcement authority, the agency typically must rely upon its enforcement authority after an incident has occurred. In addition, in March 2019, a Government Accountability Office report became public that recommended actions for the FTC, the CFPB, and Congress to strengthen oversight of credit bureaus' data security.[94]

Meanwhile, P.L. 115-174, Section 301, requires credit bureaus to provide fraud alerts for consumer files for at least a year under certain circumstances. In addition, credit bureaus must provide consumers with one free freeze alert and one free unfreeze alert per year. The law also established further requirements to protect minors. Currently, many credit bureaus provide consumers services such as credit monitoring for identity theft victims. In general, credit bureaus

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[88] See Equifax, "Equifax Announces Cybersecurity Incident Involving Consumer Information," press release, September 7, 2017, at https://www.equifaxsecurity2017.com/2017/09/07/equifax-announces-cybersecurity-incident-involving-consumer-information/.

On October 2, 2017, Equifax announced that an additional 2.5 million consumers may have been affected, for a total of 145.5 million. See, "Equifax Announces Cybersecurity Firm has Concluded Forensic Investigation of Cybersecurity Incident," press release, October 2, 2017, at https://investor.equifax.com/news-and-events/news/2017/10-02-2017-213238821.

[89] See CRS Report R44429, *Financial Services and Cybersecurity: The Federal Role*, by N. Eric Weiss and M. Maureen Murphy.

[90] See 15 U.S.C. §6801 and CRS Insight IN10792, *The Equifax Data Breach: An Overview and Issues for Congress*, by N. Eric Weiss.

[91] See CRS Testimony TE10021, *Consumer Data Security and the Credit Bureaus*, by Chris Jaikaran.

[92] GLBA delegated the authority for federal consumer privacy provisions to the federal banking regulators for federally insured depository institutions; the Securities and Exchange Commission for brokers, dealers, investment companies, and investment advisors; state insurance regulators for insurance companies; and the FTC for all other financial institutions. See CRS Report R44429, *Financial Services and Cybersecurity: The Federal Role*, by N. Eric Weiss and M. Maureen Murphy.

[93] FTC, "Privacy of Consumer Financial Information," 65 *Federal Register* 33646-33689, May 24, 2000.

[94] U.S. Government Accountability Office, *Consumer Data Protection: Actions to Strengthen Oversight of Consumer Reporting Agencies*, GAO-19-196, February 2019, https://www.gao.gov/products/GAO-19-196.

charge fees for these services, paid for by either a consumer or private company after a data breach incident. H.R. 3622 would expand protections for identity theft victims, including the right to free credit monitoring and identity theft services.[95] It would require the CFPB to create new regulations to define the parameters for these new consumer benefits, including how long they should be provided and what services should be included.[96]

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[95] H.R. 3622 §§201-209.

[96] H.R. 3622 §208.