

STATEMENT OF ANNE P. FORTNEY

BEFORE THE

**COMMITTEE ON FINANCIAL SERVICES
HOUSE OF REPRESENTATIVES**

ON

**CREDIT REPORTS: CONSUMERS' ABILITY TO
DISPUTE AND CHANGE INACCURATE INFORMATION**

June 19, 2007

Anne P. Fortney
Hudson Cook, LLP
1020 19th Street, NW
7th Floor
Washington, DC 20036
202-223-6930
Fax: 202-223-6935
afortney@hudco.com

Statement of Anne P. Fortney

Chairman Frank, Congressman Bachus and members of the Committee, thank you for this opportunity to appear before the Committee on Financial Services.

I am a partner in the Washington, DC office of the Hudson Cook law firm. Our firm specializes in consumer financial services;¹ my practice focuses primarily on issues arising under the Fair Credit Reporting Act (FCRA) and similar consumer protection laws. I bring to this practice more than 30 years experience in the consumer financial services field, including service as Associate Director for Credit Practices at the Federal Trade Commission (FTC), as in-house counsel at a consumer credit card issuer and as a practitioner who counsels clients on compliance with the FCRA and related laws. I also serve as a consultant and an expert witness in FCRA litigation.²

I commend you for holding this hearing on the accuracy of credit report data and the effectiveness of the consumer dispute process under the FCRA. Through the leadership of this Committee, the FCRA was amended by the Fair and Accurate Credit Transactions Act (FACT Act) of 2003.³ The FACT Act changed the FCRA to improve, in pertinent part, the accuracy and integrity of data furnished to consumer reporting agencies and the resolution of consumer disputes regarding this data.

¹ As explained on the firm's website: "Hudson Cook, LLP was established in 1997 with a single purpose in mind - to provide the best possible service to companies needing advice and assistance in the ever changing and challenging world of consumer financial services law. Our wide-ranging services cover virtually all aspects of state and federal consumer financial services law. At some law firms, the consumer financial services practice is at best an adjunct to the litigation or general business or banking law practice. At Hudson Cook, consumer financial services law is what we do." www.hudsoncook.com.

² A more detailed description of my background and experience is attached to this statement.

³ See Public Law 108-159, "The Fair and Accurate Credit Transactions Act of 2003," amending 15 U.S.C. 1681 *et seq.*

Summary of Testimony

My testimony today concerns the obligations of creditors and other furnishers of credit report information to consumer reporting agencies under the FCRA. The primary concerns involve the accuracy of information furnished and the resolution of consumer disputes about this accuracy. I believe my experience provides a unique perspective on FCRA compliance challenges facing furnishers. From my experience, I observe that, although questions about consumer report accuracy and the dispute process continue to generate concern, furnishers take their FCRA compliance obligations very seriously and devote substantial resources to the fulfillment of their responsibilities. I also believe that new FACT Act provisions should, when fully implemented, enhance consumer report accuracy and dispute resolution and that additional requirements should not be created until the overall effectiveness of these provisions can be determined.

FACT Act Provisions to Enhance Accuracy and Integrity of Data

In 2003, Congress enacted the FACT Act, in part, in response to consumer concerns about the accuracy of information reported to consumer reporting agencies and the need for a more efficient and effective dispute process. Many of the provisions are still being implemented. It is expected that the dispute process will be further enhanced when all the provisions are fully implemented.⁴

The FACT Act includes two provisions that directly affect furnishers' obligations relevant to today's hearing. Section 312 requires the federal agencies to prescribe guidelines and regulations that furnishers must follow to enhance the accuracy and

⁴ See, e.g., 2 Federal Trade Commission and Board of Governors of the Federal Reserve System Report to Congress on the Fair Credit Reporting Act Dispute Process (August 2006) ("2006 Report to Congress"), pp. 33-35.

integrity of data reported to consumer reporting agencies.⁵ When the agencies establish guidelines for furnishers to accomplish this objective, they must consider the following:

- Identify patterns, practices and specific forms of activity that can compromise the accuracy and integrity of information.
- Review the methods used to furnish information.
- Determine if furnishers maintain and enforce policies to furnish accurate information.
- Examine policies and procedures used by furnishers to conduct investigations and correct inaccurate information.

