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Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues

Updated October 12, 2023

Congressional Research Service
https://crsreports.congress.gov
R44125

CRS REPORT
Prepared for Members and
Committees of Congress

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Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues

SUMMARY

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October 12, 2023

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Consumer credit reporting agencies (also called *credit bureaus* or *CRAs*) collect and subsequently provide information to firms about consumer credit and payment behavior, called *consumer reports* or *credit reports*. *Credit scores* are (numeric) metrics used to predict a variety of financial behaviors, computed using the information obtained from one or more consumer reports. Firms use credit report and score information to screen for consumer risks. For example, lenders may rely upon credit reports and scores to determine the likelihood that a prospective borrower will repay a loan (e.g., a mortgage or credit card). The consumer credit reporting system benefits the consumer lending industry by making credit underwriting cheaper and easier and by creating an additional incentive for consumers to pay back their loans on time.

Equifax, Experian, and TransUnion are the three largest nationwide providers of credit reports, sometimes called *nationwide consumer reporting agencies*. These credit bureaus generally create consumer credit reports containing historical information about repayment on credit products such as mortgages, student loans, credit cards, and auto loans. Credit applications, bankruptcies, and debts in collection are also regularly included. Other CRAs provide a variety of specialized consumer reporting services, including employment screening, tenant screening, and check and bank screening.

Firms that use consumer reports may also report information to CRAs, thus serving as *furnishers*. Furnishing information is voluntary, and furnishers are not required to submit their information to all CRAs. Consumer credit reports are more comprehensive and therefore more valuable as more companies choose to participate as furnishers. However, furnishers incur costs to report data—for example, by meeting regulatory requirements to ensure accuracy of consumer information.

Reliance by firms on consumer data significantly affects consumer access to financial products or opportunities. For example, consumers with strong credit reports may have greater access to credit, but negative information, such as loan defaults, may cause a lender to deny a consumer access to credit. In recent years, average consumer credit scores have improved due to COVID-19-era forbearance and credit reporting protections, as well as improved financial situations for consumers.

Consumers generally do not choose to participate in the credit reporting system. For this reason, consumer protection laws and regulations may be particularly consequential. The Fair Credit Reporting Act (FCRA; 15 U.S.C. §1681), implemented by Regulation V, is the main statute regulating the credit reporting industry. The FCRA establishes consumers' rights in relation to their credit reports. It also imposes certain responsibilities on those who collect, furnish, and use the information contained in consumers' credit reports. The Consumer Financial Protection Bureau (CFPB) has rulemaking and enforcement authorities over all CRAs for the FCRA and certain other consumer protection laws. It has supervisory authority, or the authority to conduct examinations, over the larger CRAs. The CFPB receives far more complains about credit reporting than any other industry it regulates. In 2022, more than three quarters of complaints that the agency received were from credit reporting, most frequently from the three nationwide CRAs.

Congress has shown continuing interest in policy questions surrounding CRAs, credit reports, credit scores, and the consumer data industry. Policy issues include (1) how inaccurate or disputed consumer data provided in consumer reports should be addressed; (2) consumers' rights in the credit reporting system; (3) whether and how medical debt should be included in credit reports; (4) whether uses of credit bureau data outside of the financial services, such as for employment or rental decisions, should be limited; (5) whether the use of alternative consumer data may increase accuracy and credit access; and (6) how to address data protection and security issues in consumer data reporting.

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Introduction

Consumer credit reporting agencies (also called *credit bureaus* or *CRAs*) collect and subsequently provide information to firms about consumer credit and payment behavior, called *consumer reports* or *credit reports*. Firms use credit report information to screen for consumer risks. For example, lenders rely upon credit reports and scoring systems to determine the likelihood that prospective borrowers will repay their loans.

The consumer credit reporting system provides benefits to the consumer lending industry by making credit underwriting cheaper and easier and by creating an additional incentive for consumers to pay back their loans on time. Since the 1970s, consumer loan underwriting has become more automated, first with the increasing use of *credit scores* and more recently with new data and technologies.[1] *Credit scores* are a (numeric) metric calculated with information in consumer credit reports and prepared, for example, for lenders to determine the likelihood of loan default. Credit scores are generally calculated using algorithms, which are pre-coded sets of instructions and calculations that are executed automatically. Lenders may rely upon credit scores to help decide whether to offer consumers loans and at what terms.

