



POLICY & ACTION FROM CONSUMER REPORTS

ERRORS AND GOTCHAS: How Credit Report Errors and Unreliable Credit Scores Hurt Consumers

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April 9, 2014

Acknowledgments

The author would like to thank Pamela Banks and Michael McCauley especially for their assistance in developing this paper. Thanks also to Norma Garcia, Suzanne Martindale, and Elisa Odabashian for reading and offering extremely helpful feedback on several drafts of the paper, and to Denise Smith for her invaluable research assistance.

Several other Consumer Reports and Consumers Union staff members offered invaluable input and advice, including Ellen Bloom, Jeff Blyskal, Delara Derakhshani, Jane Healey, Christina Tetreault, and Beccah Rothschild. Thanks to Christopher Casey for reviewing consumer-submitted stories for the paper, to Carol Pollard for producing it, and to Caitlin Watkins for her proofreading work.

The author is grateful to the consumer advocates who took the time to offer their peer review of the paper. Thanks to Chi Chi Wu of the National Consumer Law Center, Ed Mierzwinski of U.S. PIRG, Ira Rheingold of the National Association of Consumer Advocates, and Ruth Susswein of Consumer Action for reviewing drafts or portions of this report.

Finally, thanks to the consumers who shared their stories with us.

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Executive Summary

In today's economy, it's especially important to have a good credit record. In addition to lenders, potential employers, landlords, and insurance companies also may check credit reports when evaluating applicants.¹ Credit scores, derived from information provided on credit reports, are used by mortgage and auto lenders, and by credit card companies to set the terms and interest rates they're willing to offer consumers applying for credit.

Unfortunately, a consumer's good credit record can be undermined when credit reports contain errors, and the damage can be serious. Consumers Union wanted to find out what kinds of problems consumers have experienced with credit report errors and obtaining fair and accurate credit scores. We asked consumers to share their experiences and collected over 1,000 stories from around the country.² Based on our review of these stories along with other recent research on this topic, we came to the following conclusions:

Key Findings

- Credit report errors are all too common. A recent Federal Trade Commission (FTC) study found that about one in five, or an estimated 40 million consumers, had an error on one of their credit reports. Over 5 percent—or

¹ The term used by the Fair Credit Reporting Act is "consumer reports." 15 U.S.C. § 1681a(d) (2012 & Supp. I). The consumer reports issued by Equifax, Experian and TransUnion that focus on creditworthiness are commonly called "credit reports." CONSUMER FIN. PROTECTION BUREAU, THE IMPACT OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES 3 (2011) [hereinafter IMPACT OF DIFFERENCES], *available at* http://files.consumerfinance.gov/f/2011/07/Report_20110719_CreditScores.pdf.

² Stories were submitted to Consumers Union's Stori.es database by website visitors. This does not constitute a nationally-representative survey. Stories have been reprinted exactly as provided to Consumers Union, though small corrections for grammar, punctuation, and capitalization have been made. More significant edits have been indicated with brackets and ellipses. First name or first initial, city, and state have been listed; last names have been withheld. In one case, the county rather than city was identified to further protect consumer identities.

about 10 million consumers—had an error that would likely lead to them paying more for interest for a loan.

- Consumers reported to us that they found a variety of errors on their credit reports, such as the inclusion of information that doesn't belong to them or that has not been properly updated. Errors are commonly caused by the ways that the consumer reporting agencies (CRAs) match files, in addition to incorrect information reported by creditors and other data "furnishers," and as a result of identity theft.
- Consumers told us that getting the CRAs to correct credit report errors can be a very difficult and frustrating process. CRAs often fail to effectively address error complaints because of fundamental problems with the way they investigate disputes. The CRAs devote limited resources to addressing errors and the investigations conducted by furnishers are often inadequate. Unfortunately, the CRAs typically accept the word of the furnisher in disputes, even if the furnisher has not provided evidence to validate the disputed information.
- Consumers can purchase their credit scores, but they have a hard time obtaining the same credit scores used by their lenders for evaluating creditworthiness. The CRAs typically sell "educational" scores to consumers that lenders rarely use.
- Credit scores sold to consumers and those used by lenders can vary significantly. A recent analysis by the Consumer Financial Protection Bureau (CFPB) found that the credit scores most often used by lenders compared to the scores consumers most often buy from the CRAs would put consumers in "credit-quality categories that are off by one category 19-24% of the time."*
- Consumers sometimes are tricked by marketing pitches promising a "free" credit score and sign up for costly credit-monitoring services unwittingly. Often the scores provided through these services are different from the scores that lenders review.

Policy Reform Recommendations

Consumers Union calls on policymakers and regulators to rein in the worst abuses of the credit reporting industry by updating regulations to ensure that credit reporting by all CRAs is fair and accurate, and to require the CRAs to give consumers their credit scores at no charge when they request their free annual credit reports. The CFPB has rulemaking authority under the Fair Credit Reporting Act (FCRA) to address credit reporting accuracy, and we urge the Bureau to take action. The CFPB and the

* CONSUMER FIN. PROTECTION BUREAU, ANALYSIS OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES 2, 17 (2012), *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf. This has been updated from an earlier version of the report, which incorrectly indicated that the CFPB's analysis was based on a comparison between educational scores consumers buy from the CRAs and the scores most often used by lenders. It has also been updated to specify that the scores differ by one credit category 19 to 24 percent of the time.

FTC should use their supervisory and enforcement authority to police the marketplace and ensure CRA and furnisher compliance with FCRA. We urge Congress to move forward on these issues as appropriate.

Below are several of the reforms that policymakers and regulators should consider. For a full list of policy reform recommendations, please see page 27.

- Hold CRAs Accountable for Accuracy: New rules are needed to define more clearly the “reasonable procedures” CRAs are required to have in place to ensure credit reports are accurate. This could include requiring CRAs to match first and last name, date of birth, and other relevant information, where appropriate.
- Hold Furnishers Accountable for Accuracy: To ensure that information about consumers is accurate, creditors and other furnishers should be required to keep supporting information and documentation about an account that appears on a credit report, unless directed otherwise by law.
- Improve the Dispute Investigation Process: Furnishers should not be able to dismiss disputes as “frivolous” if consumers provide new information that is relevant to their complaints. Furnishers should delete disputed information from a credit report if they cannot offer documents to support it.
- Provide Consumers with Access to Free Annual Credit Scores: The CRAs should be required to provide consumers with their credit scores for free when consumers request their annual credit reports. These scores should be the same ones that are most often used by lenders to make credit decisions.
- Stop Deceptive Marketing of Credit Reports and Scores: Regulators should crack down on deceptive marketing of credit reports and scores to protect consumers from unknowingly registering for unwanted credit monitoring or other expensive services.

Background

The credit reporting system includes a number of different consumer reporting agencies (CRAs), also known as “credit bureaus.”³ Experian, Equifax, and TransUnion are the three biggest, nationwide CRAs.⁴ These three collect the most credit information about consumers, meaning that they hold the most credit files—an estimated 200 million files each.⁵ Each of the credit bureaus is a global corporation that has profited handsomely from collecting and selling consumer data. In the fiscal year ending in March 2013, Experian reported over \$4 billion in revenue, while in 2013 Equifax made over \$2 billion, and TransUnion earned over \$1 billion.⁶ While the credit reports prepared by the three largest CRAs are the most widely used, there are also a number of smaller “specialty” CRAs that report a wide variety of consumer information, including checking account history, information on rent payments, and even wage information.⁷

Lenders typically consult one or more of the three major CRAs when evaluating a consumer’s creditworthiness, for example, when a consumer applies for a car loan or mortgage. In recent years, other actors have consulted credit reports for purposes other than lending, including employers conducting background checks on applicants; auto and homeowners insurance companies establishing rates; utility companies when evaluating whether to ask new customers to pay a deposit; and landlords evaluating prospective tenants.⁸

CRAs develop their consumer databases by collecting information provided by data “furnishers,” such as credit card companies and mortgage lenders. While the largest furnishers generally report to each of the three major CRAs, not every furnisher does so.⁹ This can account for some of the differences between the credit reports

³ 15 U.S.C. § 1681a(f) (definition of “consumer reporting agency”); CONSUMER FIN. PROTECTION BUREAU, KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM 7 (2012) [hereinafter KEY DIMENSIONS], available at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf (discussing historical rise of three largest CRAs).

⁴ 15 U.S.C. § 1681a(p) (definition of CRAs operating on a “nationwide basis”).

⁵ See KEY DIMENSIONS, *supra* note 3, at 21; FED. TRADE COMM’N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 2 (2012) [hereinafter 2012 ACCURACY REPORT], available at <http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fifth-interim-federal-trade> (citing industry figures estimating over 200 million active files).

⁶ Experian, Financial Highlights, <http://www.experianplc.com/investor-centre/key-financial-data.aspx> (last visited Mar. 17, 2014); Equifax, Inc., Annual Report (Form 10-K), at 26 (Jan. 31, 2014), available at http://www.sec.gov/Archives/edgar/data/33185/000114420414012238/v368092_10k.htm; TransUnion Corp., Annual Report (Form 10-K), at 30 (Jan. 31, 2014), available at <http://www.sec.gov/Archives/edgar/data/1513514/000155203314000018/transunion-20131231x10k.htm>.

⁷ See *Big Brother is watching*, CONSUMER REPORTS MONEY ADVISER, Oct. 2009, available at <http://www.consumerreports.org/cro/money/consumer-protection/big-brother-is-watching/overview/index.htm>. For more on specialty CRAs, see NAT’L CONSUMER LAW CTR., FAIR CREDIT REPORTING 67-68 (8th ed. 2013) [hereinafter FAIR CREDIT REPORTING].

⁸ KEY DIMENSIONS, *supra* note 3, at 5; DEMOS, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION’S CREDIT REPORTING INDUSTRY 4 (2011), available at http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf.

⁹ KEY DIMENSIONS, *supra* note 3, at 15.

produced by the different CRAs. Credit reports may also differ because they include credit inquiries from lenders, who do not always check reports from each of the three major bureaus.¹⁰ Finally, most furnishers send their information to the three major CRAs in a single monthly transmission using a format adopted by much of the industry to help standardize information, known as Metro 2.¹¹

CRAs collect and report information such as payment history on debts like mortgages, student loans, and credit cards.¹² Credit reports also show any bills that have gone into delinquency or collection, and public records such as bankruptcies.¹³ Once negative information appears on a credit report, it typically remains there for seven years, though if successfully disputed, an entry can be removed earlier.¹⁴ Certain public records can remain on a report even longer than seven years, depending on the statute of limitations.¹⁵ Bankruptcies can stay on credit reports for up to ten years, and criminal convictions can stay indefinitely.¹⁶

Credit scores are calculated from information provided on credit reports, often using highly secretive, proprietary algorithms and are designed to indicate the likelihood that a consumer will go into delinquency on a loan.¹⁷ As a result, errors on credit reports can have a negative impact on the consumer's resulting credit score. While the CRAs produce their own credit scores, including the VantageScore, Fair Isaac Corporation (FICO)¹⁸ is perhaps the most well-known credit scoring company. According to the CFPB, in 2010, over 90 percent of lenders bought FICO scores to make decisions about consumers.¹⁹

Since the 1970s, federal legislation and rules have aimed to guarantee important consumer protections and encourage credit reporting accuracy.²⁰ Under the Fair Credit Reporting Act of 1970 (FCRA),²¹ all consumer reporting agencies must ensure that they establish and follow "reasonable procedures to assure maximum possible accuracy."²² Furnishers cannot report information if they "[know] or have reasonable cause to believe that the information is inaccurate."²³ New rules established by federal regulators in 2009 declared that furnishers must develop "reasonable written

¹⁰ IMPACT OF DIFFERENCES, *supra* note 1, at 4.

