

**California PIRG  
Consumer Federation of America  
Consumers Union  
Identity Theft Resource Center  
NYPIRG  
Privacy Rights Clearinghouse  
Privacy Times  
U.S. Public Interest Research Group**

September 17, 2003

The Honorable Richard C. Shelby  
Chair, Senate Banking, Housing and  
Urban Affairs Committee  
Washington, DC 20510

The Honorable Paul S. Sarbanes  
Ranking Member, Senate Banking, Housing  
and Urban Affairs Committee  
Washington, DC 20510

***RE: SUPPORT STRONG IMPROVEMENTS TO FCRA DISCUSSION DRAFT IN MARK UP  
-- OPPOSE PREEMPTION OF STATE LAWS --***

Dear Chairman Shelby and Ranking Member Sarbanes:

The undersigned consumer and privacy groups write in the hope that the Committee, in its September 18<sup>th</sup> markup, will fix some serious shortcomings in the draft legislation to amend the Fair Credit Reporting Act.

We of course appreciate the hard work and attention that the Chairman, Ranking Member and other Members of the Committee have devoted to the issue. The bill represents a substantial step forward for consumers in federal oversight of credit report accuracy, medical privacy, identity theft and in enhancing consumer access to credit reports and scores. But we feel that failure to make major changes in the following areas will result in a tragically missed opportunity to significantly strengthen consumer protections in this vital area, to protect individual financial privacy, to fight identity theft, and improve credit report accuracy.

First, although it wasn't in the discussion draft, we understand that the Committee is contemplating making permanent the FCRA's preemption of State law. This could prevent States from responding quickly to the ever-evolving crime of identity theft at a time that it is reaching epidemic proportions. Many of the positive aspects of the Senate and House bill were taken from State laws or proposals. It is unthinkable that Congress would **permanently** stifle such innovation when it is most needed. Besides, the financial services industry has failed to show that State identity theft and credit reporting laws hamper commerce. The existing evidence confirms there is better economic performance, as well as robust financial services available, in the States with the strongest financial privacy and ID theft laws.

While we believe that the Gramm-Leach-Bliley Act gives states the right to enact affiliate sharing privacy protections that go beyond federal law, one U.S. District Court has held that FCRA preempts such protections. If Congress renews this part of FCRA, and higher courts agree with the lower court, it would be the first time in U.S. history that Congress so hastily took away the privacy rights of Americans. To

rob so many Americans of hard-fought privacy rights in this area is a grave mistake and an ominous precedent. Many of the undersigned organizations will oppose any final legislation that preempts states from enacting stronger financial privacy laws or expands current preemptions to include identity theft or credit scoring laws that are stronger (but not inconsistent) with this bill.

Third, the bill does not squarely confront a fundamental problem that causes inaccuracy and contributes to identity theft – namely, the weak duties on furnishers of credit information to report information accurately and to be accountable if they fail to do so. This fundamental problem will not be solved until furnishers are directly liable to consumers for furnishing inaccurate data.

We urge you to support the strengthening amendments below and to oppose any industry-backed amendments to weaken this bill at the behest of debt collectors, retailers and banks, whose sloppy practices are frequently responsible for identity theft and credit reporting errors. Credit bureaus, whose inaccurate reports can result in consumers paying too much, are also seeking weakening amendments.

The priority improvements that should be made to the bill include the following:

### **Identity Theft**

- Clarify that the only preemption which will apply to identity theft provisions of state law is the general “inconsistency” provision.** Preemption should not be expanded. States should be restricted – in the area of identity theft - only from passing laws that are inconsistent with the specific requirements of the federal law.
- Clarify the definition of an “identity theft report.”** In all circumstances covered by the law, whether a consumer is contacting a furnisher, user or credit bureau or other entity seeking to clear his or her name, the consumer should be able to provide a police report, or either an FTC identity theft affidavit or similar affidavit. This is critical because very few police departments will provide a police report to victims.
- Impose clear duties on creditors and credit bureaus to cooperate with ID theft victims.** Creditors should have a duty to honor a fraud or security alert and conduct additional investigation prior to issuing credit. Companies should have a clear duty to provide documentation of fraudulent activity to victims. In addition, credit bureaus should have a duty to include a fraud alert with a credit score, not just with a credit report.