Reliance by firms on consumer data significantly affects consumer access to financial products or opportunities. For example, negative or derogatory information, such as loan delinquencies or defaults, may influence a lender to deny a consumer access to credit. The inclusion of negative information may be particularly limiting to consumers under circumstances in which such information is inaccurate or needs to be updated to reflect more current and possibly improved financial situations. Furthermore, consumers may find the process of making corrections to consumer data reports to be time-consuming, complex, and perhaps ineffective. The exclusion of more favorable information, such as the timely repayment of noncredit obligations, from standard credit reporting or scoring models may also limit credit access.

Although the general public is likely to be more familiar with the use of credit reporting and scoring to qualify for mortgage and other consumer loans, the scope of credit report use is broader. For example, employers may use credit reports to screen prospective employees to determine the likelihood of fraudulent behavior. Landlords may use consumer data to determine whether to lease an apartment to a prospective tenant. In short, numerous firms rely upon consumer data to identify and evaluate the risks associated with entering into financial relationships or transactions with consumers.[2]

This report first provides background information on the consumer data industry and various specialty areas. An overview of a prominent specialty area, consumer scoring, is discussed and along with various factors used to calculate credit scores. Next, the report provides a general description of the current regulatory framework of the consumer data industry. Finally, the report discusses selected policy issues pertaining to consumer data reports. Specifically, the report addresses policy issues concerning (1) inaccurate or disputed consumer data provided in consumer data reports; (2) consumers' rights in the credit reporting system; (3) whether and how medical debt should be included in credit reports; (4) whether uses of credit bureau data outside

[1] Faster computing power, internet-based products, and cheaper data storage at scale have increased automation in consumer lending. New technological innovations have been used to update automated processes, in some cases beyond traditional numeric credit scores. For example, for some lenders, the internet has been incorporated to accept applications, and new data sources are used to conduct consumer loan underwriting. For more information, see CRS In Focus IF12399, *Automation, Artificial Intelligence, and Machine Learning in Consumer Lending*, by Cheryl R. Cooper.

[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/.

of the financial services, such as for employment or rental decisions, should be limited; (5) whether the use of *alternative* consumer data may increase accuracy and credit access; and (6) how to address data protection and security issues in consumer data reporting. For more information on credit reporting relating to natural disasters, government shutdowns, and the COVID-19 pandemic, see the **Appendix**.

The Consumer Data Industry and Specialty Services[3]

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 consumer reports based upon historical data of individuals' financial transactions. Equifax, Experian, and TransUnion are the three largest nationwide providers of credit reports, sometimes referred to as *nationwide consumer reporting agencies*. These credit bureaus generally create consumer credit reports containing historical information about repayment on credit products such as mortgages, student loans, credit cards, and auto loans. Credit applications, bankruptcies, and debts in collection are also regularly included.

Other CRAs provide a variety of specialized consumer reporting services, including employment screening, tenant screening, and check and bank screening.[4] These credit reports may include historical information about credit repayment; utility, telecom, and rent payment; employment; insurance claims; arrests; bankruptcies; and check writing and account management. Consumer files, however, generally do not contain information on consumer income or assets or personal information such as race or ethnicity, religious or political preference, or medical history.[5]

Firms that use consumer reports may also report information to CRAs, thus serving as *furnishers*.[6] Furnishing is voluntary, and furnishers have discretion over the types of obligations they wish to report to each CRA.[7] Therefore, there is significant variance in what information is

[3] This section of the report was originally authored by Darryl Getter.

[4] Some specialty CRAs are subsidiaries of larger CRAs. Examples include the National Consumer Telecom and Utilities Exchange (http://www.nctue.com/), which is managed by Equifax, and RentBureau (https://www.experian.com/rental-property-solutions/rental-history), which is owned by Experian.

[5] 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.