¹¹ KEY DIMENSIONS, *supra* note 3, at 14.

¹² *Id.*

¹³ *Id.* at 8-9.

¹⁴ 15 U.S.C. §§ 1681c(a)(2-5) (2012 & Supp. I) (listing types of adverse information to be removed after seven years); 15 U.S.C. § 1681i(a)(5)(A) (requiring removal of inaccurate and unverifiable information disputed by consumer).

¹⁵ 15 U.S.C. § 1681c(a)(2).

¹⁶ § 1681c(a)(1) (bankruptcies); § 1681c(a)(5) (criminal convictions).

¹⁷ FAIR CREDIT REPORTING, *supra* note 7, at 621.

¹⁸ On the FICO name, *see* Fair Isaac Corporation, Annual Report (Form 10-K), at 3 (Feb. 11, 2014), available at

<http://www.sec.gov/Archives/edgar/data/814547/000119312513438562/d591009d10k.htm>.

¹⁹ IMPACT OF DIFFERENCES, *supra* note 1, at 6 (citing estimates from TowerGroup).

²⁰ For general discussion of FCRA's legislative history, *see* FAIR CREDIT REPORTING, *supra* note 7, at 6.

²¹ 15 U.S.C. §§ 1681—1681x (2012 & Supp. I).

²² 15 U.S.C. § 1681e(b).

²³ 15 U.S.C. § 1681s-2(a)(1)(A).

policies and procedures concerning the accuracy and integrity” of their data.²⁴ Moreover, CRAs must conduct a “reasonable reinvestigation” when a consumer files a complaint about errors, and the CRAs must remove incorrect information from a consumer’s report within a limited period of time.²⁵ Other important rights guaranteed by FCRA include the ability to request a free credit report once a year from each of the three major bureaus, to dispute errors, and to purchase a credit score.²⁶

Credit Reporting Errors Are Too Common

Despite these protections, many consumers find that their credit reports do not correctly depict their creditworthiness. Too many consumers continue to find errors on their reports and have problems getting them corrected. For example, Lisa, from Lancaster County, Pennsylvania, told us:

“For a long time, our scores included information about another guy who—ironically—lived in the other side of our duplex with a similar mailing address and the same name as my husband—only his middle initial was different, and he wasn't a junior. When we tried to get the problem cleared up, we were treated as if we were lying and had done bad things. We ended up having to wait a number of years for those things to fall off our credit [reports] because it was such a hassle to get it corrected. We only knew there were problems when we went to apply for credit.”

Unfortunately, Lisa’s story is hardly unique. A 2012 Federal Trade Commission (FTC) investigation estimated that almost 20 percent of consumers had at least one credit report that contained errors.²⁷ Over 5 percent had errors significant enough to place them in an inferior credit category for FICO’s car loan specialty score, making it more likely they would pay more for a loan.²⁸ Further, many Americans are spending valuable time working, sometimes fruitlessly, to correct the errors in their credit files. In 2011, consumers contacted the big three CRAs about eight million times with their accuracy concerns.²⁹ Consumers have also taken their concerns to the CFPB. In 2013, the agency collected about 24,200 complaints about credit reporting issues, and 73 percent of those complaints cited “incorrect information” in relation to credit reports.³⁰

²⁴ Procedures To Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 74 Fed. Reg. 31484 (July 1, 2009).

²⁵ 15 U.S.C. § 1681i(a)(5)(A).

²⁶ 15 U.S.C. §§ 1681g(c)(1)(B)(iii-v).

²⁷ 2012 ACCURACY REPORT, *supra* note 5, at 38. The FTC estimates that 200 million consumers have credit files. *Id.* at 2. As a result, it can be estimated that about 40 million consumers have a credit report error.

²⁸ *Id.* at 47. Based on the FTC’s estimate that the credit reporting industry has files on 200 million consumers, it can be concluded that about 10 million consumers would be put into the more expensive credit category due to credit reporting errors. See *supra* text accompanying note 27.

²⁹ KEY DIMENSIONS, *supra* note 3, at 27.

³⁰ CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JANUARY 1-DECEMBER 31, 2013 19 (2014), available at http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf. The CFPB began collecting complaints about credit reporting issues in October 2012. Consumer Fin.

The high rate of credit reporting errors shows that the CRAs and furnishers should do a better job at ensuring that consumers' information is correct and in correcting errors. To that end, it is critical to develop and enforce additional guidelines for CRAs and furnishers. Further reforms are needed to ensure the CRAs and furnishers thoroughly investigate all credit disputes and take seriously consumers' records and documentation in the process.

Errors Caused By CRA Mistakes and Procedures

Credit reporting errors can occur in a variety of ways, but many of them concern the methods the CRAs use to put together credit reports.³¹ CRAs sometimes mix together records from two different people who share similar identification information, creating a "mixed file."³² The CRAs use loose matching requirements when creating a credit report for a lender to make sure they do not omit data that might be important to that lender. According to the FTC, "the CRAs do not rely exclusively on SSNs [Social Security numbers] in their matching procedures[.]" noting that CRAs will place the information in a consumer's report if their personal information is similar, even without an exact match on the Social Security number.³³ For example, the case *Reeves v. Equifax Information Services, LLC, and Medical Data Systems, Inc.* revealed that Equifax mixed the files of two men who shared seven out of nine digits of the Social Security number and had similar names.³⁴

Mixed files can have a devastating effect on a consumer's ability to get credit. For example, Frank, from Pitman, New Jersey, explains that his credit history was combined with his son's, and as a result, he couldn't get a good deal when he tried to refinance his mortgage. His story also illustrates how difficult it can be to correct a mixed file:

"My son and I have the same first and middle names. . . . So all of my son's good and bad credit [information] always show[s] up on my report even though we obviously have different Social Security numbers. Many times I have tried to get these errors fixed, through the mail, phone and online, but to no avail. Recently I attempted to refinance my mortgage, same problem, low credit score due to erroneous data."

Protection Bureau, Credit Reporting Complaint Snapshot 2 (2014), available at

http://files.consumerfinance.gov/f/201402_cfpb_snapshot_credit-reporting-complaints.pdf.

³¹ The National Consumer Law Center identifies the four common categories of error as: "Mixed files," "Identity theft," "Furnisher errors," and "Re-aging of obsolete debts." See NAT'L CONSUMER LAW CTR., AUTOMATED INJUSTICE: HOW A MECHANIZED DISPUTE SYSTEM FRUSTRATES CONSUMERS SEEKING TO FIX ERRORS IN THEIR CREDIT REPORTS 7-12 (2009) [hereinafter AUTOMATED INJUSTICE], available at http://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf. For a description of common credit reporting errors, see also KEY DIMENSIONS, *supra* note 3, at 24-26.

³² See KEY DIMENSIONS, *supra* note 3, at 24-25; AUTOMATED INJUSTICE, *supra* note 31, at 7.

³³ FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTIONS 318 AND 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 40 (2004), available at <http://www.ftc.gov/sites/default/files/documents/reports/under-section-318-and-319-fair-and-accurate-credit-transaction-act-2003/041209factarpt.pdf>.

³⁴ *Reeves v. Equifax Information Servs., LLC*, No. 09-43, 2010 U.S. Dist. LEXIS 50241, at *2 (S.D. Miss. May 20, 2010).

Tom, from Boston, Massachusetts, found that a mixed file problem compromised his ability to buy a house. Like Frank, Tom discovered that it's not easy to correct a mixed file problem, and had to devote considerable time and effort to fixing it:

“If I only [k]new my credit score before attempting to purchase a home. Someone else, with the same name as myself, had a really terrible score. The [consumer reporting agency] had mixed up his [credit record] with mine and this resulted in ruining my score. It took almost a year to get everything straightened out.”

A similar, but more subtle matching issue occurs when good information belonging to one consumer gets associated with another—which could unfairly damage the original consumer's credit score, though it will help the other consumer.³⁵ Matching problems can also lead to incorrect public records entries. Often, one's Social Security number is not used in a court record. CRAs have to use other personal information to place the record with a consumer, potentially resulting in errors.³⁶

Sometimes, the report the CRA gives to a consumer will not include mixed data, but the CRA will send a report on the same consumer to a lender that includes the mixed data. This is because CRAs maintain stricter matching requirements for reports for consumers than they do for lenders.³⁷ Therefore, mixed files can be particularly difficult to detect, and some consumers may not be aware of the problem until they are turned down for credit.

Consumer credit report accuracy can also be compromised when CRAs neglect to regularly update public records information.³⁸ Additionally, problems can be introduced due to Metro 2, the standardized reporting method that the CRAs use. While the National Consumer Law Center (NCLC) argues that errors may be caused by furnishers' failure to comply with the Metro 2 format,³⁹ it also notes that the format itself has limitations that can create misleading entries.⁴⁰ For example, since there is currently no way to report a short sale of a property through Metro 2, the sale is translated as “settled for less than full amount,” or “foreclosure started.”⁴¹ This

³⁵ See KEY DIMENSIONS, *supra* note 3, at 23.

³⁶ FAIR CREDIT REPORTING, *supra* note 7, at 130; see also Mary Spector, *Where the FCRA Meets the FDCPA: The Impact of Unfair Collection Practices on the Credit Report*, 20 GEO. J. ON POVERTY L. & POL'Y 479, 486 (2013) (discussing sources of public records errors).

³⁷ FAIR CREDIT REPORTING, *supra* note 7, at 137; KEY DIMENSIONS, *supra* note 3, at 37.

³⁸ FAIR CREDIT REPORTING, *supra* note 7, at 130; Spector, *supra* note 36, at 486.

³⁹ *Making Sense of Consumer Credit Reports: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the Sen. Comm. on Banking, Housing and Urban Affairs*, 112th Cong. (2012) (statement of Chi Chi Wu, NCLC), available at http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b5d9716-9a48-4757-90d8-7a69d33af0ca (see 6-7 of PDF).

⁴⁰ See, e.g., NAT'L CONSUMER LAW CTR., SOLVING THE CREDIT CONUNDRUM: HELPING CONSUMERS' CREDIT RECORDS IMPAIRED BY THE FORECLOSURE CRISIS AND GREAT RECESSION 7 (2013) [hereinafter SOLVING THE CREDIT CONUNDRUM], available at http://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf; FAIR CREDIT REPORTING, *supra* note 7, at 119.

⁴¹ SOLVING THE CREDIT CONUNDRUM, *supra* note 40, at 7. Moreover, this issue could affect one's credit score. According to FICO analyst Frederic Huynh, “In general, foreclosures, short sales, and

inaccurate characterization may cause a potential lender or employer to believe that the consumer had actually gone into foreclosure.⁴²

To address these problems, new rules must make clear the “reasonable procedures” CRAs must pursue in order to ensure credit report accuracy. For example, require credit bureaus to consistently match both the first and last name of the consumer, their date of birth, as well as other relevant information as appropriate.