On March 22, 2006, the agencies published a Federal Register notice soliciting comments to assist them in developing accuracy and integrity guidelines and regulations.⁶ The agencies determined that, in advance of proposing the guidelines and rules, they would benefit from public comment on issues relating to: (1) criteria to be considered in developing the accuracy and integrity guidelines, (2) reasonable polices and procedures for implementing the guidelines and (3) considerations involved in promulgating rules that identify circumstances when furnishers must investigate consumers disputes made to them directly. To that end, the agencies posed detailed questions related to accuracy and integrity of data and the direct dispute resolution process.

The agencies are appropriately concerned about the various types of furnishers that will be required to follow the guidelines and rules, and specifically asked furnishers to explain how their responses might differ depending on the type of furnishers providing

⁵ The FTC, the Board of Governors of the Federal Reserve System, the OCC, the FDIC, the OTS and the NCUA.

⁶ 71 Fed.Reg. 14419 (March 22, 2006).

the information, the type of information provided, the frequency of reporting, and the type of consumer reporting agency to which the information is provided. The questions posed highlight the complexity of the agencies' task of providing meaningful and workable guidelines and rules.

The FACT Act also contains a provision for consumers to directly dispute with furnishers the accuracy of information furnished to nationwide consumer reporting agencies. This provision will take effect after the agencies prescribe regulations in accordance with the requirements of the Act.⁷

Section 312(b) of the FACT Act changed the standard for furnishers reporting information to the consumer reporting agencies. Before the FACT Act, furnishers could not furnish information about a consumer to a consumer reporting agency if the furnisher knew or consciously avoided knowing that the information was inaccurate. Under the FACT Act, the furnisher may not report information if it “knows or has reasonable cause to believe that the information is inaccurate.”⁸ The term “reasonable cause to believe that the information is inaccurate” means “having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.”⁹

Under Section 314 of the FACT Act, if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after reinvestigation, the furnisher must modify that item of information, delete that item of information, or permanently block the reporting of that item of information.

⁷ FACT Act § 312(c).

⁸ FACT Act § 312(b)(1).

⁹ FACT Act § 312(b)(2).

Given the number and diversity of furnishers who will be subject to the guidelines and regulations, the agencies have taken time to develop guidelines and rules that will achieve the goal of improving accuracy and the dispute process. In this interim period, some furnishers have implemented procedures for responding to direct consumer disputes.¹⁰ Furnishers expect that the system will be further improved and/or refined when the agencies ultimately issue their guidelines and regulations. The agencies have not announced an expected date for the proposed rulemaking.

Furnishers' Compliance Efforts

In working to improve the accuracy and integrity of data reported, it is important to consider the volume and scope of the data involved. Billions of items of tradeline information are furnished to consumer reporting agencies each month, resulting in the creation and maintenance of files on more than 200 million consumers, with more than 1.5 billion consumer reports issued annually.¹¹ Creditors benefit because readily available credit information enables them to offer more credit, incur less default risk, and obtain greater lending capital through the bundling and selling of consumer credit obligations in the secondary market.¹² Consumers benefit because they have easy access

¹⁰ See 2006 Report to Congress, pp. 25-27.

¹¹ Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003 (2004), pp. 8-9, <http://www.ftc.gov/reports/facta/041209factarpt.pdf>.

¹² Water F. Kitchenman, *U.S. Credit Reporting: Perceived Benefits Outweigh Privacy Concerns*, The Tower Group, p. 7 (1999).

to credit and pay less for credit extended.¹³ Our consumer reporting system is unequalled in the world in terms of scope and benefits.¹⁴

Congress has never imposed, and should not impose, a perfect information obligation upon furnishers of credit report information or upon the consumer reporting agencies.¹⁵ Given the speed and volume of consumer reporting transactions, mistakes will occur. The challenge is to minimize the avoidable errors, quickly resolve inevitable mistakes and still encourage maximum participation in a voluntary system.

It is my experience that furnishers expend considerable resources in ensuring the accuracy of the information they report to consumer reporting agencies and resolving customer disputes about the accuracy of this information.¹⁶ Furnishers have financial and reputation interests at stake when they report information about their customers and when they investigate consumer disputes. If furnishers fail to comply with their legal obligations, they will have dissatisfied customers, lose future business opportunities in a

¹³ Kitchenman, *U.S. Credit Reporting*, p. 7; see also Staten and Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation*, (May 2003), p. vii, <http://www.ftc.gov/bcp/workshops/infoflows/statements/cate02.pdf>.

¹⁴ Staten and Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act*, pp. iii, v-vi; see also Fred H. Cate and Richard J. Varn, *The Public Record: Information Privacy and Access – A New Framework for Finding the Balance* (1999), p. 11, http://it.ojp.gov/initiatives/files/Public_Record.pdf

¹⁵ See FTC Commentary on the FCRA, 16 C.F.R. Part 600, ¶ 607(b) -3: “The section does not require error free consumer reports.”