[6] A *tradeline* is a record of the transaction (payment) activity associated with a consumer account that is reported by a furnisher to a CRA. See Experian, "Glossary of Credit Terms," https://www.experian.com/blogs/ask-experian/credit-education/faqs/glossary/.

[7] A community bank, for example, may choose to report delinquencies on consumer loans rather than on commercial loans given that it may have greater information regarding the cash flow circumstances of its larger commercial borrowers. See Federal Trade Commission (FTC) and Federal Reserve, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006, https://www.federalreserve.gov/boarddocs/rptcongress/fcradispute/fcradispute200608.htm.

reported to different CRAs. For example, some furnishers may choose not to fully report information for a variety of different reasons.[8]

Consumer credit reports are more comprehensive and therefore more valuable as more companies choose to participate as furnishers. However, furnishers incur costs to report data—for example, by meeting security requirements when transferring data and procedures to ensure accuracy of consumer information. To become furnishers, firms must be approved and comply with the policies of a CRA, such as fee registration requirements.[9] The transfer of consumer data involves security risks, and many CRAs have adopted standardized reporting formats and requirements approved by the Consumer Data Industry Association for transferring data.[10] Furnishers must be able to comply with industry data transfer requirements or some CRAs are unlikely to accept their data.[11] Compliance costs may be more burdensome for smaller firms, causing some to choose not to be furnishers. In addition, entities that elect to become furnishers face legal obligations, which may also influence a firm's decision to become a furnisher.[12]

Generally, CRAs earn revenues by selling credit reports to firms, as well as other related services, such as credit scoring analysis (discussed in more detail in the next section).[13] Business models and policies of CRAs are different. Some CRAs may regularly maintain information on consumers, others may offer investigative services to gather information about consumers, and some may do a combination of these activities. Moreover, different CRAs may adopt different conventions for storing consumer information. Consequently, consumer reports obtained from different CRAs on the same consumer are likely to differ.

[8] For example, some large credit card companies may be choosing not to report payment amounts to the nationwide consumer credit reporting agencies, possibly for competitive reasons. Logan Herman, Jonah Kaplan, and Austin Mueller, *Payment Amount Furnishing and Consumer Reporting*, CFPB, November 2020, https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_report_2020-11.pdf; and John McNamara, "Why the Largest Credit Card Companies Are Suppressing Actual Payment Data on Your Credit Report," CFPB, https://www.consumerfinance.gov/about-us/blog/why-the-largest-credit-card-companies-are-suppressing-actual-payment-data-on-your-credit-report/.

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

[10] For more information on credit reporting furnishing requirements, see Consumer Data Industry Association, "Metro 2 Format for Credit Reporting," https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/.

[11] Compliance may require investing in technology compatible with the computer systems of a CRA.

[12] Furnishers are obligated to report accurate and complete information as well as to investigate consumer disputes. See FTC, "Consumer Reports: What Information Furnishers Need to Know," https://www.ftc.gov/tips-advice/business-center/guidance/consumer-reports-what-information-furnishers-need-know.

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

Credit Repair and Credit Counseling Services

Some consumers turn to credit repair and credit counseling services when they want help identifying and disputing inaccurate information in their credit reports, access to financial education[14] and debt management plans,[15] and support to improve their credit report and financial situations.[16] Generally, credit repair companies operate for profit, while credit counseling services are provided by nonprofits, although services that these types of organizations offer to consumers may be similar.[17] Credit repair company revenue declined during the COVID-19 pandemic due to stronger household finances,[18] and more consumers are using internet resources to dispute information themselves.[19] In contrast, consumer demand for credit counseling services has increased.[20] Going forward, increasing interest rates may make it harder for consumers to pay off debt, increasing demand for credit repair and credit counseling services.[21]

Credit Scoring Services

A consumer score is a (numeric) metric that can be used to predict the likelihood of a variety of financial behaviors.[22] Consumer credit scores are prepared for lenders to determine, for example, the likelihood of loan default for a particular type 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 a host of other adverse financial behaviors. Consumer scores are typically computed using the information obtained from one or more consumer reports. Some firms, including CRAs, create consumer reports and scores, while others are primarily engaged in only the production of consumer scores.[23] Hence, consumer scoring can be considered a specialty service in the consumer data industry. For example, if a user of a consumer report subsequently wants a consumer score, it may be charged an additional fee.

