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Consumer and Credit Reporting, Scoring, and Related Policy Issues

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SUMMARY

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Consumer and Credit Reporting, Scoring, and Related Policy Issues

The consumer data industry collects and subsequently provides information to firms about the behavior of consumers when they participate in various financial transactions. Firms may use consumer information to screen for the risk that consumers will engage in behaviors that are costly for businesses. For example, lenders rely on credit reports and scores to determine the likelihood that prospective borrowers will repay their loans. Insured depository institutions—banks and credit unions—rely on consumer data service providers to determine whether to make available checking accounts or loans to individuals. Insurance companies use consumer data to determine what insurance products to make available and to set policy premiums. Payday lenders may use data regarding the management of checking accounts and payment of telecommunications and utility bills to determine the likelihood of repaying small-dollar cash advances. Merchants rely on the consumer data industry to determine whether to approve payment by check or electronic payment card. Landlords may use consumer data to determine whether to lease apartments to prospective tenants. Employers may use consumer data information to screen prospective employees to determine the likelihood of fraudulent behavior. In short, numerous firms rely on consumer data to identify and evaluate potential loss risks before entering into financial relationships with new consumers.

Consumer credit reporting agencies (CRAs), also known as credit bureaus, are firms that prepare consumer reports comprised of individuals' financial transaction history data. Such data may include historical information about credit repayment, rental payments, employment, insurance claims, debts in collection, bankruptcies, check writing, and account management. Consumer reports, however, do not contain information on consumer income or assets, race or ethnicity, religious or political preferences, or medical history. The information in consumer reports can subsequently be used to calculate numeric scores, which are metrics representing the likelihood that consumers may engage in costly financial behaviors such as defaulting on loans, filing insurance claims, overdrawing bank accounts, failing to pay utility bills, or committing fraud.

The Fair Credit Reporting Act (FCRA, 15 U.S.C. §1681), implemented by Regulation V, is the primary statute regulating the credit data industry. FCRA includes consumer protection provisions. For example, FCRA requires that consumers must be told when their information from CRAs has been used after adverse actions (e.g., denial of a loan) have occurred, and a consumer has a right to one free credit report ever year (from each of the three largest nationwide CRAs) even in the absence of an adverse action. Consumers also have the right to dispute inaccurate or incomplete information in their reports. FCRA also imposes certain responsibilities on those who collect, furnish, and use the information contained in consumers' credit reports. The Consumer Financial Protection Bureau (CFPB) implements FCRA, and it has rulemaking and enforcement authorities over all CRAs as well as the authority to conduct examinations for larger CRAs.

Congress has shown continuing interest in policy issues surrounding the consumer data industry that have implications for consumer protection and access to financial products and opportunities. Specific policy issues include (1) inaccurate or disputed information in consumer reports; (2) inconsistencies in billing and collection practices, which have generated complications with medical debt reporting; (3) the length of time negative or derogatory information should remain on consumer reports; and (4) incorporating non-traditional loan repayment data, also known as *alternative* data, into consumer reports and scores.

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Introduction

The consumer data industry collects and subsequently provides information to firms regarding the financial transaction behaviors of consumers. When deciding whether to enter into various contractual agreements, many firms use this data to determine whether consumers are likely to engage in costly behaviors. For example, lenders rely on credit reports and scores to determine the likelihood that prospective borrowers will repay their loans. In addition, insured depository institutions—banks and credit unions—may use consumer data to determine whether to make checking accounts or loans available to individuals. Insurance companies use consumer data to determine what insurance products to make available and to set policy premiums.[1] Payday lenders may use data stemming from the management of checking accounts and payment of telecommunications bills to determine the likelihood of repaying small-dollar cash advances. Merchants may rely on consumer data to determine whether to approve payment by check or electronic payment card. Landlords may use consumer data to determine whether to lease apartment to prospective tenants. Employers may use consumer data information to screen prospective employees to determine the likelihood of fraudulent behavior.

Greater reliance by firms on consumer data affects access to financial products such as loans and insurance as well as opportunities such as housing and employment.[2] Consequently, negative or derogatory information (e.g., multiple overdrafts, involuntary account closures, loan defaults, fraud incidents), which stays on consumer reports for several years, limits consumer access and is problematic if such information is inaccurate or out of date. Furthermore, consumers may find making corrections to be time-consuming, complex, and perhaps ineffective. In some cases, the exclusion of information—such as timely repayment of credit (i.e., loans) and non-credit (e.g., rent, utilities) obligations—may also limit access to various financial products or opportunities.

Congress established the current regulatory framework for the consumer data industry to address consumer protection concerns. The Fair Credit Reporting Act (FCRA, 15 U.S.C. §1681), enacted in 1970 and implemented by Regulation V, is the primary statute regulating the credit data industry.[3] FCRA establishes consumers' rights in relation to their credit reports, as well as permissible uses of credit reports. It also imposes certain responsibilities on those who collect, furnish, and use the information contained in consumers' credit reports. FCRA requires accurate and complete reporting of information and for the investigation of consumer disputes. The Consumer Financial Protection Bureau (CFPB) has rulemaking and enforcement authority over credit reporting agencies (CRAs), also known as credit bureaus, as well as entities that furnish consumer data to CRAs. It also has supervisory authority over qualifying CRAs.[4]

[1] See CRS Report RS21341, *Credit Scores: Credit-Based Insurance Scores*, by Baird Webel.

[2] For a list of consumer reporting agencies, see Consumer Financial Protection Bureau (CFPB), "List of Consumer Reporting Agencies," https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/consumer-reporting-companies/companies-list/.

[3] P.L. 91-508. Title VI, §601, 84 Stat. 1128 (1970), codified as amended at 15 U.S.C. §§1681-1681x. For the legal definition, see 12 C.F.R. §1090.104, "Consumer Reporting Market," https://www.ecfr.gov/current/title-12/chapter-X/part-1090/subpart-B/section-1090.104. FCRA, the Fair Debt Collection Practices Act, and the Equal Credit Opportunity Act are all consumer credit protection amendments included in the Consumer Credit Protection Act (P.L. 90-321).

[4] In July 2012, the CFPB announced that it would supervise CRAs with $7 million or more in annual receipts, which included 30 firms representing approximately 94% of the market. See CFPB, "CFPB to Supervise Credit Reporting," July 16, 2012, http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-superivse-credit-reporting/.

This report provides background information on the consumer data industry and various specialty areas. An overview of a preeminent specialty area—consumer scoring—is also discussed. Next, the evolution of the consumer data industry is summarized. The report discusses policy issues concerning (1) inaccurate or disputed information in consumer reports; (2) inconsistencies in billing and collection practices, which have generated complications with medical debt reporting; (3) the length of time negative or derogatory information should remain on consumer reports; and (4) the incorporation of non-traditional loan repayment data into consumer reports and scores.

The Consumer Data Industry and Specialty Services

This section provides background information on the consumer data industry, particularly the CRAs. It also provides background on credit scoring along with a summary of key factors known to affect credit scores.

Consumer Reporting Services

CRAs are firms that prepare and sell (to other firms) consumer reports pertaining to individuals' financial transactions history data.[5] Such data may include historical information about credit repayment, tenant payment, employment, insurance claims, bankruptcies, and check writing and account management. Consumer files, however, do not contain information on consumer income or assets.[6] Consumer reports in general may not include information on items such as race or ethnicity, religious or political preference, or medical history.[7]

Equifax, Experian, and TransUnion—the three largest nationwide providers of *credit reports*—capture loan repayment behaviors. Other CRAs provide a variety of specialized consumer reporting services.[8] Some specialty CRAs collect data regarding payment for phone, utilities, and telecommunication (e.g., cable) services, which can be used for identity verification.[9] Before hiring employees or renting property, some employers or landlords may obtain *background screening reports* or *tenant screening reports*, respectively, from those specialized CRAs to conduct background checks.[10] Some CRAs specialize in consumer reporting for the underbanked, near prime, and subprime consumer segments, including those with minimal recorded data.[11] Some CRAs specialize in debt collection (recovering past due funds) and fraud verification data.[12]

[5] Jonathan Burns, "Credit Bureaus and Rating Agencies in the US," *IBISWorld*, January 2023, p. 15.