Errors Caused by Furnisher Mistakes and Procedures

Credit report mistakes can also occur when data furnishers report incorrect information to the CRA. This can be the result of a simple mistake, such as a typographical or computer error, or a broader systemic problem.⁴³ The CRAs, too, sometimes fail to thoroughly investigate information to make sure it is correct. The CRAs do investigate a company before they begin accepting its information, and make sure that it can report information according to the Metro 2 format. Once a new furnisher successfully completes the CRAs’ introductory period, the CRAs’ computers look for—and reject—information that is logically inconsistent or clearly erroneous. Still, the CRAs do not try to independently verify the information reported by furnishers.⁴⁴

Failing to independently verify information reported by furnishers can leave consumers vulnerable to errors as a result of furnisher mistakes. Aleta, from Mena, Arkansas, told us about the frustration she felt as a result of a simple computer error:

“A bill was mistakenly issued to me because of a computer glitch. I tried to resolve it and was told everything had been taken care of. Then I was turned over to a collection agency. I called again and told everything had been taken care of. Instead it turned up on my credit report. I went thr[ough] the investigation process. That was useless! Then I asked and eventually got a letter from the creditor stating it was THEIR fault and it never should have been turned over to a collection agency in the first place. They also contacted the collection agency and told them it was a mistake. The collection agency contacted the credit bureaus and told them I did not and never had owed the bill. It was all a mistake. Well that was 7 months ago and IT IS STILL ON MY CREDIT REPORT!”

Aleta’s story shows how small mistakes on the part of a creditor can end up hurting a consumer, and how much time it can take for the CRAs to correct errors. Communication problems between the creditor, collection agency, and the CRA can make it challenging for the consumer to fix the problem—even if the creditor and collection agency are in agreement that a mistake has been made.

deeds in lieu are all treated in a similar manner by the FICO Score.” Frederic Huynh, *Adapting Credit Scores to Evolving Consumer Behavior and Data*, 46 SUFFOLK U. L. REV. 829, 839 (2013).

⁴² According to NCLC, however, there is currently no judicial consensus that this should be considered an inaccuracy. See SOLVING THE CREDIT CONUNDRUM, *supra* note 40, at 7.

⁴³ KEY DIMENSIONS, *supra* note 3, at 24; AUTOMATED INJUSTICE, *supra* note 31, at 10.

⁴⁴ KEY DIMENSIONS, *supra* note 3, at 18-19.

Mike, from Dunwoody, Georgia, also found inaccurate information on his credit report because of a furnisher error, which made it impossible for him to obtain new credit. In this case, the furnisher did not believe it had erred, and Mike sued the furnisher and the three nationwide CRAs to address the problem. He explains:

“A creditor claimed I was delinquent in my payments and I claimed I was not based on the conditions of my account. Creditor persisted and put a negative in my report causing other creditors to cancel my accounts, new creditors would not give me credit because of the negative. At the checkout counter of a store where I wanted to take advantage of an offer I was refused in front of other customers because of the negative in my report. I finally had to file suit against the creditor and the three reporting agencies to get all this corrected. It took over two years to get this resolved.”

Broader procedural problems can also lead to furnisher errors. For example, furnishers sometimes provide inaccurate information when they fail to correct an error that had already been successfully disputed by a consumer. If the error is not corrected fully in the system, the information can reappear on the consumer’s report a few months later.⁴⁵ Furnishers may also incorrectly claim that a consumer is legally responsible for a credit card account when, in fact, he or she is simply an authorized user on the card.⁴⁶

In addition, many credit report errors are due to mistakes in medical billing. The Commonwealth Fund estimates that in 2012, seven million working-aged adults had an incorrect medical bill that was sent to a collection agency.⁴⁷ Furthermore, Commonwealth found that 41 million adults of working age—22%—had a medical debt in collections in 2012.⁴⁸ Of the millions of Americans with medical collections on their credit reports, over three million have paid or settled medical debt in collections that remains on their credit reports and continues to harm their credit scores.⁴⁹ All of these instances can have serious consequences for consumers, as a bill in collections can lead to a 100-point drop in a consumer’s FICO score.⁵⁰

⁴⁵ FAIR CREDIT REPORTING, *supra* note 7, at 205. CRAs are also responsible for making sure this information isn’t included on credit reports. 15 U.S.C. § 1681i(a)(5)(A) (2012 & Supp. I).

⁴⁶ KEY DIMENSIONS, *supra* note 3, at 25; AUTOMATED INJUSTICE, *supra* note 31, at 10-11.

⁴⁷ THE COMMONWEALTH FUND, INSURING THE FUTURE: CURRENT TRENDS IN HEALTH COVERAGE AND THE EFFECTS OF IMPLEMENTING THE AFFORDABLE CARE ACT 6 (2013) [hereinafter INSURING THE FUTURE], available at http://www.commonwealthfund.org/~media/Files/Publications/Fund%20Report/2013/Apr/1681_Collins_insuring_future_biennial_survey_2012_FINAL.pdf. For more on medical billing errors, see *Check medical bills for errors*, CONSUMER REPORTS MONEY ADVISOR, Aug. 2009, available at <http://www.consumerreports.org/cro/money/personal-investing/check-medical-bills-for-errors/overview/index.htm>.

⁴⁸ INSURING THE FUTURE, *supra* note 47, at 6.

⁴⁹ Carla K. Johnson, *Small, paid-off debt can mar credit, upend financing for unknowing Americans*, DAILY JOURNAL, Mar. 4, 2012, available at <http://www.accessproject.org/adobe/press/March4%20DailyJournal.pdf>.

⁵⁰ Jessica Silver-Greenberg, *How to Fight a Bogus Bill*, WALL ST. J., Feb. 19, 2011, available at <http://online.wsj.com/news/articles/SB10001424052748703312904576146371931841968> (citing FICO estimates).

Furnishers should do more to ensure that they are providing “accurate, timely, up to date, and fully substantiated”⁵¹ information. For example, unless it conflicts with an existing law, they should hold on to documentation regarding an account as long as that account is included in a consumer’s credit history. Moreover, to alleviate the impact of errors in medical billing on consumers, all paid or settled medical debt should be immediately removed from credit reports.

Debt Collection Issues

Debt collectors can also contribute to credit reporting mistakes when they report the incorrect starting date or “date of delinquency” for the seven-year period that negative information may be included in a credit report.⁵² This date of delinquency is 180 days after the first missed payment for accounts that are sent to collections or charged off.⁵³ This date should not change even if the account is sold, placed with a new collector, or if there is a partial payment to the account.⁵⁴ Debt collectors sometimes instead report the date they received the account.⁵⁵ This practice, known as “re-aging,” is a violation of FCRA.⁵⁶ Richard, from Swanton, Ohio, experienced repeated problems with re-aged debt on his credit report. He told us:

“I have fought with the big three credit reporting agencies for almost 20 years, continuously attempting to correct mistakes. This experience has so jaded me, that I no longer attempt to resolve these issues. . . . **I have had (recently) continuous re-listing of debts from 2000 on my current reports, because legal collectors refile them as NEW debts, and the agencies DO NOT remove them.** I have sent literally an average of one or more letters a year to each agency expressing my disappointment. Their inaccuracies have cost me business loans, personal loans, and ruined our credit from the 1990s to present.”⁵⁷

As Richard’s story illustrates, collectors do not always report the correct date of delinquency to the CRAs, and they in turn may not adequately check to make sure the furnishers are providing accurate information. Furnishers must uphold their legal responsibilities to report the correct date relating to the account, and compliance must be enforced.

⁵¹ Consumers Union and other advocacy groups have recommended this language in previous FCRA rulemakings. *See infra* note 163.

⁵² *See* 15 U.S.C. § 1681s-2(a)(5)(A) (2012 & Supp. I) (setting reporting requirements for furnishers, such as debt collectors).

⁵³ 15 U.S.C. § 1681c(c)(1).

⁵⁴ FED. TRADE COMM’N, 40 YEARS OF EXPERIENCE WITH THE FAIR CREDIT REPORTING ACT: AN FTC STAFF REPORT WITH SUMMARY OF INTERPRETATIONS 94 (2011) [hereinafter 40 YEARS OF EXPERIENCE], available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrcareport.pdf> (stating that FCRA Section 623(a)(5)(A) requires a “firm date” for start of delinquency).

⁵⁵ FAIR CREDIT REPORTING, *supra* note 7, at 220.

⁵⁶ *See* 15 U.S.C. § 1681c(c)(1) (setting reporting period for delinquencies); FAIR CREDIT REPORTING, *supra* note 7, at 220-22 (description of “re-aging” practice and its effects); EVAN HENDRICKS, CREDIT SCORES & CREDIT REPORTS: HOW THE SYSTEM REALLY WORKS, WHAT YOU CAN DO 198-201 (2004) (discussing lawsuits brought against debt collectors for re-aging debts on credit reports).

⁵⁷ Emphasis added.

Errors Caused By Identity Theft

The prevalence of identity theft also leaves consumers vulnerable to credit report errors.⁵⁸ Identity theft can occur when a thief obtains personal financial information sufficient to open credit accounts in someone else's name.⁵⁹ This type of identity theft affected over one million consumers in 2012.⁶⁰ Moreover, it can take a long time to identify and address the problem. A report published by the FTC in 2007 showed that 24 percent of consumers who experienced this type of theft failed to discover it for at least six months.⁶¹

Furthermore, these identity theft cases can be difficult to resolve with the CRAs. Sam, of Brookline, Massachusetts, shared how he struggled to correct the information on his account because of identity theft. Sam was turned down for credit while he worked to address the problem:

“Dealing with credit rating agencies can be a nightmare. Someone with access to my Social Security number opened a credit card account in my name and with his/her address (in another state where I had never lived)—and then made purchases before allowing the account to become delinquent. I learned about this fraud months later when applying for credit. A review of my credit report provided by one rating agency (Experian) made clear what had happened. I went thru all the hoops set up by the agency to correct my report—even tracking down the names of the people responsible for the fraud. I obtained a letter from the bank that had issued the fraudulently-obtained card, indicating that I had never been issued a credit card by the bank, and I filed a police report. Months later, the agency corrected my report. When I provided the same information to the other two major rating agencies (Equifax and Transunion)—including the corrected report from Experian and other documentation—each said it had to independently verify my case. **It took months more to have all three reports corrected—during which time I was denied credit twice and my credit score (over 800) fell by more than 200 points.**”⁶²

Sam's story demonstrates that once information about fraudulent accounts is included in a credit file, it can be a challenge for consumers to get the CRAs to remove it. Sam is not alone when it comes to the frustrations he has experienced. In 2012, the *Columbus Dispatch* examined almost 30,000 credit reporting complaints sent by consumers to the FTC and 24 state attorneys general and found that over half of the consumers who registered complaints with the FTC were unable to get the

⁵⁸ KEY DIMENSIONS, *supra* note 3, at 25; AUTOMATED INJUSTICE, *supra* note 31, at 9-10.

⁵⁹ Gail Hillebrand, *After the FACTA: State Power to Prevent Identity Theft*, 17 LOY. CONSUMER L. REV. 53, 55-56 (2004); FAIR CREDIT REPORTING, *supra* note 7, at 403.

⁶⁰ U.S. DEP'T OF JUSTICE, VICTIMS OF IDENTITY THEFT, 2012 2 (2013), available at <http://www.bjs.gov/content/pub/pdf/vit12.pdf>.

⁶¹ SYNOVATE, FEDERAL TRADE COMMISSION – 2006 IDENTITY THEFT SURVEY REPORT 24 (2007), available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-2006-identity-theft-survey-report-prepared-commission-synovate/synovatereport.pdf>.