¹⁶ In addition to my experience counseling furnishers, I also participate frequently in industry conferences. I observe that furnishers place an emphasis on compliance and staying current on trends, issues and legal requirements to ensure that they are aware of their obligations and best practices. In this regard, it is telling that the Consumer Financial Services Committee of the American Bar Association currently has more than 800 members and holds extensive meetings three times a year. Although the Committee strives to include participation by all counsel who serve the consumer financial services industry (including consumer representatives, academicians and government officials), most of the Committee members counsel creditors.

competitive marketplace, maintain inaccurate internal records, and may face litigation and regulatory enforcement actions. Customer disputes may also alert furnishers to actual or potential identity theft or other fraud, and the resolution of those disputes may prevent additional losses or facilitate loss recovery.

Many furnishers have systems and procedures in place for reporting a consumer's account activities. In the vast majority of cases, the information furnishers report is accurate.¹⁷ However, furnishers also recognize that some mistakes are inevitable in light of the volume of data and the daily changes in information. To correct mistakes, furnishers have adopted policies and procedures to respond to consumer accuracy disputes received from consumer reporting agencies and directly from consumers.

Furnishers typically have multiple layers of review in place to ensure that their responses to consumer disputes are accurate. I have found that furnishers typically have the following general procedures in place:

- Written policies governing reporting requirements and procedures;
- Written policies regarding investigation of disputes, in some cases with step by step instruction;
- Special policies and procedures when identity theft is alleged; and
- Escalated reviews in more difficult cases.

Furnishers' policies and procedures account for the fact that some disputes are inquiries that can be resolved by reviewing, comparing and verifying information, or

¹⁷ See Robert B. Avery, Paul S. Calem & Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin (Summer 2004): "This analysis of the effects of data problems on credit history scores indicates that the proportion of individuals affected by any single type of data problem appears to be small." See also: 2006 Report to Congress at Appendix D, Table 1, showing pending disputes at .18%.

explaining to the consumer the information that was furnished. For disputes that are not resolved by explanation, verification or updating, it is my experience that furnishers will, 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. When a consumer claims identity theft, many furnishers submit the dispute to a fraud investigation department or specialist for special handling. Some furnishers refer all disputes to a research department.

Under the current law, furnishers have the flexibility to respond as the consumer dispute dictates. Some cases require little investigation; others more skilled handling. Through the years, furnishers have gained experience and information so that they can best assess the nature and complexity of the dispute and properly respond to disputes in the most efficient and effective manner.

Obviously, it is important for furnishers to report accurate information and investigate disputes in compliance with the law. Failure to do so can lead to an undesirable expenditure of resources and sometimes litigation costs. Although some have advocated more stringent sanctions for failures to meet furnishers' obligations, additional penalties would not incentivize furnishers to enhance compliance efforts. Instead, the more likely result of imposing penalties would be that furnishers would delete accurate tradeline information or settle frivolous litigation. Neither result would enhance the overall system for consumers or creditors; in fact, doing so would undermine the accuracy and integrity of the information upon which creditors rely.

Challenges Faced by Furnishers

According to the 2006 Report to Congress, approximately 18 to 22 % of consumers who obtained file disclosures from a consumer reporting agency in 2003 disputed information in their credit files.¹⁸ This percentage should be compared to the Report's chart showing that only 0.18% of all accounts reported by one nationwide consumer reporting agency had pending disputes.¹⁹ Furnishers usually resolve disputes by modifying information or deleting information; if the information is accurate, furnishers verify the information.²⁰

Consumer complaints may arise when the furnisher verifies the disputed information, or makes a modification that does not mirror the consumer's request. The following factors help provide context to these complaints:

1. Consumers do not understand the information reported or the reason for the information reported. When a consumer obtains a file disclosure, a consumer may not recognize some information – such as the current account owner (which occurs when an account is sold) or the account number (which is often changed from the number the consumer uses for privacy and identity theft protection purposes). Consumers may not understand that if they make delinquent payments and subsequently bring an account current, furnishers will continue to report the past delinquent history. In these situations, it is not a matter of the furnisher conducting a more comprehensive investigation; the

¹⁸ 2006 Report to Congress, p. 12.

¹⁹ *Id.*, Appendix D.

²⁰ *Id.*, p. 24.

information reported is accurate. When the information is accurate, the furnisher has no obligation to change it or delete it.