[6] See CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[7] See Federal Reserve, "Federal Fair Lending Regulations and Statutes: Equal Credit Opportunity (Regulation B)," *Consumer Compliance Handbook*, http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_reg_b.pdf; and Experian, "Basic Questions About Credit Reports and Credit Reporting," https://www.experian.com/assets/consumer-education-content/brochures/Reports_Issue_1.pdf.

[8] For a list of consumer reporting agencies, see CFPB, "List of Consumer Reporting Agencies," 2020, http://files.consumerfinance.gov/f/201501_cfpb_list-consumer-reporting-agencies.pdf.

[9] For example, see National Consumer Telecom and Utilities Exchange, http://www.nctue.com.

[10] For example, see Experian RentBureau, http://www.experian.com/rentbureau/renter-credit.html.

[11] For example, see Clarity Services, https://www.clarityservices.com/, which focuses on higher-risk borrowers and collects data from financial service providers, such as auto financers, check cashers, prepaid card issuers, peer-to-peer micro lenders, and small-dollar credit lenders.

[12] For example, see Consumer Data Industry Association, https://www.cdiaonline.org/.

Firms that use consumer reports may also report information to CRAs, thus serving as *furnishers*. A *tradeline* is an account attached to an individual consumer that a furnisher reports to a CRA.[13] A tradeline serves as a record of the transaction (payment) activity associated with an account that may include information pertaining to both untimely and timely payments. Furnishing tradelines is voluntary, and furnishers are not required to submit tradelines to all CRAs. Furnishers also have different business models and policies, resulting in different reporting practices. Some furnishers report both timely and untimely payments, while others only report untimely payments. Some furnishers report only those unpaid customer obligations deemed uncollectible and written off as losses on their (or their clients') balance sheets, when money balances owed surpass minimum threshold levels, or only the principal balances owed minus the penalties and fees. Others may report all monies owed. Furnishers, therefore, have discretion over the types of obligations they report and how they report them.

If more firms choose to participate as furnishers, consumer data becomes more comprehensive and more valuable—but furnishing is costly. To become furnishers, firms must be approved and comply with the policies of a CRA, such as fee registration requirements.[14] When transferring consumer data, furnishers must comply with cybersecurity requirements and adopt standardized reporting formats established by the Consumer Data Industry Association—or some CRAs will not accept the data.[15] In cases when such compliance costs are burdensome, some firms may choose not to be furnishers. The legal obligations associated with FCRA may also influence decisions to become furnishers given the possibility of incurring legal costs.[16]

[13] See Experian, "What Are Tradelines and How Do They Affect You?," May 13, 2024, https://www.experian.com/blogs/ask-experian/what-are-tradelines/.

[14] For examples of some furnisher requirements, see Experian, "Reporting to Credit Agencies," http://www.experian.com/consumer-information/reporting-to-credit-agencies.html.

[15] The approved formats add security (privacy) protections to the data transfer process. See Consumer Data Industry Association, "Metro 2 Format for Credit Reporting," https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/. CRAs are also subject to the data protection and security requirements of the Gramm-Leach-Bliley Act (P.L. 106-102). See CRS Report R47434, *Banking, Data Privacy, and Cybersecurity Regulation*, by Andrew P. Scott and Paul Tierno.

[16] See Federal Trade Commission, "Consumer Reports: What Information Furnishers Need to Know," https://www.ftc.gov/business-guidance/resources/consumer-reports-what-information-furnishers-need-know.

Example: Specialty CRA Service to Obtain Checking Accounts

When an individual applies for a checking account, a depository institution typically pays a fee to purchase a credit report from a specialty CRA, part of the initial fixed costs incurred when beginning a financial relationship with a new customer.[17] Depository institutions use credit reports to verify the identity of customers as required by the Bank Secrecy Act.[18] They also look for incidents of fraudulent activity, and prospective customers are typically rejected when problems verifying identity arise or incidents of fraud have been discovered.[19] Depository institutions also review information about past banking relationships, such as whether any financial institutions closed checking or other accounts due to the inability to collect overdraft or insufficient funds fees. Rather than reject all applicants with adverse information, depositories may choose to offer checking accounts with less overdraft coverage and fewer check-writing privileges. A prepaid card may also be offered as a substitute for a checking account. The information obtained from CRAs may also allow depository institutions to infer the probability of cross-selling (or arguably pre-approving access to) other financial products (e.g., mortgages, credit cards, savings accounts) to new customers.

Credit Scoring Services

A *consumer score* is a numeric metric used to predict the likelihood of a variety of financial behaviors.[20] For example, consumer *credit scores* are prepared for lenders to determine the likelihood of loan default for particular types of credit (e.g., a mortgage or credit card). Other consumer scores can be prepared to predict the likelihood of filing an insurance claim, overdrawing a bank account, failing to pay a utility bill, committing fraud, or other adverse financial behaviors. Consumer scores are typically computed using the information obtained from one or more consumer reports. Some firms, including CRAs, create both consumer reports and scores, while others produce only consumer scores.[21] For this reason, consumer scoring can be considered a specialty service in the consumer data industry. Consumer report users are charged additional fees if they want the reported information converted into consumer scores.

An individual may have numerous consumer scores due to differences in (1) financial behaviors that different firms need to predict, (2) the CRAs where the consumer scoring firms purchase their consumer data, and (3) algorithms used by different scoring firms.

- Estimating the likelihood that a prospective customer makes an adverse choice, such as defaulting on a loan, varies by financial product. For example, if borrowers can prioritize whether to be late repaying their credit card, auto, or mortgage loans, then the probability of default is likely to vary by loan type. Whether a prospective claimant files an insurance claim depends upon the amount of coverage and the deductible of a policy. Because behaviors may depend on some similar and some different factors, a single score is unlikely to be universally representative of adverse behaviors for all types of financial products.
- CRAs have their own policies for storing and reporting information. Different CRAs may collect the same information on the same individuals but adopt

[17] See ChexSystems, https://www.chexsystems.com/.

[18] P.L. 91-508.

[19] See Early Warning, "Real-Time *Identity Chek* Service—New Account Scores," https://www.earlywarning.com/sites/default/files/2019-05/ew_product_brief_real-time_identity_chek_nas.pdf.

[20] The predictive power of consumer scores, assuming no significant changes in consumer repayment patterns, may last for approximately one to two years. For examples of various types of scores and corresponding estimated months of predictive power, see TransUnion, "Scores Overview," http://www.transunion.com/docs/financialServices/FS_ScoresOverview.pdf.

[21] For example, see FICO, http://www.fico.com/en/, and VantageScore, http://www.vantagescore.com/.

different conventions for storing the information. For example, one CRA may report a delinquent debt obligation separately from the penalties and fees, whereas another CRA may combine both items into one entry. Consequently, consumer reports obtained from different CRAs on the same consumer are likely to differ due to different policies adopted by furnishers, CRAs, or both.