⁶² Emphasis added.

credit bureaus to fix the mistakes on their credit reports.⁶³ Since October 2012, over 2,600 consumers have complained to the CFPB about the problems they have experienced with the CRAs' credit report error investigation process.⁶⁴

As these consumer stories illustrate above, fixing errors can be a complicated and often fruitless endeavor, despite laws requiring furnishers and CRAs to correct them.

Credit Reporting Agencies Fail to Conduct Adequate Investigations of Errors

Why is it so difficult to get CRAs to correct credit reporting errors? When a consumer reports an error, the CRAs have a legal responsibility to investigate the issue fully—but Congress and federal regulators have not explicitly laid out the standards that should be followed to conduct a “reasonable reinvestigation” as required by law.⁶⁵ It's also clear that the automated system developed by the CRAs to resolve disputes may not adequately address consumer complaints. The dispute investigation system places all of the power to adjudicate the dispute into the hands of the furnisher, which often performs just a cursory investigation.⁶⁶

The CRAs and furnishers primarily rely on an automated online system, known as e-OSCAR, to transmit information about disputes to one another, and to resolve them.⁶⁷ Use of this system allows the CRAs to complete reinvestigations very quickly. According to industry data from 2004, over half of all disputes transferred to a furnisher by a CRA are returned within a week.⁶⁸

⁶³ Jill Riepenhoff & Mike Wagner, *Credit Scars*, THE COLUMBUS DISPATCH, May 6, 2012, available at <http://www.dispatch.com/content/stories/local/2012/05/06/credit-scars.html#channel=f1f6be9f35dbe1a&origin=http%3A%2F%2Fwww.dispatch.com>.

⁶⁴ Consumer Fin. Protection Bureau, Consumer Complaint Database, <http://www.consumerfinance.gov/complaintdatabase/> (2,630 entries as of Feb. 19, 2014) (click on “Credit Reporting Complaints” and filter for “credit reporting company’s investigation”).

⁶⁵ For descriptions of how the reinvestigation process currently operates, see, e.g., FED. TRADE COMM’N, REPORT TO CONGRESS ON THE FAIR CREDIT REPORTING ACT DISPUTE PROCESS 6-7 (2006), available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-and-board-governors-federal-reserve-system-report-congress-fair-credit/p044808fcradisputeprocessreporttocongress.pdf> [hereinafter FTC DISPUTE PROCESS REPORT]; AUTOMATED INJUSTICE, *supra* note 31, at 14-20; Spector, *supra* note 36, at 487-88.

⁶⁶ See, e.g., AUTOMATED INJUSTICE, *supra* note 31, at 21-25; KEY DIMENSIONS, *supra* note 3, at 35.

⁶⁷ FTC DISPUTE PROCESS REPORT, *supra* note 65, at 15; e-OSCAR, Home, www.e-oscar.org, (last visited Mar. 18, 2014). Complaints about public records errors are handled differently. CRAs do not use the e-OSCAR system for handling public records disputes; instead, they either obtain the public record in dispute and check it, or they have an agent check the public record on their behalf. KEY DIMENSIONS, *supra* note 3, at 35; see also Spector, *supra* note 36, at 488.

⁶⁸ FTC DISPUTE PROCESS REPORT, *supra* note 65, at 22.

The dispute process works as follows:

- After the consumer submits a complaint with the CRA, the agency conducts a quick investigation against their system to check for easily verified errors or duplicate disputes. About 15 percent of the complaints are addressed or dismissed during this process.⁶⁹
- The CRAs send the remaining 85 percent of complaints to the furnisher through e-OSCAR.⁷⁰ The CRA distills the complaint information supplied by the consumer into a standardized document known as an Automated Consumer Dispute Verification form (ACDV).⁷¹ On this form, the complaint is translated into a code or codes, and sometimes with additional text.⁷² For example, according to an industry lobbyist, a code might read: “E1–‘Claims paid original creditor before collection started or paid before charge-off. Verify account status, payment rating, current balance, amount past due, pay history.’”⁷³ CRAs are also required to send “all relevant information” to the furnisher for review,⁷⁴ and furnishers must examine it.⁷⁵ Consumers can now submit supporting documentation by mail, fax, or online for furnishers to view.⁷⁶
- The data furnisher then investigates the error by checking the complaint against the information on file, before sending a determination back to the CRA.⁷⁷

⁶⁹ KEY DIMENSIONS, *supra* note 3, at 32.

⁷⁰ *Id.*

⁷¹ FTC DISPUTE PROCESS REPORT, *supra* note 65, at 14.

⁷² KEY DIMENSIONS, *supra* note 3, at 32.

⁷³ *Credit Reports: What Accuracy and Errors Mean for Consumers: Hearing Before the Subcomm. on Consumer Protection, Product Safety and Insurance of the Sen. Comm. on Commerce, 113th Cong. (2013)* (statement of Stuart K. Pratt, Consumer Data Industry Association), available at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=f5e66411-e2e4-41c1-8380-add209111034 (see 13 of PDF).

⁷⁴ 15 U.S.C. § 1681i(a)(2)(A)(2012 & Supp. I).

⁷⁵ 15 U.S.C. § 1681s-2(b)(1)(B).

⁷⁶ Gail Hillebrand, *Now you have better options to dispute a credit report error*, CFPB BLOG, Feb. 27, 2014, <http://www.consumerfinance.gov/blog/now-you-have-better-options-to-dispute-a-credit-report-error/>. Until recently, the e-OSCAR system used by the three biggest CRAs did not even have the capability to forward documents submitted by consumers to the furnishers as they conduct their investigations into credit errors. See KEY DIMENSIONS, *supra* note 3, at 34. Within the last year, however, the e-OSCAR system has become equipped to forward consumer-provided documents to the furnisher, enabling a more thorough investigation process. See Press Release, Consumer Fin. Protection Bureau, CFPB Puts Companies on Notice About Duty to Investigate Consumer Credit Report Disputes (Sept. 4, 2013), available at <http://www.consumerfinance.gov/newsroom/cfpb-puts-companies-on-notice-about-duty-to-investigate-consumer-credit-report-disputes/>. In February 2014, the CFPB announced the new e-OSCAR capability to handle documents submitted online by consumers. Richard Cordray, Director, Consumer Fin. Protection Bureau, Remarks at the Consumer Advisory Board Meeting (Feb. 27, 2014), available at <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-advisory-board-meeting/>.

⁷⁷ KEY DIMENSIONS, *supra* note 3, at 32; FTC DISPUTE PROCESS REPORT, *supra* note 65, at 19-21.

- Consumers are also permitted to submit complaints right to the furnisher, instead of, or in addition to, the CRA.⁷⁸ Furnishers consider the information submitted to them and send a correction through the e-OSCAR system to the CRA if they believe it is warranted.⁷⁹

While this process for investigating errors sounds straightforward, it does not always serve the best interests of consumers. First, CRA call center agents often are not equipped to provide consumers with the help they need. According to testimony provided by consumer advocates, the CRAs have outsourced many of their call centers overseas to cut costs,⁸⁰ and some call center agents have been instructed to handle consumer complaint calls in four to six minutes.⁸¹ But as reporter Steve Kroft of *60 Minutes* notes, “[R]egardless of where they are or who you talk to, they won’t be much help.”⁸² Kroft interviewed former Experian call center agents in Santiago, Chile, who revealed that they had no power to actually investigate error complaints, but merely to code the disputes, and accept the account of the furnisher.⁸³

Clearly, the CRAs rely on the furnishers to conduct the investigations and determine whether or not an error has occurred. The CRAs usually take the word of the furnisher in handling these complaints. Greg from Broadview Heights, Ohio, illustrates this in describing how the CRA accepted the data furnisher’s word over his in a dispute over an account:

“Creditor erroneously reported account as delinquent. Disputed account with credit bureau. Creditor ‘verified’ report by repeating same erroneous information. Credit bureau refused to accept second dispute, referring to creditor. Creditor refused to discuss case, referring to attorney.”

⁷⁸ FTC DISPUTE PROCESS REPORT, *supra* note 65, at 25.

⁷⁹ *Id.* at 26.

⁸⁰ *Credit Reports: Consumers’ Ability to Dispute and Change Information: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007) (statement of Evan Hendricks, Privacy Times), available at <http://archives.financialservices.house.gov/hearing110/oshendricks061907.pdf> (see 3 of PDF); *Fair Credit Reporting Act: How it Functions for Consumers and the Economy: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007) (statement of Leonard A. Bennett, Nat’l Ass’n. of Consumer Advocates) available at <http://democrats.financialservices.house.gov/hearing110/osbennett061907.pdf> (see 30 of PDF).

⁸¹ AUTOMATED INJUSTICE, *supra* note 31, at 32. For more on the limited resources devoted to the investigation process, see Kelly Dilworth, *Why the Consumer Dispute Process is Broken*, CREDITCARDS.COM, Oct. 17, 2012, http://www.creditcards.com/credit-card-news/credit_report_dispute-process-broken-1270.php?a_aid=9fc4cb60; Anne Kadet, *Why the Credit Bureaus Can’t Get It Right*, THE NETWORK J., Mar. 25, 2009, available at <http://www.tnj.com/why-the-credit-bureaus-cant-get-it-right>. Inadequate customer service at the CRAs has been a concern for many years, prompting FTC investigations in the mid-1990s and enforcement actions in the early 2000s. See NAT’L ASS’N. OF STATE PIRGS, *MISTAKES DO HAPPEN: A LOOK AT ERRORS IN CONSUMER CREDIT REPORTS 9* (2004), available at http://www.uspirg.org/sites/pirg/files/reports/Mistakes_Do_Happen_2004_USPIRG.pdf.

⁸² Steve Kroft, *40 Million Mistakes: Is Your Credit Report Accurate?*, CBS NEWS, Aug. 25, 2013, available at <http://www.cbsnews.com/news/40-million-mistakes-is-your-credit-report-accurate-25-08-2013/> (60 Minutes broadcast originally aired on Feb. 10, 2013) (see 2 of transcript).

⁸³ *Id.* (see 4 of transcript).

This is problematic for consumers for two reasons. First, this unfairly places the burden on the consumer to show that the furnisher has made a mistake.⁸⁴ FCRA requires CRAs to remove any information from a report that “cannot be verified,” thus furnishers have the responsibility to prove the consumer wrong.⁸⁵ Second, furnishers often fail to conduct a thorough investigation into the problem, which raises questions about the veracity of their claims in some cases.

Furnisher investigations are inadequate to correct many types of errors. According to an industry source, attorney Anne P. Fortney, a typical furnisher investigation has the employee “at a minimum, verify the consumer information by matching the name, Social Security number and other pertinent data; and review the account history, including payment history and any historical notes related to the account.”⁸⁶ These investigations can be lacking, especially when the errors were already caused by or reflected in the furnisher’s computer records. In other cases, it is clear that the employees in charge of the reinvestigation fail to uphold even these minimum standards.

Many courts have found that the existing procedures CRAs and furnishers use fall short of what constitutes a “reasonable” investigation as required by FCRA. For example, in *Dickman v. Verizon Communications, Inc.* (2012), the court refused to dismiss the case against Verizon and found that there were questions about the adequacy of their investigation process in part because, as the plaintiff argued, Verizon informed the CRAs “that he had become delinquent on the [n]ew [a]ccount three months *before* he actually opened it.”⁸⁷ This error revealed that Verizon had not fully investigated the error complaint, since it supplied information that information that was clearly false. Verizon claimed that it followed a similar procedure as described by Fortney to investigate errors—checking the account, verifying the name and other identifiers, and looking at the record of past payments.⁸⁸

In *Boggio v. USAA Federal Savings Bank* (2012), USAA employees responded to an error complaint by simply reconfirming the plaintiff’s identity, and did not review any underlying documentation in his file.⁸⁹ The court denied USAA’s motion for summary judgment in their favor because it could not conclude that USAA’s investigation was “reasonable” as a matter of law.⁹⁰ The plaintiff sued because he believed he was incorrectly listed as a “co-obligor” on his ex-wife’s loan—information that had been forwarded to the CRAs.⁹¹ Deposition testimony revealed that USAA employees are “not permitted to make any phone calls to anyone” or review any documents submitted by paper.⁹²

⁸⁴ AUTOMATED INJUSTICE, *supra* note 31, at 28.