Given the variety of different financial behaviors firms may want to predict, there are many consumer scores that are calculated. Consumer scores for the same individual and behavior calculated by different scoring firms are also likely to differ. Consumer scoring firms may have purchased consumer information from different CRAs, which have their own policies for storing and reporting information. Each scoring firm has its own proprietary statistical model(s), meaning

[14] For more information on financial literacy and education, see CRS Report R46941, *Financial Literacy and Financial Education Policy Issues*, by Cheryl R. Cooper.

[15] For information on debt management plans, see Christa Gibbs et al., *Recent Trends in Debt Settlement and Credit Counseling*, CFPB, July 2020, https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_debt-settlement-credit-counseling_2020-07.pdf.

[16] See CFPB, "What Is Credit Counseling?," February 2, 2018, https://www.consumerfinance.gov/ask-cfpb/what-is-credit-counseling-en-1451/; and CFPB, "What's the Difference Between a Credit Counselor and a Debt Settlement or Debt Relief Company?," August 24, 2022, https://www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/.

[17] Campbell Lang, "Credit Repair Services in the US," *IBISWorld*, June 2022, p. 4.

[18] For more information on household debt during the COVID-19 pandemic, see CRS Report R46578, *COVID-19: Household Debt During the Pandemic*, coordinated by Cheryl R. Cooper.

[19] Campbell Lang, "Credit Repair Services in the US," *IBISWorld*, July 2023, pp. 8-16.

[20] Brendan McErlaine, "Credit Counselors, Surveyors, and Appraisers in the US," *IBISWorld*, October 2022, pp. 10-15.

[21] Brendan McErlaine, "Credit Repair Services in the US," *IBISWorld*, July 2023, pp. 8-16.

[22] The predictability 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.

[23] FICO (see http://www.fico.com/en/) and VantageScore (see http://www.vantagescore.com/) are examples of firms that specialize in the production of credit scores.

that each firm decides what consumer information should be included and excluded from calculations. Each firm can choose its own weighting algorithms. For example, included information can be equally weighted, or heavier weights can be placed on more recent information or on information otherwise deemed more pertinent. Sometimes the consumer scoring firm selects the appropriate weighting scheme, and sometimes the requestor of a consumer score may provide instructions to the preparer.

In recent years, average consumer credit scores have improved due to COVID-19-era forbearance and credit reporting protections,[24] as well as improved financial situations for consumers.[25]

[24] For background on consumer loan forbearance and other relief options during the COVID-19 pandemic, see CRS Report R46356, *COVID-19: Consumer Loan Forbearance and Other Relief Options*, coordinated by Cheryl R. Cooper.

[25] Alyssa Brown and Siobhán McAlister, "Credit Score Transitions during the COVID-19 Pandemic," CFPB, January 25, 2023, https://www.consumerfinance.gov/about-us/blog/office-of-research-blog-credit-score-transitions-during-the-covid-19-pandemic/; and Scott Fulford, Marie Rush, and Eric Wilson, *Changes in Consumer Financial Status During the Early Months of the Pandemic: Evidence from the Second Wave of the Making Ends Meet*, CFPB, April 2021, https://files.consumerfinance.gov/f/documents/cfpb_making-ends-meet-wave-2_report_2021-04.pdf.

Some Factors Frequently Used to Calculate Credit Scores[26]

To calculate a credit score, credit scoring models generally obtain the following factors from a credit report:

- **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 an insufficient credit history).
- **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, generally 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.[27] 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.[28]
- **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 users that 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.[29] Information for consumers on how to improve and maintain a good credit score is available from the Consumer Financial Protection Bureau (CFPB; see https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/).

Consumer Protections and Regulation of the Credit Reporting System

This section provides a brief overview of existing consumer protections and regulations related to credit reporting. Consumers generally do not choose to participate in the credit reporting system.

[26] 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.

[27] 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/.