- Each scoring firm has its own proprietary statistical model(s), meaning that each firm decides what consumer information should be included from calculations and how it is weighted. For example, included information can be equally weighted, or heavier weights can be placed on more recent information or on information deemed more pertinent. Sometimes the consumer scoring firm selects the weighting scheme, and sometimes the requestor of a consumer score may provide instructions to the preparer. Furthermore, the weights for various product types may change over time.

Given these many differences, applicants for financial products usually cannot see the actual scoring metrics used until *after* the decision-making firms release them, particularly when customized scores were requested and used in the decision-making processes.

Some Factors Frequently Used to Calculate Credit Scores[22]

To calculate credit scores, credit scoring models generally obtain the following factors from credit reports:

- **Payment history.** A lender is concerned about the borrower paying past credit accounts on time. Payment history includes information related to late or missed payments, how late, amount owed, bankruptcies, foreclosures, lawsuits, and wage garnishments. Negative information on a credit report negatively affects a credit score.
- **Credit utilization.** This factor measures the amount of outstanding debt a consumer has accumulated relative to his or her credit limit. An individual with $3,000 in charges on a credit card with a $5,000 limit would have a credit utilization rate of 60%. A high credit utilization rate negatively affects a credit score.
- **Length of credit history.** The more experience an individual has using credit, the easier it is for a lender to determine how well or poorly additional credit will be managed. Calculating credit scores may be impossible for "invisible" consumers (i.e., consumers with either no credit history or insufficient credit histories).
- **New credit accounts or requests.** There are two types of inquiries: A *soft* inquiry occurs when consumers request to check their credit reports, typically for accuracies or to dispute information, but there is no corresponding request for credit. Users of credit reports do not receive information regarding soft inquiries. A *hard* inquiry occurs when consumers apply for credit, and action is required by users of credit reports, typically to make approval or rejection decisions. Hence, making numerous different credit requests, particularly over a short period of time, can negatively affect a score. If a consumer shops for credit, which would be indicated by applying for the same type of credit within a short period of time (e.g., two to six weeks), then that activity would count as only one hard inquiry in most credit scores.[23] Prescreening, which is used frequently in credit card solicitations, does not count as a "firm offer of credit or insurance" and, therefore, does not affect consumer credit scores.[24]
- **Credit mix.** Demonstrating the ability to manage multiple types of credit obligations (i.e., revolving, installment, mortgage credit, and finance company credit) influences a credit score. For example, the ability to maintain a stable debt-to-income ratio—preferably below 28%—despite having a mix of credit types indicates the ability to manage credit. Having most of one's credit consist of credit from *indirect lenders*, such as department stores and rent-to-own stores, may not be viewed as favorably in some credit scoring models as credit from *direct lenders*, such as banks and credit unions.

Firms that prepare or purchase credit scores can decide how much weight to apply to each factor, and they may include additional predictive factors (e.g., information found on the credit application such as income and employment history) in the calculations. The Equal Credit Opportunity Act, however, prohibits characteristics such as race, sex, marital status, national origin, and religion from being used in credit scoring models.[25]

Selected Legislative Developments

This section provides an overview of some legislative developments pertaining to the consumer data industry. As previously mentioned, FCRA was enacted in 1970 and implemented by Regulation V, is the primary statute regulating the credit data industry. FCRA requires "that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper

[22] For more information, see Fair Isaac, "What's in My FICO Scores: How My FICO Scores Are Calculated," http://www.myfico.com/crediteducation/whatsinyourscore.aspx; and Federal Reserve, "Credit Reports and Credit Score," https://www.federalreserveconsumerhelp.gov/en/learnmore/credit-reports-and-scores.

[23] CFPB, "What Effect Will Shopping for an Auto Loan Have on My Credit?," June 6, 2016, https://www.consumerfinance.gov/ask-cfpb/what-effect-will-shopping-for-an-auto-loan-have-on-my-credit-en-763/.

[24] See Federal Reserve, "Permissible Purposes of Consumer Reports (FCRA, Section 604) and Investigative Consumer Reports (FCRA, Section 606)," http://www.federalreserve.gov/boarddocs/supmanual/cch/200611/fcra.pdf; CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, p. 9, http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf; and BankersOnline, "New Rules for Prescreening," March 1, 1997, https://www.bankersonline.com/articles/103643.

[25] P.L. 93-495, Title 5, 88 Stat. 1520; 15 U.S.C. §§1691 et seq.

utilization of such information."[26] The Federal Trade Commission (FTC) initially played a key role in the implementation, oversight, enforcement, and interpretation of FCRA when it was initially enacted.[27] However, the FTC did not have supervisory or examination authority over CRAs. Congress has since amended FCRA to provide greater consumer protections:

- Although FCRA initially placed requirements on CRAs, the Consumer Credit Reporting Reform Act of 1996 (P.L. 104-208) established, among other things, the duty for furnishers to provide accurate information to CRAs when handling disputes.[28]
- The Fair and Accurate Credit Transactions Act of 2003 (P.L. 108-159) provided consumers with greater ability to monitor the information collected by CRAs.[29] Specifically, a consumer has the right to one free credit report every year (from each of the three largest nationwide credit reporting providers) even in the absence of an adverse action.[30] A consumer must be notified after an adverse action (e.g., a credit denial, receiving less favorable credit terms) has occurred based upon information obtained from a CRA, and disclosure of that information must be made free of charge.[31] Consumers have the right to dispute inaccurate or incomplete information in their reports, and they may turn to credit repair or counseling services to help identify and dispute information in their credit reports.[32] After a consumer alerts a CRA of such a discrepancy, the CRA must investigate and correct errors within 30 days (or 45 days under certain circumstances.[33] The act also directed the FTC to study consumer reporting accuracy, discussed in the textbox below.
- The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) established the CFPB, consolidating many federal consumer financial protection powers from other federal agencies. The CFPB has rulemaking and enforcement authorities over all CRAs. The CFPB also has supervisory authority over the larger CRAs, meaning that it can conduct examinations, review the procedures and operating systems regarding the management of consumer data, and enforce applicable laws. The CFPB still shares enforcement and rulemaking authority with various federal and state agencies including the FTC for certain statutes that apply to all CRAs, prudential regulators (e.g., the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the

[26] 15 U.S.C. §1681.

[27] FTC, "Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act," 76 *Federal Register* 44462, July 26, 2011.

[28] FTC, "Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act."

[29] FTC, "Fair and Accurate Credit Transactions Act of 2003," https://www.ftc.gov/legal-library/browse/statutes/fair-accurate-credit-transactions-act-2003.

[30] As of August 2023, Equifax, Experian, and TransUnion are offering free weekly online credit reports. See https://www.annualcreditreport.com/index.action.

[31] See CFPB, *A Summary of Your Rights Under the Fair Credit Reporting Act*, https://files.consumerfinance.gov/f/documents/bcfp_consumer-rights-summary_2018-09.pdf.

[32] Although the services offered to consumers may be similar, credit repair companies typically operate for profit, while credit counseling services are typically provided by nonprofits. See Campbell Lang, "Credit Repair Services in the US," *IBISWorld*, June 2022, p. 4.

[33] CFPB, "If a Credit Reporting Error Is Corrected, How Long Will It Take Before I Find Out the Results?," September 1, 2020, https://www.consumerfinance.gov/ask-cfpb/if-a-credit-reporting-error-is-corrected-how-long-will-it-take-before-i-find-out-the-results-en-1339/.

Currency, National Credit Union Administration), and state attorney general offices.[34]

- The 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) established new consumer protections related to credit reporting, including the right to a free *credit freeze*, which allows consumers to cease opening new credit accounts in their names as a precaution from fraud and identity theft. This legislative action followed a 2017 data breach of a nationwide credit bureau that exposed the personal data of millions of individuals.[35] Additional provisions in P.L. 115-174 related to the reporting of medical debt and additional protections for servicemembers and veterans are discussed in sections below.

