

**Consumer Federation of America
Consumers Union
National Consumer Law Center
U.S. Public Interest Research Group**

November 14, 2003

Dear Conferees on the "Fair and Accurate Credit Transactions Act of 2003" (H.R. 2622):

The Fair Credit Reporting Act (FCRA) was enacted to ensure fairness and accuracy in the consumer reporting system. Today, consumers continue to pay too much or be denied credit because of inaccuracies in their credit reports. In addition, they battle a fast-growing assault on their financial integrity -- identity theft. Although we are disappointed that Congress missed the opportunity to empower consumers to prevent the sharing of their personal financial information between company affiliates, we commend members of the House and Senate for passing legislation designed to improve the credit reporting system, and to the decrease the incidence of and help victims of identity theft.

Both the House bill (H.R. 2622) and Senate version (S. 1753) contain important provisions for consumers. However, the Senate bill generally has more substantive protections in the areas of identity theft, financial privacy and credit report accuracy, and is far less preemptive of state laws. The undersigned national consumer and community groups strongly urge you to ensure that the following consumer protections are included in any final conference report:

1. *Affiliate Sharing -- The House Should Recede to the Senate Section 214.*

Although we believe that consumers deserve the additional right to stop the actual sharing of their personal financial information between affiliates, we urge you to recede to the Senate and accept this important provision. This provision will allow consumers to permanently prevent one of the unwanted effects of information sharing between affiliates -- the receipt of unwanted marketing solicitations generated by the sharing of consumers' personal information between affiliates. We consider this a minimum standard and would strongly object to any weakening amendments to this provision.

2. *No Identity Theft Preemptions - The House Should Recede to the Senate's Non-Preemptive Approach*

Substantively, the Senate provisions are stronger and better serve victims of this crime. More importantly, however, the Senate allows states to continue to respond to this evolving crime. Numerous states, including California, Connecticut, Illinois, Louisiana, Texas, and Washington, have provided their residents protections in the area of identity theft with which the financial

services industry is currently complying. It is crucial that states be allowed to respond to new types and methods of identity theft and to the emerging needs of victims. We, therefore, strongly recommend that the final bill adopt the Senate approach, which does not preempt stronger state laws, only those laws that are not consistent under the inconsistency provision already contained in the FCRA.

Unlike the seven previously preempted areas that are being extended permanently, all of the identity theft provisions that might be adopted by the Congress are completely new. While we hope these provisions will reduce the incidence of this crime, it is highly doubtful that Congress has anticipated all the problems posed by the identity theft epidemic. Maintaining state authority to respond to new identity theft schemes quickly, and locally, is a vitally important privacy protection for consumers that should be maintained in Federal law.

3. Identity Theft Protections --The House Should Recede to the Senate's Provisions

We urge the House to recede to the substance of the Senate identity theft provisions because they present a more workable approach. In particular, the final bill should include Senate bill Section 151(a) (Canwell/Enzi Senate Amendment) because it allows victims and law enforcement the right to obtain business records, such as application and transaction information from a business that has granted credit in the consumer's name. This will empower consumers and law enforcement to track the actions of an active identity thief and better enable the victim to clear his or her name.

We recommend that any conference report also provide a procedure for victims to block information when they have been unable to receive a police report -- something neither bill currently addresses. One-half of victims aided by identity theft victims' organizations are not able to obtain a police report. Consumers must have a procedure to be able to block this information when they have tried and been unable to get a police report.

Unfortunately, the Senate offer weakens Section 152 of its own bill, by upgrading its standard to require a victim to provide a police report, instead of either a police report or an identity theft report. An identity theft report, submitted under penalty of perjury, is an adequate standard that balances the needs of businesses to ensure that they are dealing with actual victims, with the needs of consumers to clear their names.

4. Accuracy/Completeness -- The House and Senate provision should be included in the Conference Report as crucial complementary methods of achieving the same goal.

We urge the Conferees to retain both Section 304 of the House version of H.R. 2622 and Sections 312(a), 313 and 314 of the Senate version of the bill. These provisions are crucial and complementary steps that must be taken to insure that creditors and credit bureaus provide and maintain more accurate and complete information. The House section will increase the standard of accuracy that the furnishers of credit reporting information -- like banks and mortgage lenders -- must maintain. It would simply require that an entity not furnish information that it has reasonable cause to believe is inaccurate. It would also, for the first time, require creditors and other furnishers to maintain reasonable procedures to ensure the accuracy of information

supplied for credit reports. The House and Senate bills both would require creditors to begin an investigation of a consumer complaint if contacted directly by a consumer, which they are not required to perform under current law. (Only credit bureaus are required to conduct these investigations.)

The Senate section also would require Federal regulators (the financial regulatory agencies and the Federal Trade Commission) to issue uniform guidelines on the accuracy and completeness of credit report information. Credit bureaus and creditors alike would have to comply with these guidelines. The Senate bill also requires the FTC to track the resolution of consumer complaints about accuracy and completeness. Even more important, the bill requires the Federal Reserve to conduct periodic “accuracy audits” of credit report files. We urge that this crucial requirement, which was dropped from the initial Senate “offer” to House Conferees, be reinstated.