[28] See Federal Reserve, "Permissible Purposes of Consumer Reports (FRCA, Section 604) and Investigative Consumer Reports (FRCA, 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.

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

For this reason, consumer protection laws and regulations may be particularly consequential. The Fair Credit Reporting Act (FCRA; 15 U.S.C. §1681), enacted in 1970 and implemented by Regulation V, is the main statute regulating the credit reporting industry. The 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 utilization of such information."[30] The 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.

The FCRA includes consumer protection provisions. Under the FCRA, a consumer must be told when his or her information from a CRA has been used after an adverse action (generally a denial of credit) has occurred, and disclosure of that information must be made free of charge.[31] A consumer has a 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 (e.g., credit denial).[32] Consumers also have the right to dispute inaccurate or incomplete information in their reports. After a consumer alerts a CRA of such a discrepancy, the CRA must investigate and correct errors, usually within 30 days. The FCRA also limits the length of time negative information may remain on reports. Debts in collections typically stay on credit reports for seven years, even if the consumer pays in full the item in collection. Personal bankruptcies stay on credit reports for 10 years.[33]

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; 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 for certain consumer protection laws. It has supervisory authority, or the authority to conduct examinations, over the larger CRAs. In July 2012, the CFPB announced that it would supervise CRAs with $7 million or more in annual receipts, which at that time included 30 firms representing approximately 94% of the market.[34]

The CFPB conducts examinations of the CRAs, reviewing procedures and operating systems regarding the management of consumer data and enforcing applicable laws. In 2017, the CFPB released a report of its supervisory work in the credit reporting system.[35] The report discusses the CFPB's efforts to work with credit bureaus and financial firms to improve credit reporting in three specific areas: data accuracy, dispute handling and resolution, and furnisher reporting. As the report describes, credit bureaus and financial firms have developed data governance and quality control programs to monitor data accuracy through working with the CFPB. In addition,

[30] 15 U.S.C. §1681.

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

[33] 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/.

[34] CFPB, "CFPB to Supervise Credit Reporting," July 16, 2012, https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-superivse-credit-reporting/.

[35] CFPB, *Supervisory Highlights Consumer Reporting Special Edition*, 2017, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

the CFPB has encouraged credit bureaus to improve their dispute and resolution processes, including making it easier and more informative for consumers.[36]

Congress has also been interested in improving consumer protections in the credit reporting system, particularly in response to the 2017 Equifax data breach, which exposed personal information of millions of consumers.[37] 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. Credit freezes allow consumers to protect themselves from fraud and identity theft by stopping new credit from being opened in their names.

Policy Issues

Policymakers continue to debate the legal and regulatory framework around the credit reporting system, including whether the scope of the FCRA should be expanded.[38] For example, the CFPB recently announced that it is considering whether to amend Regulation V to update credit reporting regulations.[39] These new regulations may clarify whether new types of data brokers are subject to the FCRA as CRAs and what kinds of information constitute a credit report.[40] The CFPB is also considering whether to clarify how medical debts should be included in credit reports, which is discussed in more detail later in this report.[41] In addition, a recent Government Accountability Office (GAO) report highlights the use of consumer scores outside of FCRA purposes and suggests that Congress consider whether the FCRA or other consumer protection laws should be expanded.[42]

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[36] The credit bureaus' efforts to make disputes easier and more informative for consumers include (1) online portals to submit disputes and upload attachments of supporting documentation; (2) improvements to their call center scripts and training regarding solicitation of relevant information from consumers with disputes; (3) no longer requiring that consumers obtain or purchase recent consumer reports before investigations; and (4) notice to consumers of dispute results, including investigation results. See CFPB, *Supervisory Highlights Consumer Reporting Special Edition*, pp. 9-11.

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

[38] In addition, FCRA compliance issues continue to occur. For example, a more recent 2019 CFPB supervisory report on consumer reporting discussed new violations and compliance management system weaknesses related to FCRA compliance. See CFPB, *Supervisory Highlights Consumer Reporting Special Edition*, Issue 20, December 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.