FTC Survey Findings

In 2012, the FTC reported that, based on a survey conducted on credit report accuracy, 26% of survey participants identified at least one potentially material error on at least one of approximately three different credit reports prepared using their consumer information.[36] After the corrections were made, 13% of participants in the FTC study saw one or more of their credit scores increase. For those who saw an increase, over 40% of their scores rose by more than 20 points.[37] In some cases, a 20-point increase could bump a consumer into a more favorable credit risk bracket if the initial consumer score prior to the correction lies near the upper quartile of a bracket. In the FTC study, the approximate 20-point increase allowed 5.2% of surveyed consumers to move to more favorable risk brackets, thus increasing the likelihood of being offered less expensive credit terms.

Policy Issues

Because the accuracy of credit reports ultimately depends on consumers to monitor and dispute any discrepancies, perhaps it is no coincidence that the CFPB receives more complaints about credit reporting than for any other industry it regulates. In 2020 and 2021, consumer complaints submitted to the CFPB about Experian, Transunion, and Equifax increased dramatically.[38] In 2022, more than 75% of complaints received by the CFPB were related to credit reporting largely involving the three largest nationwide CRAs.[39]

The complaints, for the most part, pertain to disputed negative information that consumers want removed. Reporting inaccuracies may occur for various reasons. Consumers may inadvertently provide inaccurate information when applying for financial services. Different furnishers

[34] See U.S. Government Accountability Office (GAO), *Consumer Reporting Agencies: CFPB Should Define Its Supervisory Expectations*, GAO-19-459, July 16, 2019, p. 15, https://www.gao.gov/assets/gao-19-459.pdf.

[35] Equifax, "Equifax Announces Cybersecurity Incident Involving Consumer Information," September 7, 2017, https://www.equifaxsecurity2017.com/updates//-/announcements/a-progress-update-for-consumers.

[36] See FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2012, https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

[37] A more recent study found similar results. See Syed Ejaz, "A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It," *Consumer Reports*, June 10, 2021, p. 4, https://advocacy.consumerreports.org/wp-content/uploads/2021/06/A-Broken-System-How-the-Credit-Reporting-System-Fails-Consumers-and-What-to-Do-About-It.pdf.

[38] CFPB, *Annual Report of Credit and Consumer Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, and TransUnion*, January 2022, p. 23, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

[39] CFPB, *Consumer Response Annual Report: January 1-December 31, 2022*, March 2023, p. 3, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_2022-consumer-response-annual-report_2023-03.pdf.

maintain certain data for their distinct purposes, which may lead to matching and verification challenges for CRAs. Matching information to the proper individual is challenging when data for multiple individuals with common names and spellings are transmitted to CRAs without ample personal identifiable information (e.g., Social Security number, birth date). In addition, inconsistencies associated with internal protocols (e.g., data verification procedures, dispute investigation procedures, billing and reporting practices) can lead to errors that may appear on multiple consumer reports generated for an individual. Individuals can also be victims of fraud or identity theft.

Not all negative information disputed by consumers, however, is inaccurate. For example, late credit card payments are likely to remain on credit reports even after the balances owed have been paid off and the accounts closed. In other words, when information on reports is negative and accurate, consumers can take actions such as bringing current any past due obligations, which can help repair their credit.[40] Nevertheless, consumers must still wait for negative information about any paid-off collections to age off their reports and for the positive information to be reflected in credit scores, discussed in more detail in the section below titled "Length of Time to Retain Negative Information."

Challenges Facing Special and General Populations

As previously stated, the accuracy of credit reports depends largely on consumers to monitor and dispute any discrepancies. *Special populations*, defined by the CFPB as servicemembers and older Americans, are likely to face greater challenges should discrepancies occur on their consumer reports.[41] Active-duty military move more frequently than civilians and tend to be more vulnerable to identity theft.[42] Elderly people are frequently targets of scams, fraud, and exploitation that rob them of their financial security.[43] In addition, the CFPB found that credit report disputes are more likely to occur for those residents in majority Black and Hispanic census tracts and younger consumers.[44] In 2014, focus group participants expressed confusion, frustration, and uncertainty related to their credit reports and scores.[45] These findings suggest that the general population may benefit from financial education resources—such as those provided by the CFPB, the financial bank and credit union regulators, and the CRAs—and dispute processes that are reasonably accessible and easy to navigate.[46]

The policy objectives addressed in this section focus on reducing two types of costly errors. A *type 1 error* occurs when financial services are provided to individuals characterized by above-normal levels of risk. For example, a type 1 error occurs when a lender, relying upon consumer credit data, inadvertently provides a loan to someone who is more likely to be delinquent or default. A *type 2 error* occurs when financial services are not provided to individuals characterized by normal or even below-normal levels of risk. Staying with the lending example, a

[40] See Jennifer White, "What Does 'Derogatory' Mean on a Credit Report?," Experian, June 28, 2022, https://www.experian.com/blogs/ask-experian/what-the-term-derogatory-means-in-a-credit-report/.

[41] CFPB, "Consumer Financial Protection Week: Special Populations Presentation," September 14, 2020, https://www.consumerfinance.gov/about-us/events/archive-past-events/special-populations-presentation/.

[42] CFPB, "Credit Reporting Companies Should Do More to Ensure That Servicemembers Receive the Free Credit Monitoring Services They Are Legally Entitled To," April 27, 2023, https://www.consumerfinance.gov/about-us/blog/credit-reporting-companies-servicemembers-receive-free-credit-monitoring-legally-entitled-to/.

[43] CFPB, "Consumer Financial Protection Bureau Recommends Financial Institutions Report Suspected Financial Exploitation of Older Adults," July 17, 2019, https://www.consumerfinance.gov/about-us/newsroom/bureau-recommends-financial-institutions-report-suspected-financial-exploitation-older-adults/.

[44] Ryan Sandler, *Disputes on Consumer Credit*, CFPB, October 2021, https://files.consumerfinance.gov/f/documents/cfpb_disputes-on-consumer-credit-reports_report_2021-11.pdf.

[45] CFPB, *Consumer Voices on Credit Reports and Scores*, February 2015, https://files.consumerfinance.gov/f/201502_cfpb_report_consumer-voices-on-credit-reports-and-scores.pdf.

[46] For example, see CFPB, "Credit Reports and Scores," https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/.

type 2 error occurs when a lender fails to identify an applicant who is more likely to repay a loan and denies the credit request. Lenders want to minimize type 1 errors, which can translate into losses of both loan principal and interest—and they also want to minimize type 2 errors, which represent forgone profitable lending opportunities. Some policies discussed in this section may simultaneously reduce both error types, and some may reduce one type while increasing the other.

This section discusses the various policy challenges associated with enhancing consumer data reliability. The specific policy issues pertain to (1) inaccurate or disputed information in consumer reports; (2) inconsistencies in billing and collection practices, which have generated complications with medical debt reporting; (3) the length of time negative or derogatory information should remain on consumer reports; and (4) incorporation of non-traditional loan repayment data into consumer reports and scores.

Inconsistent Internal Protocols

Minimizing and correcting errors depends on the consumer data industry adopting reasonable internal protocols for matching and verifying data. Efforts to reduce internal and systemic reporting inaccuracies, thereby enhancing the accuracy of reported information, would likely reduce the number of both type 1 and type 2 errors. Developments addressing these challenges are discussed below.

