**HOUSE COMMITTEE ON**
**FINANCIAL SERVICES**

# HEARING ON
# EXAMINING THE NEED FOR H.R. 2885,
# THE CREDIT MONITORING CLARIFICATION ACT

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**Testimony of:**


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## INTRODUCTION

Mr. Chairman and members of the Committee, I am Robin Holland, Senior Vice President, Global Consumer Services for Equifax. I want to thank you for this opportunity to testify regarding the Credit Repair Organizations Act, frequently referred to as CROA. I would especially like to thank Mr. Kanjorski for his leadership in introducing the Credit Monitoring Clarification Act (H.R. 2885), as well as Mr. Royce and the other bipartisan co-sponsors of this legislation. We are proud to support this bill along with our two great Georgia members, Mr. Price and Mr. Scott. I commend your efforts, Mr. Chairman, the members of the Committee and your excellent staff for taking up the long-overdue issue of CROA reform.

In this statement, I briefly describe Equifax; the original reasons for CROA's enactment; the credit monitoring products that Equifax has developed since the passage of CROA to assist consumers to understand their credit histories and to protect their credit histories from fraud and identity theft; and the CROA reforms that, we believe, should be put into place to protect these vital credit monitoring services and to protect consumers.

## EQUIFAX

Founded in 1899, Equifax is the oldest, the largest, and the only publicly traded of the national companies that provide consumer information for credit and other risk assessment decisions. As one of the three "national" credit bureaus, Equifax's activities are highly regulated under the Fair Credit Reporting Act (FCRA) and dozens of other related federal and state statutes. Equifax is a responsible steward of sensitive consumer information and, as such, is committed to consumer privacy. We have been steadfast in working with governments, consumers, and businesses to forge effective solutions to complex information and privacy issues. Equifax believes that the marketplace can offer solutions that enlighten, enable and empower consumers. Equifax has developed products, such as credit monitoring products, which directly assist consumers in understanding their credit files and in empowering them to prevent identity theft and to manage their financial health.

## THE CREDIT REPAIR ORGANIZATIONS ACT (CROA)

In 1996, Congress enacted CROA to address the consumer threat posed by credit repair organizations (CROs), commercial entities which charge consumers for providing services that purportedly would improve a consumer's credit record, credit history or credit rating.[1] In our view, promising to alter or remove negative, but accurate and timely, information from a consumer's credit report constitutes an unfair and deceptive practice that ultimately undermines consumer confidence in the credit reporting system. In order to protect the integrity of the credit reporting system, consumer reporting agencies, including Equifax and the other national credit bureaus, urged Congress to enact CROA to attempt to stop these entities from making false promises to consumers about their ability to change or alter accurate and timely data contained in credit reports. CROA imposed a number of appropriately harsh requirements on credit repair

[1] Credit Repair Organizations Act (CROA), Public Law 90-321, 82 Stat. 164, 15 USCS § 1679 (2006).

organizations, including consumer disclosures about the limits of any possible changes to a credit file.

Thus, CROA's intent is to protect consumers from paying money for a service which, almost by definition, cannot be provided and indirectly, at least, to protect consumer reporting agencies and legitimate consumer reporting activities from the deceptive and fraudulent actions of credit repair organizations. Ironically, by crafting an intentionally broad definition of "credit repair organization", CROA's definition of a credit repair organization (any entity which, directly or indirectly, purports to "improve" a consumer's credit record) has bee misread to cover credit monitoring products offered by consumer reporting agencies – the very entities that originally sought passage of the legislation.

## CREDIT MONITORING

Accurate credit reports are important to individual consumers and to the economy. Individual consumers who fall victim to identity theft can be denied employment or credit and may be forced to expend significant resources correcting fraudulent credit report information. Further, identity theft ends up costing financial institutions, including the national credit bureaus, millions if not billions of dollars annually.[2] The Federal Trade Commission (FTC) recommends that consumers regularly review their credit report files to help guard against identity theft.[3] As public awareness and concern grows over the risk of identity theft, the national credit bureaus have developed products to assist consumers to monitor their credit files and to detect and to prevent identity theft.