⁸⁵ 15 U.S.C. § 1681i(a)(5)(A) (2012 & Supp. I).

⁸⁶ *Credit Reports: Consumers’ Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007) (statement of Anne P. Fortney), available at <http://archives.financialservices.house.gov/hearing110/osfortney061907.pdf> (see 9 of PDF).

⁸⁷ 876 F.Supp.2d 166, 174 (E.D.N.Y. 2012).

⁸⁸ *Id.* at 173.

⁸⁹ 696 F.3d 611, 619 (6th Cir. 2012).

⁹⁰ *Id.* at 619-20.

⁹¹ *Id.* at 613.

⁹² Brief for Appellant, *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 2012 WL 248111, at *8 (6th Cir. 2012) (No. 11-4040).

Dixon-Rollins v. Experian Information Solutions, Inc. (2010) revealed that TransUnion and furnishers did not conduct a reasonable investigation of the plaintiff's dispute as required by law.⁹³ The court upheld the judgment and award for the plaintiff, finding that TransUnion had not fulfilled its duty to investigate in part because it did not forward any of the documentation that plaintiff Dixon-Rollins provided to the debt collector during the reinvestigation, and simply accepted the debt collector's word.⁹⁴ Although Dixon-Rollins had paid off the debt, her four attempts to have the incorrect information altered on her credit report were in vain.⁹⁵ The debt collector simply checked its records and reconfirmed to the CRA—incorrectly—that the debt had not been paid.⁹⁶

Problems can also occur when CRAs do not follow their own procedures to resolve errors. The case of *Miller v. Equifax Information Services LLC* (2013)⁹⁷ highlighted some of these lapses in the CRA investigation system, especially when trying to correct a mixed file. In this case, the court upheld the judgment and granted Julie Miller \$1.8 million in both punitive and compensatory damages after Equifax ignored her efforts to remove errors from her credit report.⁹⁸ Over the course of two years, Miller challenged a number of collections entries on her credit report that did not belong to her, but Equifax failed to remove them.⁹⁹ Equifax's representative testified that while she couldn't conclusively explain the reason for this lapse, Equifax employees may have let the marks remain because they couldn't verify the plaintiff as the owner of the credit file.¹⁰⁰ Although Equifax maintained that it established special procedures to deal with a mixed file, in this case, standard procedures were not followed.¹⁰¹

In February 2014, the CFPB put furnishers on notice that they must fully investigate all error disputes. It had found that many furnishers simply asked the CRA to erase the disputed account from the consumer's credit report, without looking into complaint at all.¹⁰² The CFPB expressed its concern that by choosing not to investigate an error, the furnishers might overlook broader problems that could lead to repeated mistakes, and might lead them to fall short of their legal responsibilities to correct the erroneous information involved in the consumer dispute with each of the CRAs.¹⁰³

⁹³ *Dixon-Rollins v. Experian Info. Solutions, Inc.*, 753 F. Supp. 2d 452, 465 (E.D. Pa. 2010) (defendant "repeatedly failed to carry out its statutory duty" under FCRA). The plaintiff sued both Experian and TransUnion, but reached a settlement with Experian. *Id.* at 456.

⁹⁴ *Id.* at 456-7, 459. The award was reduced, however. *Id.* at 456.

⁹⁵ *Id.* at 457.

⁹⁶ *Id.*

⁹⁷ No. 11-1231 (D. Or. Jan. 29, 2014).

⁹⁸ *Miller*, No. 11-1231, slip. op. at 2. At trial, the jury had granted \$18 million. *Id.*

⁹⁹ Complaint at 6, *Miller v. Equifax Info. Servs.*, No. 11-1231 (D. Or. Jan. 29, 2014); see also Laura Gunderson, *Equifax must pay \$18.6 million after failing to fix Oregon woman's credit report*, THE OREGONIAN, July 26, 2013, available at

http://www.oregonlive.com/business/index.ssf/2013/07/equifax_must_pay_186_million_a.html (noting that the *Miller* judgment would be the largest award ever obtained in a case against a major CRA).

¹⁰⁰ Transcript of Record at 278-84, *Miller v. Equifax Info. Servs.*, No. 11-1231 (D. Or. Jan. 29, 2014).

¹⁰¹ *Id.* at 442-47.

¹⁰² Consumer Fin. Protection Bureau, CFPB BULLETIN 2014-01 1 (2014), available at http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf.

¹⁰³ *Id.*

These examples help to demonstrate how minimal steps taken by CRAs and furnishers do not properly address or even clarify the underlying dispute. In many cases, CRAs are accepting the word of the furnisher, even when they don't have evidence to back up their case. This is true even for disputes from furnishers who are debt collectors. A CRA will accept the furnisher's response to the dispute, even if the consumer is actually correct, has documentation that she is correct, and the furnisher has sent nothing to back up its response. NCLC notes that this not only places the burden of proof on the consumer, it unfairly gives the furnisher the role of being the judge in the dispute against it.¹⁰⁴

Consumers need additional protections so that credit reporting disputes are settled fairly. Most importantly, CRAs should not simply accept the word of the furnisher in a dispute without any evidence. Disputed information should be removed from a consumer's credit record if the furnisher cannot provide documentation to corroborate its claims following the consumer dispute. Also, consumers should be permitted to submit additional documents or evidence in support of their dispute, without having to worry that the dispute will be marked "frivolous" and dismissed.¹⁰⁵

Credit Report Errors Can Impact Many Aspects of Consumers' Lives

Credit report mistakes can have dire consequences for consumers. Consumers may pay thousands of dollars more in interest over the lifetime of their mortgages due to errors that place them in a lower credit-rating category,¹⁰⁶ and hundreds of dollars more in auto insurance per year. An error on a credit report can even mean losing out on a job, and can leave a consumer unable to perform simple online identity verifications.

Higher Interest Rates on Loans

Accurate credit reports are essential for consumers who are looking to get the best deal on credit such as a car loan or mortgage, since errors can lead to lower credit scores. For example, an erroneous 30-day "bank card" delinquency placed on a consumer's credit report could potentially lead to a 100-point drop in their FICO score.¹⁰⁷ If the consumer's FICO score fell 100 points from 780 to 680, he or she could end up paying \$456 more per year on a \$25,000, 36-month auto loan¹⁰⁸ and \$840 more per year for a \$300,000 fixed-rate, 30-year mortgage—or \$25,200 over

¹⁰⁴ *Making Sense of Consumer Credit Reports: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the Sen. Comm. On Banking, Housing and Urban Affairs*, 112th Cong. (2012) (statement of Chi Chi Wu, NCLC), available at http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b5d9716-9a48-4757-90d8-7a69d33af0ca (see 22-24 of PDF).

¹⁰⁵ 15 U.S.C. § 1681i(3)(A) (2012 & Supp. I) (CRAs are allowed to reject disputes they have found are "frivolous or irrelevant"); see also 40 YEARS OF EXPERIENCE, *supra* note 54, at 77 (noting that CRAs can reject duplicative disputes that do not offer new evidence).

¹⁰⁶ KEY DIMENSIONS, *supra* note 3, at 11.

¹⁰⁷ KEY DIMENSIONS, *supra* note 3, at 12.

¹⁰⁸ Myfico.com, Save Money With FICO, <http://www.myfico.com/Products/Products.aspx> (last visited Mar. 20, 2013) (click on "36 month auto loan" tab to see current rates).

the entire loan.¹⁰⁹ In a 2002 joint report, the Consumer Federation of America (CFA) and the National Credit Reporting Association (NCRA) estimated that a consumer whose score fell from the “prime” to the “subprime” credit category would end up paying over \$124,000 more on a 30-year mortgage loan.¹¹⁰ CFA and NCRA estimated that eight million consumers would be misclassified as “subprime” as a result of credit reporting errors.¹¹¹

Financial expert Liz Weston claims that, in her own estimation, a consumer with a 650 score, compared to a consumer with a score of 750, could pay \$8,000 more in interest on a \$20,000 private student loan over the course of 10 years, and \$720 more per year in credit card interest.¹¹² All told, Weston estimates that the 100-point credit score drop could cause a consumer taking out a variety of loans to pay about \$200,000 more in interest over a lifetime.¹¹³

Furthermore, if a credit reporting error is not corrected, it can take a long time for one’s credit score to return to its previous heights. For example, FICO estimates that it will take about three years for a consumer with a credit score of 780 to return to his or her previous score after being marked 30 days late on a mortgage payment.¹¹⁴ Clearly, credit reporting errors can have significant, life-altering financial consequences for consumers.

Difficulty Getting Hired

Credit reporting errors can be particularly damaging for consumers seeking jobs—an unusually high percentage in this time of high unemployment.¹¹⁵ According to a Society for Human Resource Management (SHRM) survey published in 2012, almost half of employers report that they check credit reports in hiring decisions related to at least one of their positions.¹¹⁶ A recent Dēmos survey showed that a quarter of unemployed respondents were asked to authorize a credit check during a job

¹⁰⁹ Myfico.com, Home Purchase Center, <http://www.myfico.com/LoanCenter/Mortgage/> (last visited Mar. 20, 2014) (click on “30-year fixed” to see current rates).

¹¹⁰ CONSUMER FDN. OF AMERICA & NAT’L CREDIT REPORTING ASS’N., CREDIT SCORE ACCURACY AND IMPLICATIONS FOR CONSUMERS 39 (2002), available at http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf.

¹¹¹ *Id.*

¹¹² Liz Weston, *Lifetime cost of bad credit: \$201,712*, MSN MONEY, Oct. 13, 2011, <http://money.msn.com/credit-rating/lifetime-cost-of-bad-credit-201712-dollars-weston.aspx>.

¹¹³ *Id.*

¹¹⁴ *Research looks at how mortgage delinquencies affect scores*, FICO BANKING ANALYTICS BLOG, Mar. 2011, <http://bankinganalyticsblog.fico.com/2011/03/research-looks-at-how-mortgage-delinquencies-affect-scores.html>.

¹¹⁵ As of February 2014, the unemployment rate was 6.7%. U.S. Dep’t of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, <http://data.bls.gov/timeseries/LNS14000000> (last visited Mar. 20, 2014). A look at the unemployment rate for the last ten years shows that the unemployment rate was 5.7% at the start of 2004, dipping to lows on or around 4.4% in late 2006-early 2007, and hitting a high of 10% in October 2009.

¹¹⁶ Soc’y for Human Resource Mgmt., *Background Checking – The Use of Background Checks in Hiring Decisions 2* (2012), available at <https://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx> (click link at bottom of page to access full presentation).

application process, with one in ten applicants denied because of their credit record.¹¹⁷

For example, Tammy, of Fort Myers, Florida, told us that inaccurate information on her credit report is preventing her from obtaining employment:

“I believe most credit reports are inaccurate. Meaning the credit score will be incorrect as well. In my case, I have been denied job after job because of my credit score. This is very serious to me. I have been out of work for seven months now. I have no income and no one to depend on for help.”