- In December 2012, the CFPB noted that financial institutions furnish the bulk of tradelines to CRAs, the top 100 furnishers provide 76% of tradeline information to the largest nationwide CRAs, and the furnishers regularly update the account status of reported tradelines.[47] The larger CRAs also update the tool used to facilitate dispute resolution between consumers and furnishers.[48] After learning more about the consumer reporting industry, the CFPB announced in 2014 requirements for the largest CRAs to provide *standardized accuracy reports* on a regular basis.[49] These reports must specify the frequency that consumers dispute information, list furnishers and industries with the most disputes, and summarize dispute resolutions. The standardized accuracy reports may not only facilitate oversight but also alert CRAs to possible systemic problems within their own operating procedures that can generate above-normal amounts of reporting errors.
- In response to a 2015 settlement between the nationwide CRAs and over 30 state attorneys general, the National Consumer Assistance Plan was launched to establish minimum standards to facilitate accurate public record data reporting, including the requirement to refresh every 90 days the information linked to personal identifiable information.[50] After these standards became effective on

[47] See CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, p. 14, http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[48] The CRAs use a web-based tool, the Online Solution for Complete and Accurate Reporting (e-OSCAR), to investigate credit reporting disputes. Four companies—Equifax, Experian, Innovis, and TransUnion—own and operate e-OSCAR. See Online Data Exchange, "Streamline Your Credit Dispute Management with e-OSCAR," http://www.e-oscar.org/.

[49] See CFPB, "Prepared Remarks of CFPB Director Richard Cordray at the Medical Debt Collection Hearing," December 11, 2014, http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-medical-debt-collection-hearing/. A sample accuracy report may be found at http://files.consumerfinance.gov/f/201412_cfpb_sample-accuracy-report.pdf.

[50] The minimum standards established for all civil public records (e.g., bankruptcies, civil judgements, tax liens) included the requirement for personal identifiable information—a name, address, and a Social Security number or date (continued...)

July 1, 2017, the CFPB noted that all civil judgements and almost half of tax liens in credit reports were removed.[51] Although credit access may have increased for some consumers in which the information was inaccurate or outdated, many affected credit reports contained other derogatory information, leaving credit access for these consumers largely unchanged.[52] In other words, public record tradelines were found to be concentrated among individuals who already had other non-public negative tradelines, resulting in little improvement in already low scores and little observed change in overall credit access.

- In 2019, the Government Accountability Office recommended that the CFPB communicate to the CRAs its supervisory expectations for accurate reporting and reasonableness of consumer dispute investigations.[53] The CFPB subsequently published various advisory opinions for CRAs.[54] In one advisory opinion, the CFPB noted unreasonable CRA internal controls such as relying solely on name-only matching procedures; the lack of written policies and procedures for furnishers, which would emphasize information accuracy and integrity; and observed logical inconsistencies in data fields.[55] For background screening companies, the CFPB recommended not reporting duplicative or obsolete legal or criminal information, which can be misleading and harmful given that applicants do not see their background screening reports until after being denied leases or job opportunities.[56] The CFPB noted that CRAs and furnishers cannot avoid their obligation under FCRA to investigate disputes by imposing obstacles to consumers wanting to submit disputes.[57]
- Incomplete or outright failure to investigate disputes may lead to systemic problems affecting credit reports. During 2020, the CFPB observed a decline in responses provided by nationwide CRAs to consumer complaints, particularly those submitted by suspected third-party repair companies on behalf of consumers.[58] The CRAs are reluctant to take action submitted particularly by unauthorized third-party credit repair companies because they may submit large volumes of illegitimate disputes.[59] After collecting large service fees from clients,

of birth—to ensure accurate matching to the correct consumer record. See Jasper Clarkberg and Michelle Kambara, "Removal of Public Records Has Little Effect on Consumers' Credit Scores," CFPB, February 22, 2018, https://www.consumerfinance.gov/about-us/blog/removal-public-records-has-little-effect-consumers-credit-scores/.

[51] See Jasper Clarkberg, "A New Retrospective on the Removal of Public Records," CFPB, December 10, 2019, https://www.consumerfinance.gov/about-us/blog/new-retrospective-on-removing-public-records/.

[52] Scott L. Fulford and Éva Nagypál, "The Equilibrium Effect of Information in Consumer Credit Markets: Public Records and Credit," CFPB, April 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4419376.

[53] GAO, *Consumer Reporting Agencies: CFPB Should Define Its Supervisory Expectations*.

[54] For example, see CFPB, "Fair Credit Reporting; Name-Only Matching Procedures," 86 *Federal Register* 62468-62472, November 10, 2021; CFPB, "Fair Credit Reporting; Facially False Data," 87 *Federal Register* 64689-64693, October 26, 2022; and CFPB, "Fair Credit Reporting; Background Screening," 89 *Federal Register* 4171-4176, January 23, 2024.

[55] CFPB, "Fair Credit Reporting; Facially False Data."

[56] CFPB, "Fair Credit Reporting; Background Screening."

[57] CFPB, "Consumer Financial Protection Circular 2022-07: Reasonable Investigation of Consumer Reporting Disputes," https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-07-reasonable-investigation-of-consumer-reporting-disputes/.

[58] CFPB, *Consumer Response Annual Report: January 1-December 31, 2020*, March 2021, p. 24, https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

[59] AnnaMaria Andriotis, "Deluge of Fraud Claims Adds to Concerns About Credit Scores," *Wall Street Journal*, December 1, 2022, https://www.wsj.com/articles/credit-score-washing-identity-theft-11669848797.

some credit repair companies have been charged with disputing correct albeit negative information (i.e., making claims of incorrect reporting or fraud) to increase their clients' credit scores, prompting the CFPB to take legal actions in some cases.[60] In 2022, the CFPB found that some CRAs—rather than conduct reasonable dispute investigations—deleted thousands of tradelines, likely resulting in the elimination of accurate and positive information from also appearing on credit reports.[61] In light of these incidents, the CFPB directed the CRAs to cease violating the FCRA's requirements for dispute investigation. In 2023, the CFPB observed changes in the nationwide CRAs' written responses to consumer complaints, noting that they were more tailored to the complaints in terms of clarifying both the source and verification of the contested information.[62]

Non-financial firms also rely on credit and other specialized reports.[63] As previously discussed, some employers may use background screening reports to evaluate job applicants.[64] Some landlords may use tenant screening reports—which may include past rental history (e.g., evictions), criminal records, and civil judgments—to determine whether to rent to an individual or household.[65] As is the case for lenders, employers and landlords that use consumer reports are required under FCRA to get written permission from applicants to obtain their consumer reports for use in the decision-making process. Applicants who are denied jobs or apartments due to information appearing on consumer reports must still receive copies of the reports. In these cases, however, applicants who learn about any inaccuracies following adverse actions may not have sufficient time to make corrections before losing the prospective job or rental opportunities.

- In 2021, the CFPB issued an enforcement compliance bulletin reminding landlords and CRAs of the importance of accurate reporting of rental and eviction information.[66] It specifically emphasized how incorrect or outdated information in tenant screening reports results in challenges for some consumers

[60] CFPB, Annual Report of Credit and Consumer Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, and TransUnion, January 2022, p. 17, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

[61] CFPB, *Supervisory Highlights*, May 2022, pp. 6-11, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.

[62] CFPB, *Annual Report of Credit and Consumer Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, and TransUnion*, January 2023, pp. 4, 19-26, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2023-01.pdf.

[63] 15 U.S.C. §1681b.

[64] According to the Society for Human Resource Management, in 2012, almost half of surveyed organizations in its membership used credit background checks on some of their job applications. Employers report that they use this information to reduce the likelihood of employee theft or embezzlement and to reduce legal liability for negligent hiring. See Society for Human Resource Management, "Background Checking—The Use of Credit Background Checks in Hiring Decisions," August 27, 2012, https://blog.shrm.org/trends/background-checkingthe-use-of-credit-background-checks-in-hiring-decisions.