Finally, we urge Conferees to include the provision that we understand is in the Senate "offer" that would require the FTC to set a cap on the amount charged for credit scores that would be based upon direct costs.

5. Use of Credit Reports in the Workplace -- Eliminate This Provision Unless Additional Safeguards are Included

The privacy protections in the FCRA were applied to the employment arena deliberately and appropriately after findings of serious abuses of employees. In fact, a great deal of the impetus for the FCRA was not errors in credit reports, but abuses in investigative reports, including those relating to employment. Section 601 of H.R. 2622 significantly reduces consumer rights to privacy in the workplace. For this reason, we urge the Conferees not to include this provision. However, if this section is included, we urge you to incorporate the important safeguards described below.

We understand that Section 601 has been included as a response to assertions that current FCRA requirements may hinder third-party investigations into employee misconduct and that such investigations should appropriately remain undisclosed. We acknowledge that, under certain circumstances, the notice and procedural protections of the FCRA relating to investigatory reports for employment purposes should be limited. However, the House's approach goes far beyond simply addressing any valid concerns. It fails to provide any standards for conducting employee investigations, and it lacks any safeguards to ensure that employees are not harassed by abusive investigations. For example, investigations should be prohibited if they relate to non-workplace behavior. Additionally, any new provision excepting employee investigations should require employers to have a reasonable basis to believe that the employee has engaged in misconduct relating to his or her employment. For these reasons sufficient safeguards must be included in any amendments to the FCRA.

6. Risk-Based Pricing Notice -- The House Should Recede to the Senate

We urge the House to recede to the Senate on the Risk-Based Pricing Provision. Section 311 of the Senate bill addresses situations in which consumers currently receive no notice whatsoever when they are offered less favorable loan terms because of information in their credit reports.

The new Section 311 notice will inform and educate consumers that their credit reports may be the cause of higher credit costs. These consumers will not only be made aware that they have received an offer with less-than-favorable terms, but they will be better able to protect against future negative results based on incomplete or erroneous information contained in consumer credit reports. We believe these provisions are vital to allow consumers to obtain the best credit for which they qualify.

7. Free Credit Report & Credit Score

We commend both the House and Senate for recognizing the need for greater access to credit reports and credit scores. The final bill should allow consumers to obtain free credit reports as easily as possible – either by phone – as only the House provides, or by the Internet or mail. It would be unfair and inequitable to those without Internet access to deny access to a free credit report by phone. We support the Senate’s proposal to allow consumers to obtain one-call credit reports from 603(p) national credit bureaus. We also support the House floor amendment by Mr. Frank to extend the free credit report on request to specialty and large regional credit bureaus, provided that the language of the final bill neither diminishes the important duties and requirements imposed on the 603(p) national bureaus, nor deletes or modifies the current requirement that each of these regional, specialty and national bureaus provides additional free reports to the indigent, the unemployed or victims of fraud.

Further, we strongly oppose the Ney amendment accepted on the House floor, which would sweepingly preempt the states from providing additional access to either credit reports or credit scores. We point out that California allows victims of identity theft, for example, to obtain 12 free credit reports for one year, to actively scan for the status of their accounts.

We support the House language providing greater access to credit scores, but only if it is modified by the narrower Senate preemption language – which would make clear that the states are free to provide access to credit scores in circumstances where the Federal law does not provide them. For example, in just the last two years, dozens of states have conducted dynamic investigations of abusive use of credit scores in insurance ratemaking, which is an area not addressed by either the House nor Senate credit scoring disclosure provisions.

8. Study on the Use of Credit Scores - The Senate Should Recede to the House

The inability of some consumers to access credit because of thin credit files, no credit scores, and/or inaccurate and unreported positive credit information is widespread. The “Study of Effects of Credit Scores and Credit-Based Insurance Scores on Availability and Affordability of Financial Products” in H.R. 2622 and S.1753 is therefore a critical element to understanding the impact of the current credit scoring system. Because it authorizes a more complete and rigorous study, we urge you to adopt the language in Section 505 of the House-passed version of the bill. This version contains vital elements not included in the Senate version, such as a requirement that the FTC conduct a study in consultation with HUD’s Office of Fair Housing and Equal Opportunity. The House provision is also superior because it would examine “causality” between factors and risks/losses, rather than simply the “correlation,” as well as the accuracy of the predictors used. This type of study will be more valuable to industry groups as well as civil

rights and consumer groups when trying to evaluate credit risk; and it would test the extent to which, if any, credit scoring models result in “disparate impact” to differing groups of consumers.

We also urge the inclusion of the required GAO study in Section 506 of the House-passed bill, that will examine the extent to which, if any, discrimination exists in the credit system, including in the availability and terms of credit.

Thank you for your consideration of our recommendations. For more information, please contact Janell Duncan at Consumers Union (202-462-6262), Ed Mierzwinski at U.S. PIRG (202-546-9707), Travis Plunkett at the Consumer Federation of America (202-387-6121) or Anthony Rodriguez at the National Consumer Law Center (202-452-6252).

Sincerely,

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