Equifax was the first in the market to launch a credit monitoring product in October 2000. The rest of the industry launched shortly thereafter. From the very start these products have been received enthusiastically by consumers. Why? That's really very simple -- credit monitoring, by educating consumer about their credit profile, addresses two of consumers' most critical needs -- financial literacy and protection against identity theft. In just the last few years Equifax's credit monitoring products have been made available to consumer affected by literally hundreds of data breaches.

Today, the market for providing credit monitoring products is highly competitive in both product features and price. Credit monitoring products offered by the national credit bureaus are widely popular with consumers and recognized as a highly effective consumer protection service by federal and state consumer protection agencies. These products give consumers a first line of defense against identity theft, and are routinely made available to victims of security breaches. Indeed, credit monitoring has become a staple requirement of most state security breach notification laws and proposed federal security breach notification legislation.[4] The FTC has

[2] U.S. GEN ACCOUNTING OFFICE, Identity Theft: Prevalence and Cost Appear to be Growing (March 2002).

[3] FEDERAL TRADE COMMISSION, Fighting Back Against Identity Theft, "How can you find out if your identity was stolen?" (available at http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html).

[4] *E.g.* Personal Data Privacy and Security Act of 2005, S. 1332, 109th Cong. (2005) (introduced by Senators Arlen Specter, Patrick Leahy, and Russ Feingold).

explicitly endorsed credit monitoring as part of a consumer strategy to protect against identity theft.[5]

Equifax Credit Watch™ went into production on the Equifax.com website in October of 2000. The initial product configuration included daily Equifax credit monitoring and 8 Equifax credit reports for $39.95 per year. Between October 2000 and today the product has been enhanced to provide consumers greater choice and control. Based on consumer feedback and focus group research, Equifax's credit monitoring products have been tailored to address the expressed needs of consumers, such as:

- Offering a stratified pricing structure to service consumers of all economic classes;
- Expanding credit monitoring services beyond the Internet to provide credit monitoring by mail;
- A "Family Program" that offers discounts for family members;
- Identity theft insurance; and
- For revolving trade lines, alerts for both balance changes or inactivity.

Currently, Equifax offers several credit monitoring products, including:

- Equifax Credit Watch Silver (2003): provides consumers with weekly credit monitoring of their Equifax credit file, one copy of their Equifax Credit Report™, and identity theft insurance in the amount of $2,500 per consumer, with a $250 deductible (not available to consumers in New York), to cover injuries arising from an occurrence of identity theft (subject to limitations and exclusions).

- Equifax Credit Watch Gold (2003): provides consumers with daily credit monitoring of their Equifax credit file, unlimited copies of their Equifax Credit Report™, and identity theft insurance in the amount of $20,000 per consumer (not available to consumers in New York) to cover injuries arising from an occurrence of identity theft (subject to limitations and exclusions).

- Score Watch™ (2004): provides consumers with continuous monitoring of their FICO® credit score and notification when a change in their FICO score impacts the interest rate they are likely to receive**,** detailed explanations for key score changes and specific tips for understanding their score, daily credit monitoring of their Equifax credit file, and two free Score Power® (which include the consumer's Equifax Credit Report™ and FICO credit score).

- Equifax Credit Watch Gold with 3-in-1 Monitoring (2005): provides consumers with daily credit monitoring of their Equifax, Experian and Trans Union credit files, unlimited copies of their Equifax Credit Report™, a 3-in-1 Credit Report which provides consumers with their credit history as reported by the three major credit reporting

[5] *E.g.* FEDERAL TRADE COMMISSION, Fighting Back Against Identity Theft, "If your information has been compromised, but not yet misused" (available at http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/compromised.html).

agencies, and identity theft insurance in the amount of $20,000 per consumer (not available to consumers in New York) to cover injuries arising from an occurrence of identity theft (subject to limitations and exclusions).