[65] The 2015 settlement resulted in public record data being removed from credit reports but not tenant screening reports.

[66] CFPB, "As Federal Eviction Protections Come to an End, CFPB Warns Landlords and Consumer Reporting Agencies to Report Rental Information Accurately," July 1, 2021, https://www.consumerfinance.gov/about-us/newsroom/as-federal-eviction-protections-come-to-an-end-cfpb-warns-landlords-and-consumer-reporting-agencies-to-report-rental-information-accurately/.

to find housing.[67] The CFPB found that data quality issues affecting tenant screening reports stemmed from eviction records and public record data issues.[68] The CFPB and FTC also jointly issued a request for information regarding how background screening collection practices may adversely affect renters.[69]

- In 2021, the CFPB also issued an advisory opinion notifying employment and tenant screening companies that they were in violation of FCRA by relying primarily on name-matching procedures.[70] The CFPB also noted that, as a result of less surname diversity, Hispanic, Black, and Asian communities were at greater risk of mistaken identities from relying solely on name-only matching, which may contribute unnecessarily to housing and unemployment instability among these groups. The CFPB noted that background screening companies in violation could face significant civil penalties, restitution for victims, damages, and other relief.

The CFPB is considering further proposals pertaining to dispute investigation processes of furnishers or CRAs that perpetuate systemic errors that ultimately affect the completeness and accuracy of credit reports.[71] Furthermore, the CFPB is considering proposals to address the business practices of *data brokers*.[72] A data broker, also known as a *data aggregator*, may be defined as a firm that collects and resells consumer data to other companies, typically to enable their customers to better market their products and services.[73] For purposes of consumer protection, the CFPB is considering proposals to regulate data brokers as CRAs, meaning that their activities would be covered under FCRA and, therefore, subject to regulatory standards.[74]

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[67] CFPB, "Errors in Your Tenant Screening Report Shouldn't Keep You from Finding a Place to Call Home," July 1, 2021, https://www.consumerfinance.gov/about-us/blog/errors-in-your-tenant-screening-report-shouldnt-keep-you-from-finding-a-place-to-call-home/; CFPB, *Consumer Snapshot: Tenant Background Checks*, November 2022, https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

[68] See CFPB, "CFPB Reports Highlight Problems with Tenant Background Checks," November 15, 2022, https://www.consumerfinance.gov/about-us/newsroom/cfpb-reports-highlight-problems-with-tenant-background-checks/; and CFPB, *Tenant Background Checks Market*, November 2022, pp. 26-32, https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

[69] FTC, "FTC and CFPB Seek Public Comment on How Background Screening May Shut Renters out of Housing," press release, February 28, 2023, https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-cfpb-seek-public-comment-how-background-screening-may-shut-renters-out-housing; and White House, "Fact Sheet: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability," January 25, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability/.

[70] CFPB, "CFPB Takes Action to Stop False Identification by Background Screeners," November 4, 2021, https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-stop-false-identification-by-background-screeners/.

[71] CFPB, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking: Outline of Proposals and Alternatives Under Consideration*, September 15, 2023, pp. 15-17, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.

[72] See CFPB, "Protecting the Public from Data Brokers in the Surveillance Industry," August 15, 2023, https://files.consumerfinance.gov/f/documents/cfpb-data-broker-rulemaking-faq_2023-08.pdf.

[73] See FTC, "FTC to Study Data Broker Industry's Collection and Use of Consumer Data," press release, December 18, 2012, https://www.ftc.gov/news-events/news/press-releases/2012/12/ftc-study-data-broker-industrys-collection-use-consumer-data; and CFPB, "Request for information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information," 88 *Federal Register* 16951-16954, March 21, 2023.

[74] CFPB, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking*, pp. 3-4.

Inconsistent Billing and Reporting Practices: Medical Tradelines

Inconsistent reporting and collecting of debt obligations within an industry, as is the case with medical billing practices, can generate widespread inaccuracies in credit scores. A CFPB study, discussed in the textbox below, found that consumers are unlikely to know when and how much various medical services cost in advance, particularly those associated with accidents and emergencies. People often have difficulty understanding co-payments and health insurance deductibles.[75] Consequently, consumers may delay paying medical obligations as they either assume that their insurance companies will pay, which often results in medical debt appearing unpaid on credit reports.

CFPB 2012 Medical Study

In a seminal study based upon a random sample of approximately 5 million consumers to determine what types of tradeline accounts were reported most frequently and the amounts (as of December 2012), the CFPB found that approximately 33% of credit reports surveyed had collection tradelines, and approximately 52% of those collection tradelines were related to medical collections.[76] After medical obligations, the remaining collection tradelines of significant relevance were associated with unclassified debts (17.3%), cable or cellular bills (8.2%), utilities (7.3%), and retail stores (7.2%). All other categories of collectible tradelines were approximately 2% or less of the survey. For 85% of the respondents, the amounts owed for medical debt were less than $1,000. In sum, more than half of collection tradelines were associated with medical debt, and they were for relatively small amounts. The median amount owed was $207, and 75% of all medical collection tradelines were under $490.

Timing inconsistencies may be characteristic of the reporting practices by some non-financial industries. For the medical industry, patients receive bills at varying time intervals as they must wait for medical insurance firms to determine how much of the total amount will be covered. Furthermore, the diverse medical industry—consisting of both large and small firms—has no standardized process for administering delinquencies or debt collections. In other words, medical providers may assign unpaid bills to debt collectors or sell outstanding debts to debt buyers. Some medical providers may assign or sell the debt after 60 days, but some may do so after 30 days.[77] Some firms may turn obligations over to collections to encourage consumers to settle unpaid balances, blurring the distinction between billing and collecting policies.[78] Debt collectors or buyers subsequently furnish negative information to CRAs, causing tradeline accounts to appear on consumer reports. Unlike furnishers of financial or banking collections, furnishers of medical collections do not regularly update tradelines.[79] These reporting inconsistencies may account for medical tradelines being disputed most often by consumers and, when used to calculate credit scores, increase the possibility of type 2 errors.

In response, various policy actions have been introduced to reduce the negative effects on consumer credit reports linked to medical tradelines:

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[75] Confusion about costs and co-payments may increase when medical care is administered outside of a consumer's state of residence, given that health insurers and providers determine costs that vary and are influenced by state regulations. See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, December 2014, http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[76] See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, December 2014, http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[77] By comparison, most bank credit card delinquencies are assigned or sold after 180 days.

[78] See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, p. 36. Other firms may not immediately employ a collections strategy to encourage repayment for fears of reputational risk.

[79] The CFPB found that, between December 2013 and June 2014, only a small fraction of medical, utility, and telecommunication collection tradelines were updated on a regular basis. See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, p. 35.