2. When a consumer claims identity theft, the consumer may not provide sufficient information or documentation within a reasonable time period, and furnishers may determine that the account has been ratified or that the consumer made a false claim of identity theft to avoid an obligation. The 2006 Report to Congress indicates that of the consumers surveyed by the GAO who disputed information in their credit files, only 2% claimed that they were victims of identity theft.²¹ Thus, furnishers deal with a relatively small number of identity theft claims compared to other types of disputes. However, identity theft claims appear to present some of the most challenging circumstances. The obvious reason is that the identifying information used by the identity thief matches the information on the victim in the furnishers' files. In addition, consumers may claim identity theft, when, in fact, they have agreed to sign as co-obligors on accounts only to later change their minds given the risk, or having forgotten over time that they agreed to act as co-obligors.²² Still other unscrupulous individuals may assert an identity theft claim in an attempt to remove accurate, negative information from their tradelines. For these reasons, furnishers do not simply rely on a consumer's assertion, but require substantiation of the claim.

The challenge in resolving identity theft claims may be compounded when victims know the thief's identity and initially decide not to report the crime or dispute the account because they do not want to accuse family members, friends or co-workers of a

²¹ 2006 Report to Congress, p. 12.

²² See, e.g., *Cope v. MBNA America Bank, N.A.*, 2006 WL 655742 (D.Or. March 8, 2006).

crime or because they believe that the thief will pay the account. Unfortunately, as a result, identity theft cases may not be reported until long after the account has been opened and is in default.²³ When a victim does not report identity theft, or assists the identity thief by making payment arrangements, the creditor/furnisher has no way of knowing that the account was improperly opened and/or used. When a claim of identity theft is made long after the account is opened and payments made, the creditor/furnisher may reasonably conclude, based upon the identifying information, the account payment history, and no report of identity theft, that identity theft did not occur. Instead, the furnisher may reasonably believe that the consumer disputes the matter only because the account is in default. It is my experience that before reaching such a conclusion, the creditor/furnisher will investigate the matter, and if there is any indication that the account was unauthorized, will delete the tradeline information. However, if there is information that a consumer has accepted liability on the account, or that the account was opened with the consumer's knowledge or consent, the creditor/furnisher may choose not to delete the tradeline.

²³ This view was shared by a consumer expert witness (the late Richard LeFebvre). Mr. LeFebvre reported that in 2004, 43% of identity theft victims knew the perpetrator. The identity thief was often a relative, significant other, friend, co-worker, or neighbor. Mr. LeFebvre also offered expert testimony on behalf of a consumer that in cases where the victim knows the identity thief, the victim usually does not report the crime for a significant period of time: “[T]he last thing you want – even though you’ve been victimized, the last thing you want to do is put your girlfriend or your friend or your father in jail. So there is going to be that period of time in which people kind of go into ... reclusion and don’t know what to do. ... So there’s a lot of lag time from the time they first find out until they actually do something about it. Sometimes it’s a big lag time” See *Sweitzer v. American Express*, U.S. District Court (S.D. Ohio, Eastern Div.) Case No. 2:05-CV-650, LeFebvre Deposition, January 17, 2007, p. 147:7-19.

3. Consumers raise frivolous disputes directly or through credit repair clinics in order to obtain credit on terms for which they otherwise would not qualify. In order to satisfy their obligation to protect the accuracy and integrity of information provided to consumer reporting agencies, furnishers must confirm the validity of disputes, and not merely remove accurate, derogatory tradeline information because the consumer has disputed the information. If furnishers delete accurate information on consumer demand, all consumers will bear the cost. Imposing more stringent investigation standards on furnishers will not stop these activities or enhance results for consumers.

4. The reasonableness of a furnisher's investigation should be measured by the procedures that were followed in light of the information reasonably available to the furnisher at the time of the dispute. The reasonableness of a furnisher's investigation depends on the circumstances existing at the time of the dispute. Even if a furnisher reaches a "wrong" conclusion, this result does not mean that the furnisher employed flawed or deficient procedures. In evaluating the reasonableness of a furnisher's investigation, the pertinent inquiry should focus on the information that was reasonably available to the furnisher at the time of the dispute. In some instances, however, litigation will uncover information that was not known or reasonably available to the furnisher when the dispute was investigated.