While credit reports, not credit scores, are consulted in employment decisions, Tammy’s story illustrates how a credit history can compromise one’s ability to find employment.¹¹⁸ Although ten states now restrict the use of credit reports for employment purposes,¹¹⁹ the practice remains prevalent and current federal law does permit it.¹²⁰ Because employers may check credit reports during the hiring process, it is especially important that CRAs maintain accurate credit reports and do a better job of correcting errors.

Higher Insurance Costs

Credit report errors can lead to higher insurance rates. In most states, insurance companies are allowed to use credit reports and scores in setting rates.¹²¹ The top auto insurance companies use credit scores for this purpose,¹²² and several major insurance companies use credit scores in setting homeowners’ insurance rates.¹²³ Consumers Union has long opposed this practice, in part because of the unreliable nature of credit reports, and also because the practice can be discriminatory. Consumers with lower credit scores often pay more for insurance despite having

¹¹⁷ DEMOS, DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB 3-4 (2013) available at <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>.

¹¹⁸ For more information on the use of credit reports in employment decisions, see KEY DIMENSIONS, *supra* note 3, at 10; FAIR CREDIT REPORTING, *supra* note 7, at 318.

¹¹⁹ CAL. CIV. CODE §1780.20.5, CAL. LAB. CODE §§ 1024.5—1024.6 (Deering 2013) (California); Colo. Rev. Stat. § 8-2-126 (2013) (Colorado); CONN. GEN. STAT. § 31-51tt (2013) (Connecticut); HAW. REV. STAT. § 378-2.7 (2013) (Hawaii); 820 ILL. COMP. STAT. 70/1-30 (2013) (Illinois); MD. CODE ANN., LAB. & EMPL. § 3-711 (LexisNexis 2013) (Maryland); NEV. REV. STAT. §§ 613.520—613.600 (2013) (Nevada); OR. REV. STAT. § 659A.320 (2013) (Oregon); VT. STAT. ANN. tit. 21, § 495i (2013) (Vermont); WASH. REV. CODE § 19.182.020 (2013) (Washington).

¹²⁰ 15 U.S.C. § 1681b(a)(3)(B) (2012 & Supp. I).

¹²¹ For more information on credit scores and insurance, see FAIR CREDIT REPORTING, *supra* note 7, at 320-21, 646-47.

¹²² FED. TRADE COMM’N, CREDIT-BASED INSURANCE SCORES: IMPACTS ON CONSUMERS OF AUTOMOBILE INSURANCE 11 (2007), available at http://www.ftc.gov/sites/default/files/documents/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal-trade/p044804facta_report_credit-based_insurance_scores.pdf.

¹²³ NAT’L CONSUMER LAW CTR. & CTR. FOR ECON. JUSTICE, CREDIT SCORING AND INSURANCE: COSTING CONSUMERS BILLIONS AND PERPETUATING THE ECONOMIC RACIAL DIVIDE 4 (2007), available at http://www.cej-online.org/NCLC_CEJ_Insurance_Scoring_Racial_Divide_0706.pdf.

good driving records and being responsible homeowners.¹²⁴ The impact of such pricing practices disproportionately falls on low-income consumers who have the most difficulty making ends meet.¹²⁵

Judy, of New York, New York, told us about her struggle, due to errors on her credit report, to get affordable car insurance:

“Based upon erroneous information [on my credit report] and assumptions made hastily, my car insurance company with which I had worked for several decades doubled my insurance rates overnight. I have not been able to get copies of my credit scores from the three credit companies or to get them to remove the erroneous information to date.”

As Judy’s story demonstrates, lowered credit scores can have a significant impact on auto insurance rates—in certain cases costing hundreds of dollars more per year. According to the CFA, in Baltimore, a customer with State Farm Insurance, F&C will pay \$632 more per year for dropping from an “excellent” to an “average” credit score.¹²⁶

Errors Can Make It Difficult to Verify Identity

Credit reporting errors can also cause problems when trying to confirm one’s identity online. Each of the three major CRAs offers identity verification services for purchase.¹²⁷ If the identity verification service relies on a credit report that contains errors, it can be difficult to perform simple, but essential, online activities. For example, L. from Lake Jackson, Texas, reported to us:

“I’ve had repeated problems with the credit bureaus mixing up me and my sister-in-law. It hasn’t prevented me from getting loans, but it does prevent me from passing identity verification online. . . .

“I can’t even access an electronic document signing system I’m supposed to use at work because I can’t get past the identity verification [one of the credit reporting agencies] does for [document verification company].”

¹²⁴ CONSUMERS UNION, SCORE WARS: CONSUMERS CAUGHT IN THE CROSSFIRE: THE CASE FOR BANNING THE USE OF CREDIT INFORMATION IN INSURANCE 3 (2006) *available at* <http://consumersunion.org/pdf/ScoreWars.pdf>.

¹²⁵ *Id.* at 2-3; *see also* CONSUMER FEDN. OF AMERICA, THE USE OF CREDIT SCORES BY AUTO INSURERS: ADVERSE IMPACTS ON LOW- AND MODERATE-INCOME DRIVERS 1 (2013), *available at* http://www.consumerfed.org/pdfs/useofcreditscoresbyautoinsurers_dec2013_cfa.pdf.

¹²⁶ *Id.* at 5.

¹²⁷ Equifax.com, Identity Proofing, http://www.equifax.com/technology/anakam/products/identity_proofing/en_tas (last visited Mar. 20, 2014); Experian.com, Authenticate, Secure and Protect, <http://www.experian.com/public-sector/authenticate-identities.html> (last visited Mar. 20, 2014); TransUnion.com, Identity Manager Authentication, <http://www.transunion.com/direct/servicesolutions/fraudIdentityMgmt/identityAuthentication.page> (last visited Mar. 20, 2014).

By correcting credit reporting mistakes, the CRAs can help ensure that consumers are judged fairly based on their true financial history and not on erroneous information.

The Difficulty of Getting a Reliable Credit Score

Like credit reports, credit scores are often used by lenders, insurers, and others to make important decisions about consumers. Many consumers have reported to us that they have difficulty obtaining credit score information that is consistent with the information lenders get to see. The scores sold to consumers may differ from the scores sold to a potential creditor, even if both parties bought the scores from the same CRA.¹²⁸

The differences between the scores available to lenders and those available to consumers can be significant. A recent analysis by the CFPB found that the credit scores most often used by lenders compared to the scores consumers most often buy from the CRAs would put consumers in “credit-quality categories that are off by one category 19-24% of the time.”¹²⁹ That’s why consumers deserve access to free yearly credit scores with their annual credit reports, the same scores that most lenders and others use when evaluating a consumer’s credit history.¹³⁰

There Are Many Different Credit Scores

There are many scores available for purchase by consumers and by lenders, but consumers have limited access to the scores viewed by lenders. The wide variety of scores also means that the score purchased by a consumer may not be the one that the lender uses. Most consumers are familiar with FICO scores, the “generic” or all-purpose scores they can purchase at myfico.com. Consumers have one score for each of the big three CRAs: Experian, Equifax, and TransUnion.¹³¹ A consumer’s generic FICO score can vary from one CRA to the next, for at least two reasons. First, each CRA may have different information in the credit report used as a basis

¹²⁸ IMPACT OF DIFFERENCES, *supra* note 1, at 5-7, 14; *see also Don’t Buy Useless Credit Scores: Your FICO score isn’t what car dealers, mortgage lenders, and others use*, CONSUMER REPORTS, July 2013, available at <http://www.consumerreports.org/cro/magazine/2013/07/don-t-buy-useless-credit-scores/index.htm?loginMethod=auto>; DÉMOS, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION’S CREDIT REPORTING INDUSTRY 14-15 (2011), available at http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf.

¹²⁹ CONSUMER FIN. PROTECTION BUREAU, ANALYSIS OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES 2, 17 (2012) [hereinafter ANALYSIS OF DIFFERENCES], available at http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf. This has been updated from an earlier version of the report, which incorrectly indicated that the CFPB’s analysis was based on a comparison between educational scores consumers buy from the CRAs and the scores most often used by lenders. It has also been updated to specify that the scores differ by one credit category 19 to 24 percent of the time.

¹³⁰ Consumers Union has long advocated for free access to one’s credit score. *See* Memorandum, Nat’l Consumer Law Ctr. et al. to Interested Parties re: Consumer Group Analysis of House FCRA Legislation, H.R. 2622 (Aug. 20, 2003), available at http://defendyourdollars.org/posts/1051-fixing_the_credit_reporting_system.

¹³¹ *See* Myfico.com, Products at a Glance, <http://www.myfico.com/Products/Products.aspx> (last visited Mar. 20, 2014).

for calculating the consumer's credit score.¹³² Second, FICO uses a different algorithm for each CRA when calculating the consumer's score.¹³³

A few years ago, the big three CRAs created a company to introduce an alternative score, called the VantageScore, that could compete with FICO scores.¹³⁴ Both consumers and lenders can purchase VantageScores.¹³⁵ They are calculated based on each of the three major CRA reports, and there are several generations of VantageScores as well.¹³⁶ VantageScore uses the same algorithm to calculate a score from the three credit reports of each of the CRAs.¹³⁷ Still, only about 1,300 lenders currently use the VantageScore.¹³⁸

The CRAs typically create educational scores that are rarely used by lenders, and that are often sold to consumers through credit-monitoring services.¹³⁹ Experian, for example, has a disclaimer noting that its PLUS score "is not the score used by lenders."¹⁴⁰

In contrast, lenders often consult scores that are not available for sale to consumers. For example, some lenders use "industry" scores that are calibrated specifically for that lending purpose, such as purchasing a car or taking out a mortgage loan.¹⁴¹ Scores created by "specialty" CRAs, like those based on rental data, are considered specialty scores.¹⁴² Lenders create their own credit-scoring systems, known as "custom" scores, and may even crunch several different scores together in their calculations.¹⁴³ Finally, FICO and VantageScore have different "generations" of scores, meaning that the companies revise and release new algorithms every few years.¹⁴⁴

Credit Score Discrepancies Can Harm Consumers

Free scores are available to consumers through websites such as CreditKarma.com, Quizzle.com, and CreditSesame.com.¹⁴⁵ Scores can also be obtained as a part of a

¹³² IMPACT OF DIFFERENCES, *supra* note 1, at 6.

¹³³ *Id.*

¹³⁴ *Id.* at 7.

¹³⁵ ANALYSIS OF DIFFERENCES, *supra* note 129, at 4.

¹³⁶ IMPACT OF DIFFERENCES, *supra* note 1, at 7-8.

¹³⁷ *Id.* at 7-8.

¹³⁸ *See* CONSUMER REPORTS, *supra* note 128.

¹³⁹ IMPACT OF DIFFERENCES, *supra* note 1, at 7.

¹⁴⁰ Experian, What's Your Experian Credit Score?, www.experian.com (last visited Mar. 20, 2014); *see also* CONSUMER REPORTS, *supra* note 128.

¹⁴¹ IMPACT OF DIFFERENCES, *supra* note 1, at 5; *see also* *Secret Scores You Need to Know About*, CONSUMER REPORTS MONEY ADVISOR, Jan. 2014, at 13.

¹⁴² FAIR CREDIT REPORTING, *supra* note 7, at 623.