- On December 31, 2014, the Internal Revenue Service (IRS) announced a final rule requiring the separation of billing and collection policies of nonprofit hospitals.[80] Hospitals that have or are pursuing tax-exempt status are required to make reasonable efforts to determine whether their patients are eligible for financial assistance before engaging in "extraordinary collection actions," which may include turning a debt over to a collection agency (thus creating a medical tradeline) or garnishing wages. In short, a tax-exempt hospital must allow a patient 120 days from the date of the first billing statement to pay the obligation before initiating collection procedures.[81] The separation of billing and collections, by incorporating a standardized grace period before turning obligations over to collections, may reduce the ad hoc reporting of negative medical tradelines until it becomes more apparent that such bills are less likely to be paid. The CFPB regulatory authority to require standardization of billing practices of for-profit hospitals is not clear.[82] However, the CFPB requires CRAs to identify furnishers and industries with the highest dispute rates in the standardized accuracy reports previously discussed.[83]
- On May 24, 2018, Congress passed the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174, Section 302), which amended FCRA to provide additional credit reporting protections for veterans.[84] The provisions related to medical debt reporting, which became effective on May 24, 2019, included the requirement that CRAs exclude certain medical debt incurred by a veteran from his or her credit report if the hospital care or medical services relating to the debt predates the credit report by less than one year.[85] CRAs must also remove from the credit report a veteran's fully paid or settled medical debt previously characterized as delinquent, charged off, or in collection. P.L. 115-174 also provides active-duty servicemembers with free credit monitoring.
- In December 2020, Congress passed the No Surprises Act (P.L. 116-260, Division BB, Title I) to discourage surprise medical billing. The CFPB subsequently issued a bulletin to remind (1) debt collectors of their obligations to comply with the Fair Debt Collection Practices Act (15 U.S.C. §§1692-1692p), which prohibits debt collection practices based on false, deceptive, or misleading representation; and (2) CRAs and furnishers of their obligations to comply with

[80] See IRS, "New Requirements for 501(c)(3) Hospitals Under the Affordable Care Act," https://www.irs.gov/charities-non-profits/charitable-organizations/requirements-for-501c3-hospitals-under-the-affordable-care-act-section-501r.

[81] See IRS, "Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirements of a Section 4959 Excise Tax Return and Time for Filing the Return," 79 *Federal Register* 78954-79016, December 31, 2014.

[82] See Robert Pear, "New Rules to Limit Tactics on Hospitals' Fee Collections," *New York Times*, January 11, 2015, http://www.nytimes.com/2015/01/12/us/politics/new-rules-to-limit-tactics-on-hospitals-fee-collections.html. The regulation of the insurance industry, which may include billing and collection practices, occurs at the state level. Whether federal, state, and local regulators currently have the authority to standardize the billing and collection practices of other (non-financial) industries would need to be determined on a case-by-case basis.

[83] See CFPB, "Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting," February 19, 2015, http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-advisory-board-meeting-20150219/.

[84] Prior to passage of P.L. 115-174, Experian, Equifax, and TransUnion established a 180-day waiting period before posting a medical collection of any type on a consumer credit report.

[85] For more information, see CFPB, "New Protections for Servicemembers and Veterans Alert," February 7, 2019, https://www.consumerfinance.gov/about-us/blog/new-protections-servicemembers-and-veterans-alert/.

FCRA's accuracy and dispute resolution requirements, including when furnishing and reporting on medical debt.[86]

- In March 2022, the three nationwide credit bureaus—Experian, Equifax, and TransUnion—jointly announced that (1) paid medical debts will no longer be included on credit reports for consumers, (2) medical debts that are less than a year old will no longer be included on credit reports to give consumers time to settle the debt with medical providers and insurance companies, and (3) medical debts under $500 will no longer be included on credit reports for consumers as of the first half of 2023.[87] The CRAs expect that these actions will remove approximately 70% of medical debts from consumer credit reports.[88] CFPB research estimates that approximately half of credit reports will no longer include any medical debts.[89]

In June 2024, the CFPB proposed to remove medical bills from credit reports.[90] Rather than prohibit medical debt collection tradelines on consumer reports, the CFPB is also considering alternative approaches such as mandating a delay in furnishing medical debts or not allowing medical debts below a certain dollar amount to be furnished.[91] The reporting problems associated with medical debts, however, are arguably not unique to the medical industry. Unlike depositories, the medical industry and the judicial courts system, for example, collect certain data at intervals necessary for their business purposes and not necessarily for the business purposes of CRAs. Therefore, removing "noisy" data arising from time inconsistent reporting by non-financial industries may reduce some type 2 errors. Whether minimizing type 1 errors is best accomplished by delaying reporting (e.g., for six, 12, or 18 months) or banning the data completely from reports remains unsettled.[92]

Length of Time to Retain Negative Information

Negative information generally refers to delinquencies or defaults. FCRA limits the length of time negative information may remain on reports. A debt in collections typically stays on a credit

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[86] CFPB, "Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act," January, 13, 2022, https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-01-medical-debt-collection-consumer-reporting-requirements-in-connection-with-no-surprises-act/; and CFPB, "Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act," 87 *Federal Register* 3025-3026, January 20, 2022.

[87] TransUnion, "Equifax, Experian, and TransUnion Support U.S. Consumers with Changes to Medical Collection Debt Reporting," March 18, 2022, https://newsroom.transunion.com/equifax-experian-and-transunion-support-us-consumers-with-changes-to-medical-collection-debt-reporting/.

[88] TransUnion, "Equifax, Experian, and TransUnion."

[89] Alyssa Brown and Eric Wilson, *Data Point: Consumer Credit and the Removal of Medical Collections from Credit Reports*, CFPB, April 2023, https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-removal-medical-collections-from-credit-reports_2023-04.pdf; and Lucas Nathe and Ryan Sandler, "Paid and Low-Balance Medical Collections on Consumer Credit Reports," CFPB, July 27, 2022, https://www.consumerfinance.gov/data-research/research-reports/paid-and-low-balance-medical-collections-on-consumer-credit-reports/.

[90] CFPB, "CFPB Proposed to Ban Medical Bills from Credit Reports," June 11, 2024, https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-to-ban-medical-bills-from-credit-reports/.

[91] CFPB, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking*, pp. 17-19.

[92] For information regarding selected legislation in the 118th Congress, see CRS In Focus IF12169, *An Overview of Medical Debt: Collection, Credit Reporting, and Related Policy Issues*, by Karl E. Schneider.

report for seven years even if the consumer pays in full the item in collection. Personal bankruptcies stay on credit reports for 10 years.[93]

On the one hand, under circumstances in which the underlying information is inaccurate or has not been updated, consumers may improperly be considered riskier and would likely be offered costlier options or face denials, thus increasing type 2 errors. Policymakers have responded to reduce type 2 errors for certain populations. Active-duty military consumers, for example, are entitled to place active-duty alerts in their credit reports to notify creditors and other credit report users.[94] In December 2021, Congress also passed legislation to prohibit CRAs from including negative information on the consumer reports of human trafficking victims.[95]

On the other hand, the longer time negative information remains on consumer reports increases the ability to distinguish between rare occurrences and consistent consumer behavioral patterns. Shorter or insufficient periods of time in which negative tradelines appear on consumer *reports* may compromise the ability to compute reliable *scores*, thus increasing type 1 errors. If, for example, lenders consider credit reports and scores to be less reliable due to premature removal of negative information, they could adopt stricter underwriting and lending policies (e.g., higher down payment requirements, lower loan amounts) for credit applicants to minimize type 1 errors. Furthermore, poor credit can signal possible criminal activity, meaning that early removal of negative information may compromise fraud detection, which may be particularly costly for small businesses and nonprofit organizations lacking the resources to conduct extensive investigations.[96]

Various preparers and users of credit scores have addressed the treatment of negative or derogatory information. If negative information appears longer than deemed necessary, weighting schemes that place less weight on older information can be adopted to calculate scores. Congress has also proposed legislation such as H.R. 5180, the Restoring Unfairly Impaired Credit and Protecting Consumers Act, which—among other things—would reduce the time negative information would remain on credit reports. H.R. 5180 would reduce the length of time bankruptcies would remain on reports from 10 years to seven years and accounts placed in collections or unpaid from seven years to four years.