It is important to note that a furnisher does not and cannot conduct the same level of inquiry as occurs during litigation, which involves written discovery and depositions. For example, disclosure of new information may occur in cases of identity theft, where evidence of the crime may be established through extensive pre-trial discovery. If the circumstances of the crime were not presented to the furnisher or were not otherwise

reasonably available at the time of the dispute, information that is later uncovered or disclosed should not bear on the assessment of reasonableness of the investigation. To require otherwise would impose strict liability on furnishers in conducting investigations and would create serious disincentives for voluntary participation in the consumer reporting system. It is for this reason that the FCRA imposes, and should impose, liability only for failure to comply with the FCRA investigation requirements and not strict liability for the furnisher's conclusions reasonably based on the investigation.

5. The fact that a case ends in litigation does not mean that the furnisher's investigation was unreasonable. In my experience, very few cases result in escalated or unresolved disputes, and ultimately in litigation. When cases do end in litigation, some courts have agreed with consumers;²⁴ others courts have found a furnisher's investigation reasonable as a matter of law.²⁵ In other instances, the courts have held that the reasonableness of the furnisher's investigation is a factual question for the jury.²⁶ The conclusion to be drawn from these cases is that the reasonableness of a furnisher's investigation will depend upon the specific facts of each individual case and that no pattern has emerged. As a result, the cases do not reveal any systemic problems that would warrant Congressional action.

²⁴ See, e.g., *Johnson v. MBNA America Bank, N.A.*, 357 F.3d 426 (4th Cir. 2004).

²⁵ See, e.g., *Cope v. MBNA America Bank, N.A.*, supra note 22; *Westra v. Credit Control of Pinellas*, 409 F.3d 825 (7th Cir. 2005); *Malm v. Household Bank*, 2004 WL 1559370 (D. Minn. 2004).

²⁶ See, e.g., *King v. Asset Acceptance, LLC*, 452 F.Supp.2d 1272 (N.D. Ga. 2006).

Specific Issues

The Committee has asked that my testimony address the following issues as appropriate. Although I believe that my testimony does address these issues, I will respond to each of the questions to the extent that they seek information within the scope of my testimony.

1. Please describe, in detail, the types of errors, problems, or other factors that may impair the accuracy, completeness, or integrity of information in credit reports.

Because of the volume and complexity of the data that constitute credit reports and the automated systems that enable the credit reporting system to operate, errors are inevitable. From its inception, the FCRA has provided for consumer access to their files at consumer reporting agencies and procedures for correcting and updating credit report information. These procedures have been improved through amendments and through the automated e-OSCAR system. Consumers today have quick and easy access to information at consumer reporting agencies, and are in the best position to challenge information that they believe to be inaccurate or incomplete. The 2006 Report to Congress indicates that consumers do avail themselves of the access and correction procedures, and that the majority of the disputes (about 70%) result in modifications or deletions of disputed information.

2. Are consumer reporting agencies' current procedures adequate for handling consumer disputes to ensure maximum possible accuracy in the resolution of consumer disputes? Is relying on automated systems adequate to handle consumer disputes under the FCRA?

Furnishers rely on the information in the Automated Consumer Dispute Verification (ACDV) received from consumer reporting agencies, including the transmission of "all relevant information" as required under the FCRA. The ACDV

form includes a free-form field which furnishers use to provide additional information. I am aware that some consumers complain that underlying documentation of their disputes is not always fully conveyed to furnishers. In addition, furnishers sometimes find the e-OSCAR dispute codes to be somewhat deficient. In my experience, however, I have not seen this to be a problem. My observation is borne out by the 2006 Report to Congress, which stated “most furnishers reported that the information provided to them through e-OSCAR usually is sufficient to investigate the dispute.”²⁷

The imposition of any new requirements with respect to paper documentation could raise practical problems, and if mandatory in all cases, will undoubtedly increase costs, slow dispute processing times and impair the overall efficiency of the dispute resolution process. For these reasons, I believe that any such requirements should be based on empirical studies, rather than anecdotes, and be implemented only if studies show that the overall benefits outweigh any impairments to the system and processing delays.

3. How effective are the FCRA provisions and regulations for insuring maximum possible accuracy in consumer reports and resolution of consumer disputes?

I believe that the statistics show that the vast majority of consumer reports are accurate, and then when disputes arise, in most instances, they are quickly resolved to the consumer’s satisfaction. For the reasons described above, complete accuracy of consumer report information is not possible. The FCRA appropriately requires consumer reporting agencies to maintain *reasonable procedures* to insure the maximum possible accuracy in providing consumer reports and to resolve consumer disputes. Thus under

²⁷ 2006 Report to Congress, p. 17. The report also mentions that a furnisher can contact a customer directly for information if necessary.

the FCRA, the focus is, and I believe should be, on the reasonableness of the procedures under the applicable circumstances. I believe that, when the FCRA provisions are applied to this process, the effectiveness of the Act's consumer protections can be evaluated in each individual case, and if there are FCRA violations, consumers have adequate remedies under the law.