The value of Equifax's credit monitoring products has been praised by real-life consumers, including:

- Keith Porter of South Carolina who uses "Equifax to proactively manage my credit status". Mr. Porter subscribes to Equifax Credit Watch, because "staying on top of my credit standing can be time consuming" and he would like to be able to "automatically monitor and manage my credit throughout the year with very little effort." Because of Equifax Credit Report, Mr. Porter was recently alerted to an error in his credit report and was able to address the issue quickly.

- Mark Hanson of California praised Equifax Credit Watch as a way to "see my credit report instantly online which immediately reduced my stress level knowing no unauthorized activity had taken place … the 'no news is good news' message lets me know Equifax Credit Watch is continually protecting me."

- Justin H. of Georgia thanks Equifax Credit Watch for helping him to respond quickly when a fraudulent account was opened at a large online retailer by an identity thief. Within 24 hours of being contacted by the identity thief, an Equifax fraud specialist was able to assist Justin H. to safeguard his financial status and protect his good name, resulting in an arrest. For Justin H. the "constant monitoring and speed at which it delivers alerts offer me a great deal of comfort".

**CREDIT REPAIR v. CREDIT MONITORING**

CROs are defined as entities that use any instrumentality of interstate commerce to sell, provide, or perform (or represent that they can perform) services or advice for the express or implied purpose of improving a consumer's credit record, credit history, or credit rating in return for a fee.[6] CROA was originally enacted to stop CROs from harming consumers and the credit reporting system through credit repair activities. Looking to the legislative history,[7] Congress did not seek to place limitations on all products and services that pertain to credit, but instead sought to target narrowly those specific harmful activities performed by CROs.

In contrast, credit monitoring and similar credit information products and services were developed to help improve consumer understanding about their credit history. Congress did not intend for the definition of a CRO to sweep in products that offer only prospective credit advice to consumers or that provide information to consumers so that the consumers can take steps on their own to improve their credit in the future. Credit monitoring and similar credit information

[6] CROA Sec. 403(3).

[7] *See* H.R. Rep. No. 103-486, at 57 (Apr. 28, 1994), *and see also Hearing on the Credit Repair Organizations Act (H.R. 458) Before the Subcommittee on Consumer Affairs and Coinage of the House Committee on Banking, Finance, and Urban Affairs*, 110th Congress (Sept. 15, 1988).

products and services should not be swept into the definition of a CRO, because such products provide information that empowers rather than harms consumers.

## THE NEED FOR CROA REFORM

CROA was enacted before any of these recently developed positive and popular consumer education and credit file monitoring products were created. Unfortunately, a broad (and, ultimately, incorrect) interpretation of CROA could include consumer reporting agencies and their credit monitoring products under the definition of CROs. Inclusion of consumer reporting agencies under CROA restrictions would inappropriately restrict and complicate consumer access to credit file monitoring products and to the beneficial features offered by these products.

Without CROA reform, plaintiffs' class action suits threaten the viability of credit monitoring products. Under CROA, these suits could require the disgorgement of all revenues from the sale of the credit monitoring products.[8] Several of the first wave of these kinds of lawsuits has been settled, but this kind of litigation is an ongoing threat and, if successful, could drive credit monitoring products from the marketplace or, at the very least, adversely distort their pricing and delivery.

CROA, quite rightly, prohibits the collection of fees before completing the promised service.[9] This requirement is appropriate for credit repair organizations but inappropriate for credit monitoring products which customarily are sold through instant online delivery and an annual subscription.

Further, CROA requires that covered entities provide prospective consumer subscribers with notices that address the inability of credit repair organizations to remove adverse, but accurate, data from a credit report.[10] Warnings against the deceptive practices of credit repair organizations would be confusing and inappropriate if given to a consumer seeking credit monitoring products.

Further, credit repair organizations are subject to a number of appropriately harsh and specific penalties, including a requirement to disgorge all revenues if CROA is violated.[11] These penalties are not appropriate for credit monitoring products.