Collecting and Incorporating *Alternative Data*

In 2015, the CFPB reported that credit scores could not be generated for an estimated 20% of the U.S. population due to their limited credit histories.[97] These consumers can be categorized into two groups. *Credit invisibles* had no credit records at the three largest credit bureaus and, thus, do not exist for the purposes of credit reporting. This group represented 11.0% of the U.S. adult population, or 26 million consumers. Another category of consumers who had credit records yet still could not be scored were considered *non-scorable*, meaning they have either insufficient (short) histories or outdated (stale) histories. The insufficient and stale non-scored groups, each

[93] CFPB, "How Long Does Negative Information Remain on My Credit Report?," September 1, 2020, https://www.consumerfinance.gov/ask-cfpb/how-long-does-negative-information-remain-on-my-credit-report-en-323/.

[94] 15 U.S.C. §1681c-1.

[95] P.L. 117-81, §6102. This provision is implemented by CFPB, "Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)," 87 *Federal Register* 37700, July 25, 2022.

[96] For information such as credit reports and credit scores reviewed to detect fraud, see Federal Financial Institutions Examination Council, *The Detection, Investigation and Prevention of Insider Loan Fraud: A White Paper*, May 2003, https://www.ffiec.gov/pdf/ilf050703_guidance.pdf.

[97] See Kenneth P. Brevoort et al., *Data Point: Credit Invisibles*, CFPB, May 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

containing over 9 million individuals, collectively represent 8.3% of the U.S. adult population or approximately 19 million consumers, according to the CFPB.

Computing reliable scores for the credit invisible and non-scorable groups is challenging. Younger adults may lack sufficient credit histories. As consumers get older, the problem of being credit invisible or belonging to part of the insufficient non-scorable group typically declines but may begin to re-occur after the age of 60. Older adults, who may have considerably reduced their credit usage as they enter their retirement years, may have stale credit records.[98] Because credit scoring models vary by firm, consumers who cannot be scored by some models might still have the ability to be scored by other models, meaning that the state of being non-scorable depends upon the credit reporting data records and scoring models used.

Alternative data generally refers to information that would not typically appear in traditional credit or loan files. Examples of alternative data includes recurrent non-credit payments such as payments on telecommunications, rent, or utilities; checking account transaction information; educational or occupational attainment; how consumers shop, browse, or use devices; and social media information. Consumers may grant CRAs and specialty firms permission to use these non-traditional data (or "opt in").[99] New technology makes it possible for financial institutions to collect alternative information from more wide-ranging sources, thereby supplementing traditional credit scores and possibly benefiting individuals with limited or no credit histories.[100] In short, recent technological advances in collecting and calculating credit scores may enhance predictability and, therefore, reduce type 2 lending errors.[101]

For certain circumstances, incorporation of alternative credit scores may still not increase credit access.[102] For example, some people may still lack digital non-credit payment histories if they are paid in cash, engage primarily in cash transactions, or choose not to have bank or credit union checking accounts. Although the inclusion of rent and utility tradelines may improve accessibility to and lower the costs of consumer credit (e.g., credit cards, automobile loans) for some invisible and non-scorable individuals, the share of creditworthy mortgage applicants may still not increase

[98] The CFPB estimated some additional information about these groups by age, income, and race. See Brevoort et al., *Data Point: Credit Invisibles*.

[99] For example, FICO introduced the UltraFICO Score, a voluntary opt-in product that relies on bank account transaction data. See FICO, "Introducing UltraFICO Score," October 2, 2019, https://www.fico.com/ultrafico/. For the non-scorable population, FICO also developed FICO Score XD for bankcard issuers by using landline phone, mobile phone, and cable payments history data. See FICO, "FICO Score XD," October 2, 2019, https://www.fico.com/en/products/fico-score-xd. Experian launched Experian Boost, which allows consumers to include utility and telecom bill payments in their credit records. For more information, see Stefan Lembo Stolba, "What Is Experian Boost?," Experian, September 19, 2022, https://www.experian.com/blogs/ask-experian/introducing-experian-boost/.

[100] See Alexei Alexandrov et al., "Looking at Credit Scores Only Tells Part of the Story—Cashflow Data May Tell Another Part," CFPB, July 26, 2023, https://www.consumerfinance.gov/about-us/blog/credit-scores-only-tells-part-of-the-story-cashflow-data/.

[101] In addition to new data variables, newer credit scores may be considered more accurate due to the incorporation of trends in consumer debt accumulation and repayment behaviors over a 24-month period (as opposed to a snapshot at a single point in time). For more information on trended credit data, see Natalie Daukas, "What Is Trended Data?," Experian, March 11, 2024, https://www.experian.com/blogs/insights/what-is-trended-data/.

[102] Other strategies consumers could use to build credit histories include credit-building loans (e.g., secured credit cards), or the reporting of new credit products such as "Buy Now, Pay Later" finance products. For more information on the impact of credit-builder loans, see CFPB, "Targeting Credit Builder Loans: Insights from a Credit Builder Loan Evaluation," July 2020, https://www.consumerfinance.gov/data-research/research-reports/targeting-credit-builder-loans/. For more information on the reporting of "Buy Now, Pay Later" finance products, see Martin Kleinbard and Laura Udis, "Buy Now, Pay Later and Credit Reporting," CFPB, June 15, 2022, https://www.consumerfinance.gov/about-us/blog/by-now-pay-later-and-credit-reporting/.

significantly due to other qualifying requirements such as minimum number of credit or non-credit tradeline requirements.[103]

The use of alternative data, which must comply with fair lending laws, prompted the CFPB to seek more information about its benefits and risks in terms of enhancing or limiting credit access.[104] Specifically, neither traditional nor alternative data can be correlated with individual characteristics such as race or ethnicity.[105] In December 2019, the CFPB, along with the prudential federal banking regulators that also monitor developments with the use of alternative data, released a brief policy statement on the appropriate use of alternative data in the underwriting process, highlighting the potential benefits and risks.[106]

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[103] For example, some individuals may still lack the minimum tradeline requirements, currently either three credit or four non-credit tradelines of recurring or fully repaid obligations for Freddie Mac. See Freddie Mac, "Establishing Borrower Credit Reputation for Manually Underwritten Mortgages," June 26, 2017, https://guide.freddiemac.com/app/guide/section/5202.1. Various federal agencies that provide mortgage guarantees generally require at least two tradelines that can be credit, non-credit, or a combination. The Federal Housing Administration requires at least two tradelines. See U.S. Department of Housing and Urban Development, "Section C. Credit Reporting Requirements," in *Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans Handbook (4155.1)*, https://www.hud.gov/sites/documents/4155-1_1_SECC.PDF.

[104] CFPB, "Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process," 82 *Federal Register* 11185-11191, February 21, 2017, https://www.federalregister.gov/documents/2017/02/21/2017-03361/request-for-information-regarding-use-of-alternative-data-and-modeling-techniques-in-the-credit.

[105] The Equal Credit Opportunity Act (ECOA; 15 U.S.C. §§1691-1691f) generally prohibits discrimination in credit transactions based upon certain protected classes, including sex, race, color, national origin, religion, marital status, age, and "because all or part of the applicant's income derives from any public assistance program." ECOA has historically been interpreted to prohibit discrimination that is either intentional or the result of disparate impact in which a neutral business decision has a discriminatory effect on an ECOA-protected class. However, the Supreme Court's reasoning in a June 2015 decision involving the Fair Housing Act, another federal antidiscrimination law, has sparked debate about whether disparate impact claims are covered under ECOA. For background on disparate impact claims, see the section entitled "Discriminatory Effects" in CRS Report R48113, *The Fair Housing Act (FHA): A Legal Overview*, by David H. Carpenter.

[106] Federal Reserve, CFPB, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency, *Interagency Statement on the Use of Alternative Data in Credit Underwriting*, December 3, 2019, https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf.

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