4. To what extent do considerations of cost impact the ability of CRAs and data furnishers to report accurate information or satisfactorily resolve all consumer disputes?

As stated above furnishers devote significant resources to handling their customers' disputes, whether those disputes are made directly or are received from a consumer reporting agency. The costs associated with these resources are necessary for legal compliance, customer satisfaction, loss prevention and recovery, reputation and related costs that are essential to success in a competitive environment. If a creditor or other furnisher were to cut those costs, it would do so to its own detriment.

5. What actions are consumer reporting agencies, furnishers and regulators taking to improve the accuracy of credit reports? What actions should they take?

For the reasons discussed above, it makes sense for all concerned to work to assure the accuracy of credit report information. The industry's adoption of the standard Metro and Metro-2 formats improve uniformity and accuracy in the furnishing of consumer report information.²⁸ Statistics also show that the automated e-OSCAR dispute system has increased the effectiveness of the dispute resolution process.²⁹

²⁸ See 2006 Report to Congress, p. 10.

²⁹ *Id.*, pp. 21-24.

6. Have the regulators taken adequate enforcement actions regarding credit reporting issues involved accuracy of information?

I am aware of the enforcement actions that the regulators have publicly announced. I have no reason to believe that their enforcement actions are anything less than adequate.

7. What factors may limit the ability of consumers to enforce the provisions of the FCRA?

I believe that significant progress has been made in consumer access to credit report information. Much of this progress is due to the emerging direct-to-consumer market for this information. This access has enabled consumers to dispute and, in most cases, remove or modify inaccurate or incomplete credit report information. If consumer report information is unchanged following a dispute, that result may be because the information is, in fact, accurate. In that case, the process serves the valuable function of educating consumers as to the nature and source of their credit report information.

When consumers are dissatisfied with the dispute outcome, they may continue to dispute the information. If they provide additional information or documentation, the dispute may subsequently be resolved to their satisfaction. If it is not, consumers have the right to insert a statement regarding the dispute into the file at consumer reporting agencies. Moreover, the FCRA requires furnishers to note the existence of a dispute when furnishing disputed information to a consumer reporting agency. Consumers also may block the furnishing and reporting of tradeline information that results from identity theft. In short, the FCRA contains many provisions that enable consumers to enforce the

rights and protections available to them. Their ability to do so may be hampered by lack of information. Consumer education as to their FCRA rights is key.

Finally, consumers with claims based on FCRA violations may bring suit to redress injury; and their counsel may recover attorneys' fees in successful actions or settlements.

8. What recommendations would you make to the FTC and banking regulators for rulemaking for Sec. 312?

As discussed in my testimony, the questions the agencies raised in their March 2006 Federal Register notice demonstrate the complexity of the issues involved in developing consumer report accuracy and integrity guidelines and regulations. The responses to those questions further illustrate the magnitude of the challenge. Our consumer reporting system has evolved on a voluntary basis in a competitive market with extensive government oversight and increasing regulation. The challenge is to preserve the flexibility inherent in this dynamic system and assure the benefits derived from credit report information, while reducing the prospect for individual harm that can result from inaccurate information. I believe that the FTC and banking regulators are taking the right approach, which is to base any guidelines and regulations on empirical information and a full understanding of the diverse business practices and limitations of those who are considered "furnishers" of consumer report information. If any new requirements are ultimately based on isolated incidences of harm, they should be instituted only if those instances are indicative of systemic problems, the resolution of which will increase consumer protection but not be off-set by a reduction in the availability and value of credit report information.

Closing Comments

In closing, I would like to thank the Committee again for the opportunity to present these views. I would like to conclude with the following observations:

1. Furnishers currently have strong incentives to provide accurate information to consumer reporting agencies, and have nothing to gain by furnishing inaccurate information about consumers;
2. Furnishers face challenges in addressing consumer disputes due to the complexity of the consumer reporting system and the problems created by identity theft and credit repair clinics;
3. Furnishers try hard to comply with existing laws and to ensure that they have policies and procedures in place to satisfy their legal responsibilities;
4. The FACT Act includes provisions not yet in effect that should further enhance the accuracy and integrity of information provided to consumers.

I am happy to answer any questions that the Committee may have.