[39] CFPB, *Fair Credit Reporting Act Rulemaking, Pre-Rule Activity*, Fall 2022, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3170-AA54. Pre-rule activity may include the following CFPB request for information: 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; and CFPB, *Small Business Review Panel for Consumer Reporting Rulemaking*, https://www.consumerfinance.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/.

[40] CFPB, "Remarks of CFPB Director Rohit Chopra at White House Roundtable on Protecting Americans from Harmful Data Broker Practices," August 15, 2023, https://www.consumerfinance.gov/about-us/newsroom/remarks-of-cfpb-director-rohit-chopra-at-white-house-roundtable-on-protecting-americans-from-harmful-data-broker-practices/; and CFPB, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking: Outline of Proposals and Alternatives Under Consideration*, September 15, 2023, pp. 7-14, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.

[41] CFPB, "CFPB Kicks Off Rulemaking to Remove Medical Bills from Credit Reports," press release, September 21, 2023, https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-rulemaking-to-remove-medical-bills-from-credit-reports/.

[42] GAO, *Consumer Protection: Congress Should Consider Enhancing Protections Around Scores Used to Rank Consumers*, GAO-22-104527, May 2022, https://www.gao.gov/assets/gao-22-104527.pdf.

This section examines selected policy issues pertaining to the use of credit reports and scores in consumer lending and other decisions. Specifically, the report addresses policy issues concerning (1) inaccurate or disputed consumer information in consumer data reports; (2) consumers' rights in the credit reporting system; (3) whether and how medical debt should be included in credit reports; (4) whether uses of credit bureau data outside of the financial services, such as for employment or rental decisions, should be limited; (5) whether the use of *alternative* consumer data may increase accuracy and credit access; and (6) how to address data protection and security issues in consumer data reporting.

Inaccurate or Disputed Information

Inaccurate information in a credit report may limit a consumer's access to credit or increase the costs to the consumer of obtaining credit. Credit reporting inaccuracies may occur for various reasons. Furnishers may inadvertently input inaccurate information into their databases. Matching information to the proper individual poses challenges, such as in cases when multiple individuals have similar names and spellings or if individuals change their names. In some cases, the information may be properly matched, but the individual could be a victim of fraud or identity theft. The predictive power of consumer data, or the ability to accurately predict a consumer's likelihood to default on a loan, would be enhanced to the extent that consumer information is regularly updated.

The accuracy of consumer information in consumer data reports has been an ongoing policy concern. In 2012, the Federal Trade Commission (FTC) reported that 26% of participants in a survey of credit report accuracy were able to identify at least one potentially material error on at least one of approximately three different credit reports prepared using their consumer information.[43] After the reports were corrected, 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, which could increase the likelihood that the consumer would be offered less expensive credit terms. More recent studies have found similar results.[44]

In recent years, legal and regulatory developments have encouraged the CRAs to make changes to improve accuracy in credit reports. As mentioned in the previous section, the CFPB has reported its actions to encourage credit bureaus and financial firms to improve data accuracy in credit reporting. In addition, in response to a 2015 settlement between the nationwide CRAs and over 30 state attorneys general, the National Consumer Assistance Plan was launched to increase accuracy in consumer credit reports.[45] According to the CFPB, this led to the removal of most civil judgments and half of all tax liens in credit reports for the nationwide CRAs.[46] Some research suggests that while the removal of this information may have benefited the consumers whose information was removed, the removal of these large categories of information may also have had distributional impacts on the allocation of credit for consumers. For example, one study found that when non-bankruptcy public records were removed from credit reports, consumers

[43] 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.

[44] 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.

[45] Claire Brennecke, Jasper Clarkberg, and Michelle Kambara, *Public Records, Credit Scores, and Credit Performance*, CFPB, December 2019, p. 2, https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_public-records-credit-scores-performance_2019-12.pdf.

[46] Brennecke, Clarkberg, and Kambara, *Public Records, Credit Scores, and Credit Performance*, p. 2.

who previously had this information on their credit reports may look like they have similar credit records as other consumers, although on average, they were more likely to default in the future.[47] Therefore, lenders reduced credit to these groups, and consumers who previously did not have non-bankruptcy public records on their credit reports may have experienced a decrease in their access to credit. Therefore, there may be trade-offs between ensuring accuracy, encouraging information furnishing, and the allocation of access of credit for consumers.