**In addition, while we urge opposition to all weakening amendments, we strongly urge opposition to two amendments that would significantly weaken the identity theft provisions of the proposal.**

- Oppose the Hagel-Enzi amendment revising the definition of identity theft report because it would delay blocking of fraudulent accounts for weeks or months.** This pernicious amendment would require the identity theft report to include detailed information about the scope and extent of the fraud that a victim could not obtain for weeks or months, and in some circumstances, could not obtain without a copy of a police report, which is difficult to obtain.

- ❑ **Oppose Hagel Amendment regarding an exception from identity theft blocking for check verification companies.** While we urge opposition to all weakening amendments, it is critically important that identity theft victims have the right to prevent “negative” credit bureaus (companies which maintain blacklists) from ruining their good names with fraudulent information.

### **Credit Reports and Scores**

- ❑ **Improve the Schumer/Allard credit score provision (section 212) to ensure that it doesn’t preempt state law.** This part of a bill takes the positive step of allowing consumers to have access to credit scores in relationship to home mortgage loans. However, this provision also broadly preempts states from enacting any complementary (not conflicting) laws that would require public disclosure of other types of credit scores, including insurance scores. This is a very serious problem.
- ❑ **Support the Corzine amendment to require all major credit reporting agencies to provide free credit reports.** Right now, the bill only requires the three national credit reporting agencies to provide consumers with one free credit report a year on request (section 211.) Consumers will not be able to get a free report from the “specialty agencies” that collect information related to insurance, medical debt, and tenant screening. This amendment would track the House bill in requiring regional, specialty and national agencies to provide free reports.
- ❑ **Support the Corzine credit score amendment** to require a study and report on how credit scores affect the availability and affordability of financial products. This important study on the potential disparate impact of credit scoring on minority groups is long overdue.

### **Report Accuracy**

- ❑ **Ensure that adverse action notices are sent to all consumers who receive offers of credit on less than favorable terms.** Adverse action notices inform consumers that they have received a less-than-favorable offer and allow them immediate access to a free credit report to check for errors and problems. This bill (section 311) only requires that creditors send consumers an adverse action notice when they receive a counteroffer of credit on terms that are less than an original offer. Instead, the bill should adopt the Federal Trade Commission’s recommendation that consumers receive an adverse action notice in all cases where credit is being offered on less-than-favorable terms, including an original offer of credit.

### **Financial Privacy**

- ❑ **Allow consumers to control the sharing of affiliate information.** The bill’s marketing-related affiliate provision does not allow consumers to stop the sharing of financial information between affiliates. It does nothing to protect consumers from the consequences of secret financial profiling, which may be used for credit granting, without providing consumers with any opportunity to review, dispute, or even know that the information has resulted in an adverse action.

### **Private Enforcement.**

- Improve consumers' rights to privately enforce furnisher accuracy requirements. As federal agencies rarely have the capacity to enforce all violations of the law, consumers need greater rights under the FCRA to – at the very least – go to court to seek injunctive relief against a credit bureau or furnisher.

Thank you for your consideration of our views. Please contact Travis Plunkett at CFA (202-387-6121), Janell Duncan at Consumers Union (202-462-6262) or Ed Mierzwinski at U.S. PIRG (202-546-9707x314) if your staff have any questions. We have also posted links to several helpful documents and web pages at <http://www.pirg.org/consumer/fcra.htm> to assist your staff.

Sincerely,

California PIRG  
Consumer Federation of America  
Consumers Union  
Identity Theft Resource Center  
New York PIRG  
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