¹⁴³ KEY DIMENSIONS, *supra* note 3, at 10; IMPACT OF DIFFERENCES, *supra* note 1, at 5.

¹⁴⁴ IMPACT OF DIFFERENCES, *supra* note 1, at 6, 8; *see also* *Credit Scores: Which Ones do Lenders Use?*, CONSUMER REPORTS, June 2009, available at <http://www.consumerreports.org/cro/money/credit-loan/credit-scores/overview/credit-scores-ov.htm>.

¹⁴⁵ Through CreditKarma.com, consumers can obtain a TransRisk New Account Score, and TransUnion VantageScores and Auto Insurance Scores. CreditKarma.com, Frequently Asked Questions, <https://www.creditkarma.com/about/faq> (last visited Mar. 20, 2014) (click on "What is the difference between the credit scores offered on Credit Karma?" under "Credit Scores"). Quizzle offers

credit monitoring package. However, these scores are often educational scores and thus do not always accurately capture a consumer's creditworthiness.¹⁴⁶ A number of consumers reported to us that they were unpleasantly surprised to find that the scores they obtained for free on the Internet or purchased through a credit monitoring service were more favorable than the scores used by lenders. For example, Brandi, of Cranberry Township, Pennsylvania, wrote:

"I prepared myself for my car search by reviewing my credit scores (where I could without offering up my credit card!) and was surprised when I went to get approved for my loan and received a much higher interest rate than expected. If I had the opportunity to see the credit score that the bank saw, I could have lined up a loan with an institution with better interest rates before I even picked my perfect car."

These score discrepancies can give consumers the false hope that they qualify for credit or low interest rates when they do not. Consumers can face higher interest rates than expected, or be denied credit.¹⁴⁷ Inconsistent scores can also lead to the loss of application fees upon denial. For example, Sheryl, from Murrieta, California, lost out on a refinance because of the difference between the credit score that she had viewed online and the score used by the lender:

"This last November, my husband got a credit score from a free site online and we went to our credit union to refinance our home loan which required a \$300 application fee which we paid without trepidation because of my husband's much improved credit score. "A week and a half into the process, we were informed that the actual credit score and the one we were quoted online differed enough to disqualify us for the loan and we had to forfeit the application fee as well as our hopes of consolidating and lowering our bills."

Chris, from Opelika, Alabama, found that the score he got along with a credit monitoring service he purchased was useless and confusing to him when looking to buy a house:

"I actually purchased creditscore.com monthly monitor service. [I was] going through process of purchasing house and noticed the huge difference in score from lender and my purchased service. I questioned it, but I didn't get an answer suitable for the difference."

Jimmy, of Wellington, Florida, lost out on a low-interest rate for a car loan after obtaining deceptively high credit scores:

consumers "a free VantageScore® credit score with your Equifax® credit report." Quizzle.com, What Is Quizzle, Free Credit Score, <https://www.quizzle.com/what-is-quizzle/free-credit-score> (last visited Mar. 20, 2014). Credit Sesame provides consumers with an Experian National Equivalency Score. CreditSesame.com, Frequently Asked Questions, <http://www.creditsesame.com/about/faqs/> (last visited Mar. 20, 2014) (click on and "What is a credit score and where did you get it?" under "Credit Questions").

¹⁴⁶ See ANALYSIS OF DIFFERENCES, *supra* note 129, at 2, 17.

¹⁴⁷ IMPACT OF DIFFERENCES, *supra* note 1, at 15.

“After paying for a credit report monitoring service, I was going by the score the service was showing me I had, only to be offered a higher rate on a car loan because the score they had for me was lower than what I had printed on my monitoring report.”

As these stories reveal, the scores that can be purchased through credit monitoring services or obtained for free over the Internet aren't usually the ones consulted by lenders. This can lead consumers to believe their credit is different from how a lender might view it, and sometimes lose money spent on loan application fees. Consumers deserve better access to scores that lenders actually use.

Deceptive Marketing of Credit Scores and Credit Reports

Consumers also told us that they thought they were getting a “free” credit score, or a score for \$1 from the CRAs, only to find that they had unknowingly signed up for a credit-monitoring service that assessed them a monthly fee. Experian and TransUnion boldly advertise free credit scores on their main websites if the consumer agrees to check a credit report for \$1—with an explanation of the actual cost in smaller letters elsewhere on the page.¹⁴⁸

For example, Amber and her husband, from Paducah, Kentucky, signed up for a “free” credit score, and then found that their bank account was being debited \$40 each month for it. To make matters worse, these unexpected debits triggered overdraft fees, and the CRA was reluctant to cancel the service upon request:

“A couple years ago my husband and I were looking into buying a new vehicle and he was curious as to what his credit score actually was! He had found a free credit score ad and it was free until about 30 days later when they withdrew \$40 out of his checking account. **At the time he was unemployed and it made our bank account go into the negatives, which of course then charged us a \$35 fee on top of our negative checking account!** My husband would call and we would think it was all okay but then it would withdraw more money from our account. This happened several times until finally it took my husband having to get a little ugly and then the issue was resolved!”¹⁴⁹

Gerry, from Honolulu, Hawaii, experienced a similar problem when he tried to get his credit score for \$1:

“I fell for a FREE check of my credit score for \$1.00—so not free. Checked my credit card the next day and the same crooks added \$39.95 to my credit card. I called them and told them to reverse that

¹⁴⁸ See Experian, Home, <http://www.experian.com/>; TransUnion, Home <http://www.transunion.com/> (last visited Mar. 20, 2014). Experian and TransUnion both advertise that the consumer can pay \$1 to check a credit report and receive a free score, as part of a 7-day trial period. After the trial period is over, a monthly fee kicks in. Equifax does not make similar offers on its homepage. See Equifax, Home, http://www.equifax.com/home/en_us (last visited Mar. 20, 2014).

¹⁴⁹ Emphasis added.

charge. I was told that they could not do that since I had agreed to daily credit checking through them. I never did. Called the credit card company and told them that I put the \$39.95 in dispute, something the bank could do but not those other crooks. End of the \$39.95 story.”

In the past ten years, the FTC and Congress have taken strong action to stop these deceptive marketing practices in relation to credit reports—though not credit scores. For example, ConsumerInfo.com, which is affiliated with Experian, agreed to settlements with the FTC in 2005 and 2007 for featuring “free” credit report promotions that led consumers to sign up for expensive credit monitoring services unwittingly.¹⁵⁰ The CARD Act of 2009 required anyone selling credit reports to point consumers to AnnualCreditReport.com specifically, the site established by federal law, to receive their free annual credit reports.¹⁵¹

More needs to be done to stop the deceptive marketing of credit scores. Consumers should be safeguarded from being tricked into paying for credit scores and credit reports. Moreover, consumers should be provided a yearly disclosure on a secure government website where they can access the same credit scores used by lenders.

Consumers Have Limited Rights to Free Credit Scores Used by Lenders

Only under certain circumstances do consumers have the guaranteed right to view the scores that are actually used by lenders, and even then, lenders are often given leeway to keep secret the actual scores that they consulted. For example, under FCRA, a consumer applying for a mortgage must also receive a free credit score.¹⁵² In some circumstances, lenders are permitted to supply consumers with educational scores purchased from a CRA instead of the scores actually used in the lending decision.¹⁵³ Second, reforms to FCRA under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) require lenders and insurers to provide the credit score they used if applicants receive a higher interest rate or are turned down for credit because of their credit score.¹⁵⁴ However, the FTC and Federal Reserve Board have determined that the lender or insurer does not have to provide the consumer with a “specialized score”—meaning one not typically available

¹⁵⁰ Complaint at 3, 7, Fed. Trade Comm’n v. ConsumerInfo.com, Inc., No. 05-801 (C.D. Cal. filed Aug. 15, 2005); Stipulated Final Judgment and Order for Permanent Injunction, No. 05-801 (C.D. Cal. filed Aug. 15, 2005); Supplemental Stipulated Judgment and Order for Permanent Injunction and Monetary Relief, No. 05-801 (C.D. Cal. filed Jan. 8, 2007) (resolving allegations that ConsumerInfo.com had violated previous Stipulated Permanent Injunction).

¹⁵¹ Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734, 1747 (2009) (codified at 15 U.S.C. § 1681j), 12 C.F.R. § 1022.138(b)).

¹⁵² 15 U.S.C. § 1681g(g)(1) (2012 & Supp. I).

¹⁵³ § 1681g(g)(1)(B)(i).

¹⁵⁴ See Pub. L. No. 111-203, 124 Stat. 1376, 2112 (2010). As credit reports rather than credit scores are used in employment decisions, this does not apply to consumers who are rejected for jobs. See DEMOS, DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB 10 (2013), available at <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>. Insurers must also provide a free copy of a consumer’s credit report and credit score after an adverse determination. See 15 U.S.C. § 1681m(a).

for sale to consumers—in these disclosures.¹⁵⁵ If the lender purchases a generic score and another type of score during the credit review process, the lender can choose which score to give to the consumer.¹⁵⁶

Credit scores should be available to all consumers for free, once a year, so that they know how their credit stacks up. A story shared by Greg, of Essex Junction, Vermont, highlights this:

“I recently found out what my true credit score was when I purchased a new car. The number that my car dealer had was not the credit score that I obtained privately. That is not only an expensive way to find out your true credit score, but also extremely unhelpful.”

The CFPB has recently taken steps to try to improve access to the credit scores used by banks. In February 2014, CFPB director Richard Cordray sent letters to major banks, asking them to voluntarily provide consumers with the credit scores used to make decisions about them.¹⁵⁷ It noted that a handful of financial institutions had recently done so.¹⁵⁸ While this is a promising development, it is strictly voluntary. Only a limited number of banks are currently providing free credit scores to their customers.

All consumers deserve access to their free, reliable credit scores. The CRAs are making hundreds of millions of dollars per year off of consumers’ financial information. It’s only fair that consumers have the right to obtain this information based on their personal data for free.

Policy Reform Recommendations

Consumers Union calls on policymakers and regulators to rein in the worst abuses of the credit reporting industry by updating regulations to ensure that credit reporting by the CRAs is fair and accurate, and by guaranteeing consumers access to their credit scores each year for free when they request their annual credit reports. The CFPB has rulemaking authority under FCRA to address credit reporting accuracy,¹⁵⁹ and we urge the Bureau to take action. The CFPB and the FTC should use their supervisory and enforcement authority to police the marketplace and ensure CRA and furnisher compliance with FCRA regarding credit reports and credit scores.¹⁶⁰ We urge Congress to move forward on these issues as appropriate.

Ensure Credit Reports Are Accurate

Hold CRAs Accountable for Accuracy: Clearly define the “reasonable procedures” that CRAs must follow in order to “assure maximum possible accuracy” of

¹⁵⁵ Fair Credit Reporting Risk-Based Pricing Regulations, 76 Fed. Reg. 41602, 41605-06 (July 15, 2011) (codified at 12 C.F.R. § 222, 16 C.F.R. §§ 640, 698).

¹⁵⁶ *Id.* at 41606.

¹⁵⁷ Letter from Richard Cordray, Director, Consumer Fin. Protection Bureau (Feb. 10, 2014), available at http://files.consumerfinance.gov/f/201402_cfpb_letters_credit-scores.pdf.

¹⁵⁸ *Id.*

¹⁵⁹ 15 U.S.C. § 1681s(e)(1) (2012 & Supp. I).