## PROPOSED LEGISLATION TO REFORM CROA

Enforcement authority under CROA was placed with the Federal Trade Commission (FTC).[12] The FTC staff states that it sees no basis for subjecting the sale of credit monitoring and similar educational products and services to CROA.[13]

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[8] CROA Sec. 409.

[9] CROA Sec. 404.

[10] CROA Sec. 405.

[11] CROA Sec. 409.

[12] CROA Sec. 410(a).

Before the Committee is a bipartisan bill (H.R. 2885), which provides that an entity providing legitimate credit monitoring products, and not credit repair services, would not fall within the definition of a credit repair organization and, therefore, would not be subject to CROA. The bill would also provide for a complete and detailed notice to be sent to consumers on their rights under the Fair Credit Reporting Act, including a right to a free report. In addition, the bill guarantees subscribers to credit monitoring products a *pro rata* refund in the event that they cancel their service.

As set out in H.R. 2885, CROA can be amended to prevent the type of abusive practices that Congress originally intended to address by taking a behavior-based approach to the application of CROA's requirements. By applying CROA to only those entities engaged in the potentially fraudulent activities known as credit repair, CROA can be reformed in a way that continues to protect consumers from those activities and permits the provision of legitimate credit monitoring products and similar credit information products and services outside of the technical provisions of CROA. The nature of the activity performed by the entity would trigger application of CROA, rather than the characterization those entities assign to their products and services.

Through this behavior-based approach, CROA would be able to reach credit repair services regardless of whether the entity claims to be a CRO or a provider of credit monitoring. Improperly characterizing either the product being sold or the entity making the offer will not achieve the purpose of evading CROA. Credit repair organizations that purport to offer legitimate services, but actually engage in credit repair operations will still be subject to CROA. Conversely, if an entity offers legitimate and beneficial products, such as credit monitoring, then the activity-based approach to CROA enforcement would permit such activities to continue without being subject to CROA. Through such reforms, no entity could escape the consumer protection requirements of CROA, but consumers would benefit from the increased availability of other legitimate products, such as credit monitoring.

To the benefit of consumers, the FTC has developed extensive expertise in investigating entities engaged in unfair or deceptive trade practices through Section 5 of the FTC Act.[14] The FTC specializes in distinguishing between what companies say they do and what those companies actually do. Given a clearly established definition of credit repair activity, with specific exceptions in place for credit information products and services such as credit monitoring products, and the FTC's expertise with respect to deceptive practices, the FTC should easily be able to recognize any attempt to mischaracterize an illegal credit repair service as a legitimate credit monitoring product. To the extent a credit repair organization falsely purported to offer CROA-exempt products or services to evade CROA coverage, they could be in violation of both CROA and Section 5 of the FTC Act.

## CONCLUSION

[13] Oversight of Telemarketing Practices and the Credit Repair Organizations Act (CROA): Hearing Before the Senate Comm. on Commerce, Science and Transportation, 110th Cong., p.19 (2007) (statement of Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission).

[14] *See* 15 U.S.C. § 45(a).

CROA reform is straight-forward and narrowly tailored to simply effectuate Congress' intent to apply CROA to credit repair organizations and not to other products and services that did not even exist in 1996 and which benefit, rather than harm, consumers. The fraudulent efforts of credit repair agencies harm consumers and the safety and soundness of the credit system. The objective of CROA always was and is to target companies which engage in fraudulent practices such as promising to delete accurate information from a consumer's credit report.

CROA reform, as proposed in the H.R. 2885, does not provide a *per se* exemption from CROA for consumer reporting agencies, based simply on their status as consumer reporting agencies. Rather, entities are exempt from CROA only if they do not engage in credit repair activities. Thus, CROA reform does not, in any way, weaken consumers' protections from deceptive practices enforced by the FTC and State Attorneys General which address the activities of credit repair organizations or address unfair or deceptive practices involving credit repair services.