Consumer Disputes

The accuracy of credit reports depends in part on consumers to monitor and dispute any discrepancies. While consumers have the right in the FCRA to dispute inaccurate or incomplete information in their reports, issues with the dispute process may exist. In addition, in 2022, the CFPB found some CRAs failing to conduct reasonable dispute investigations, deleting information rather than investigating for accuracy, and not following up appropriately with consumers.[48] In addition, CFPB research found that disputes are generally more common on credit reports for consumers who live in majority Black and Hispanic neighborhoods, younger consumers, and consumers with lower credit scores.[49]

The CFPB receives more complaints about credit reporting than for any other industry it regulates. In 2022, for example, more than three quarters of complaints that the agency received were about credit reporting, most frequently about the three nationwide CRAs.[50] In 2020 and 2021, consumer complaints submitted to the CFPB about Experian, Transunion, and Equifax increased dramatically.[51] The CFPB attributes some of these complaints to an automated system causing information disputes not to be addressed quickly and consumers spending lots of time fixing errors.[52] The CFPB found that in 2020, the nationwide CRAs changed how they responded to consumer complaints, which included not responding when they suspected that a third party such as a credit repair company had submitted a complaint on behalf of the consumer.[53] The nationwide CRAs have identified credit repair companies as a challenge to their dispute processes, claiming that they submit a large volume of illegitimate disputes, harming the quality of their information about consumers.[54] Some argue that credit repair companies may be disputing correct yet negative information, claiming it is fraudulent or incorrectly reported, in order to increase consumers' credit scores.[55] In 2022, while the number of CFPB complaints from consumers remained elevated, the CFPB reported that complaint responses from the nationwide

[47] Scott L. Fulford and Éva Nagypál, "The Equilibrium Effect of Information in Consumer Credit Markets: Public Records and Credit," CFPB, Office of Research, Working Paper No. 23-03, April 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4419376.

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

[49] 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.

[50] 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.

[51] 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.

[52] CFPB, *Annual Report of Credit and Consumer Reporting Complaints*, pp. 3-4.

[53] CFPB, *Annual Report of Credit and Consumer Reporting Complaints*, p. 4.

[54] CFPB, *Annual Report of Credit and Consumer Reporting Complaints*, p. 19.

[55] 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.

CRAs were more substantive and tailored and more likely to contain consumer relief, fixing some of these past issues.[56]

A 2019 GAO report argues that the CFPB should better define its expectations around accuracy and reasonable investigations.[57] In particular, it describes consumer report accuracy issues primarily caused by consumer matching challenges due to inaccurate personally identifiable information and errors in furnished information. For consumer dispute investigations, GAO recommends that the CFPB provide more clarity on investigation obligations for CRAs. Since the GAO report was released, the CFPB published guidance about the inadequacy of name-only matching procedures[58] and inconsistent information in credit reports,[59] as well as dispute investigation requirements, such as providing the furnisher all of the information in a consumer's dispute and not limiting how a consumer can request an investigation with the CRAs.[60] The agency also issued guidance on consumer privacy and permissible purposes for accessing a credit report.[61] The CFPB is considering proposals to clarify dispute processes in its current credit reporting rulemaking.[62]

Consumer Rights in the Credit Reporting System

Consumers sometimes find it difficult to advocate for themselves when credit reporting issues arise because they are not aware of their rights and how to exercise them. According to a CFPB report, some consumers are confused about what credit reports and scores are, find it challenging to obtain credit reports and scores, and struggle to understand the contents of their credit reports.[63] Currently, the CFPB provides financial education resources on its website to help educate consumers about their rights regarding consumer reporting.[64] The credit bureaus' websites also provide information about how to dispute inaccurate information and how consumers can contact them by phone or mail.

Special populations have unique needs in the credit reporting system. For example, active-duty military may move more frequently than civilians do and spend time in war zones, making them more vulnerable to identity theft.[65] Thus, policymakers have considered whether servicemembers

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

[57] GAO, *Consumer Reporting Agencies: CFPB Should Define Its Supervisory Expectations*, GAO-19-459, July 2019, https://www.gao.gov/assets/gao-19-459.pdf.