¹⁶⁰ § 1681s(a)(1) (FTC enforcement authority); § 1681s(b)(1)(H) (CFPB enforcement authority).

information entered into credit reports as required under the Fair Credit Reporting Act.¹⁶¹ For example, require CRAs to match first and last name, date of birth, and other relevant information as appropriate.¹⁶²

Hold Furnishers Accountable for Accuracy: Establish that information provided by furnishers is accurate only if it is “timely, up to date, complete, and fully substantiated.”¹⁶³ To ensure accuracy, furnishers should be required to retain supporting information and documentation relating to an account for as long as it appears on the credit report, unless otherwise required by law.¹⁶⁴ Current law requiring collectors to correctly report the “date of delinquency” on items in collections should be enforced.¹⁶⁵ To address incorrect medical billing, paid or settled medical debts must be promptly removed from credit reports.¹⁶⁶

Improve the Reinvestigation Process: To improve the error dispute process, furnishers should not be allowed to dismiss a dispute as “frivolous” if the consumer submits new information that is relevant to the complaint.¹⁶⁷ Furnishers should be required to delete disputed information from a credit report if it cannot provide documentation to back it up.¹⁶⁸

Assure Consumers Rights to Injunctive Relief: Consumers should have the power to seek injunctive relief against CRAs and furnishers to correct inaccurate files and to prohibit other violations of the FCRA.¹⁶⁹

Provide Consumers Access to Free, Reliable Credit Scores

Provide Consumers Access to Free Annual Credit Scores: Each of the three major CRAs should provide consumers with their credit scores at no charge when consumers request their free annual credit reports.¹⁷⁰

¹⁶¹ § 1681e(b). On April 9, 2014, legislation was introduced in Congress to address this issue. *See Stop Errors in Credit Use and Reporting Act of 2014*, 113th Cong. (2014) (bill text on file with author).

¹⁶² *See Stop Errors in Credit Use and Reporting Act of 2014*, 113th Cong. (2014). Consumers Union and other consumer advocacy organizations have long supported the position that furnishers should provide this information to CRAs to prevent mixed files. *See Letter from Consumers Union et al. to Fed. Trade Comm’n et. al, Notice of Proposed Rulemaking Pursuant to Section 312 of the Fair and Accurate Credit Transactions Act 36* (Feb. 11, 2008), *available at* <http://consumersunion.org/pdf/CreditReportsComm2-08.pdf>.

¹⁶³ *See id.* at 2-3.

¹⁶⁴ *See id.* at 4.

¹⁶⁵ *See id.* at 35.

¹⁶⁶ Congress has considered legislation to address this issue. *See Medical Debt Responsibility Act of 2013*, S. 160, 113th Cong. (2013). Consumers Union and other consumer groups strongly support the bill. *See Letter from Consumers Union et. al to Senators Tim Johnson and Michael Crapo* (May 13, 2013), *available at* https://www.nclc.org/images/pdf/legislation/mdra_coalition_letter05132013.pdf.

¹⁶⁷ *See supra* note 105. The Stop Errors in Credit Use and Reporting Act of 2014 will also address this issue.

¹⁶⁸ *See, e.g., Making Sense of Consumer Credit Reports: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the Sen. Comm. On Banking, Housing and Urban Affairs*, 112th Cong. (2012) (statement of Chi Chi Wu, NCLC), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b5d9716-9a48-4757-90d8-7a69d33af0ca (*see* 31-32 of PDF) (advocating similarly that disputed debts should be deleted from credit reports unless furnisher or CRA can prove that dispute is invalid).

¹⁶⁹ *See Stop Errors in Credit Use and Reporting Act of 2014*, 113th Cong. (2014).

Provide Consumers with the Credit Scores Lenders Use: The CRAs should provide consumers with the same credit score most lenders use in making lending decisions.¹⁷¹

Greater Transparency: The CRAs should be required to provide consumers with credit reports and credit scores that are easily understood by consumers. They should offer up-to-date information about the specific factors or predictors that contribute to the consumer's credit score, where the score falls in the range of scores, and advice about how the score can be improved.¹⁷²

Stop Deceptive and Misleading Marketing of Credit Scores: Regulators should crack down on deceptive marketing of credit reports and scores to protect consumers from unknowingly registering for unwanted credit monitoring or other expensive services.¹⁷³

¹⁷⁰ Congress has considered legislation more than once to address this issue. *See* Stop Errors in Credit Use and Reporting Act of 2014, 113th Cong. (2014); Fair Access to Credit Scores Act of 2013, S. 471, 113th Cong. (2013).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *See supra* note 148.

How to Access Your Credit Information and Correct Errors

Credit reports offer a summary of a consumer's credit history and are often used by lenders and others, such as insurers, potential landlords, and employers, when making financial decisions. It's important to check each of your credit reports once a year to make sure they don't contain any errors and to check for signs of identity theft. **Credit scores** are calculated from information in your credit report and are used to quickly evaluate a consumer's creditworthiness.

How Do I Access my Free Credit Reports?

- You have the right to one free credit report from each of the consumer reporting agencies (CRAs) every 12 months.
- The three major, nationwide CRAs—Equifax, Experian, and TransUnion—are required by law to maintain a single website where consumers can obtain their free yearly credit reports from each of these three companies.
 - ❑ Go to www.AnnualCreditReport.com;
 - ❑ Call 1-877-322-8228; or
 - ❑ Mail the following form
<https://www.annualcreditreport.com/manualRequestForm.action> to
Annual Credit Report Request Service
P.O. Box 105281
Atlanta, GA 30348-5281
- Smaller CRAs must also provide consumers with a free report once every 12 months. Examples of these bureaus include First Advantage SafeRent, which collects your rental payment history, and Chex Systems, which gathers checking account information.
 - ❑ Consumers can contact each of these smaller, or “specialty” CRAs directly. Please see Consumer Reports, “[Big Brother Is Watching](#)” for full information on how to contact many of these different bureaus and obtain your specialty reports.

How Do I Check My Report For Errors?

- Once you have your report, carefully check your personal information for accuracy.
- Check that all of the accounts and debts on your report are correctly listed in your name, and are accurate.
- Ensure that all bankruptcies, tax liens, or court judgments listed on the report are accurate. For example, if you have paid a tax lien, it should be noted in the report.

- Check for outdated information. Negative information typically should be removed after seven years. Bankruptcies should be removed after ten years.

How Do I Correct Errors on my Credit Report?

- File a dispute by mail with each of the CRAs that is reporting incorrect information about you. You may also file a complaint online or by phone, but you can easily document your dispute if you send it through the mail.
 - The Federal Trade Commission (FTC) has provided a sample letter that you can use as you write your own dispute letter:
<https://www.consumer.ftc.gov/articles/0384-sample-letter-disputing-errors-your-credit-report>
- Equifax and TransUnion require you to submit a dispute form with your letter:
 - Equifax: <http://www.equifax.com/cp/MailInDisclosureRequest.pdf>
 - TransUnion: <http://www.transunion.com/docs/rev/personal/InvestigationRequest.pdf>
- Make sure to document and keep track of everything you send to the CRAs:
 - Mail your complaint “return receipt requested.”
 - Keep copies of everything you send to the CRAs and that they send you.
 - Only send copies. Hold onto your original documents.
- To contact the CRAs:

TransUnion Consumer Solutions

P.O. Box 2000
 Chester, PA 19022-2000
 Phone disputes: 800-916-8800
 Online disputes: <http://www.transunion.com/personal-credit/credit-disputes/credit-disputes.page>

Experian

P.O. Box 4500
 Allen, TX 75013
 Phone disputes: The phone number is located on your credit report.
 Online disputes: <http://www.experian.com/disputes/how-to-dispute.html>

Equifax Information Services LLC

P.O. Box 740256
 Atlanta, GA 30374
 Phone disputes: The phone number is located on your credit report.
 Online disputes: <https://www.ai.equifax.com/CreditInvestigation/home.action>

- In addition to filing a complaint with the CRA, you may also file a complaint with the company that is sending the incorrect information to them. They are called “furnishers.” You also should do this through the mail.

- Note that you shouldn't just complain to the furnisher. Be sure to also file a complaint with the CRA. If you only file a dispute with the furnisher, you will have fewer legal protections.
- Do not use credit repair companies. They can be expensive, and you can correct errors on your credit report yourself for free. And some credit repair offers are outright scams that will do more harm than good.

To learn more about reading credit reports and correcting errors, please see Consumers Union's site, "[Your Credit Matters](#)."

What About Identity Theft on my Credit Report?

- If you become the victim of identity theft or if sensitive information such as your Social Security number has been compromised, consider placing a fraud alert or security freeze on your file.
 - Fraud alerts let creditors know that you were a victim of identity theft, and you can re-file every 90 days. This will warn creditors to more carefully verify the identity of anyone opening an account in your name, including both you and a thief opening a credit account in your name. We recommend that you place 90-day fraud alerts, rather than an extended 7-year fraud alert on your credit file. You are entitled to free credit reports each time you file a fraud alert.
 - A security freeze obstructs new lenders from accessing your credit history, which makes it more difficult for them to open new credit accounts in your name.
 - Some consumers consider using a credit-monitoring service to alert them to potentially fraudulent activity on their credit reports. These services provide little or nothing that you cannot do for yourself at no fee, but may provide some consumers peace of mind.

Be warned that some states may charge fees for placing and lifting security freezes under certain circumstances. To learn more about security freezes, including any fees in your state charged for them, please see the "[Consumers Union's Guide to Security Freeze Protection](#)."

How Can I Get my Credit Score?

- Credit scores are not included in the free yearly credit report. You usually have to purchase them, and when you do, you most likely will not be able to buy the score that is actually used by your lender. The score you purchase may not accurately tell you whether you'll qualify for a particular loan.

- When you apply for credit, ask your lender for your credit scores actually used in making the credit decision. They do not have to give it to you, but sometimes they will if you ask.
- If you use First National Bank of Omaha, Barclaycard US, Discover or Merrick Bank credit cards, you should be able to take advantage of FICO's "Open Access" program to get the credit scores they purchased to grant you a card and monitor how well you handle your account. Other cardholders, including Walmart credit card customers, may also be able to obtain FICO scores for no additional charges.
- Don't fall for "free" or \$1 credit score advertisements. You may end up signing up for a credit-monitoring program that charges monthly fees.

**Do you have complaints about credit reporting
or getting your credit score?**

Notify the Consumer Financial Protection Bureau (CFPB)
by filing a complaint at <http://www.consumerfinance.gov/complaint/>.

They will send your complaint directly to the CRA and
check on it until you hear back from them.

Glossary

ACDV	Automated Consumer Dispute Verification. Form used to transmit consumer reporting dispute information between the consumer reporting agency and the furnisher.
CFA	Consumer Federation of America
CFPB	Consumer Financial Protection Bureau
CRA	Consumer reporting agency
e-OSCAR	Online system used by the CRAs to process reporting disputes.
FCRA	Fair Credit Reporting Act
FICO	Fair Isaac Corporation
FRB	Federal Reserve Board
FTC	Federal Trade Commission
Furnishers	Individuals or companies that report information to the CRAs.
Metro 2	Format furnishers use when reporting information to the CRAs.
Mixed file	Credit reporting error that occurs when a consumer's report includes information belonging to another consumer.
NCLC	National Consumer Law Center
NCRA	National Credit Reporting Association, Inc., now known as the National Consumer Reporting Association.
Re-aging	Credit reporting error that occurs when debt collectors or other furnishers report the incorrect "date of delinquency" of a debt, so that it remains on the credit report longer than directed by law.
SHRM	Society for Human Resource Management
SSN	Social Security number