[58] CFPB, "Fair Credit Reporting; Name-Only Matching Procedures," 86 *Federal Register* 62468-62472, November 10, 2021.

[59] CFPB, "Fair Credit Reporting; Facially False Data," 87 *Federal Register* 64689-64693, October 26, 2022.

[60] 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/.

[61] CFPB, "Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports," 87 *Federal Register* 41243-41246, July 12, 2022.

[62] 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.

[63] 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.

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

[65] CFPB, "Credit Reporting Companies Should Do More to Ensure That Servicemembers Receive the Free Credit (continued...)

should have rights to additional credit reporting protections. For example, active-duty military consumers are entitled to place active-duty alerts in their credit reports to notify creditors and other credit report users.[66] In addition, victims of human trafficking may have credit reports that include adverse information resulting from their being trafficked. Responding to this concern, in December 2021, Congress passed new language prohibiting credit reporting companies from including negative information that resulted from human trafficking to be included in consumers' credit reports, providing new credit reporting protections for these victims.[67]

Medical Debt and Credit Reports[68]

When a consumer defaults on a debt, a third-party debt collector—rather than the lender (or medical provider) to whom the debt is originally owed—often collects the debt obligation.[69] Debts in collection, including medical debts in collection, can be reported to credit bureaus and appear on consumers' credit reports. Medical debts are the most commonly reported type of debt collection on credit reports. According to the CFPB, in 2021, medical debts constituted 58% of debts reported in collection.[70] Medical debts reported to the credit bureaus tend to be for relatively small amounts and may be more likely to be reported than are other types of debts. According to the CFPB, most medical debts reported are under $500.[71]

Inconsistencies associated with medical billing can lead to inconsistencies in credit reporting. Medical debts are often transferred to debt collectors after different periods of time, depending on the medical provider. Health insurance disputes can cause the consumer to be unaware of a medical debt in collection.[72] Some medical providers may offer financial assistance programs, complicating the medical billing process for consumers.[73] In addition, debt collectors can decide whether or when to report debts to CRAs. Therefore, medical debts can appear on people's credit reports inconsistently. Perhaps for these reasons, CFPB research has found that medical debts may be a less reliable predictor of future credit performance than other debts are.[74] While some

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/.

[66] 15 U.S.C. §1681c-1.

[67] 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.

[68] For more information on medical debt, see, CRS In Focus IF12169, *An Overview of Medical Debt Collection, Credit Reporting, and Related Policy Issues*, by Cheryl R. Cooper.

[69] For more information on debt collection, see CRS Report R46477, *The Debt Collection Market and Selected Policy Issues*, by Cheryl R. Cooper.

[70] CFPB, *Medical Debt Burden in the United States*, February 2022, https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

[71] CFPB, *Medical Debt Burden in the United States*.

[72] Consumers also complain to the CFPB about disputed, inaccurate, or not-owed medical debts on credit reports. For more information on medical debt complaints to the CFPB, see CFPB, *Complaint Bulletin: Medical Billing and Collection Issues Described in Consumer Complaints*, April 2022, https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf.

[73] For more background on financial assistance for medical care and medical debt reported to the CRAs, see Susan Singer, Eric Wilson, and Tavi Carare, *Understanding Required Financial Assistance in Medical Care*, CFPB, July 28, 2022, https://www.consumerfinance.gov/data-research/research-reports/understanding-required-financial-assistance-in-medical-care/; and Octavian Carare, Susan Singer, and Eric Wilson, *Exploring the Connection Between Financial Assistance for Medical Care and Medical Collections*, CFPB, August 24, 2022, https://www.consumerfinance.gov/about-us/blog/exploring-connection-between-financial-assistance-for-medical-care-and-medical-collections/.

[74] See Kenneth P. Brevoort and Michelle Kambara, *Data Point: Medical Debt and Credit Scores*, CFPB, May 2014, http://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.

newer credit scoring models take this into account, older or in-house models are still used by the financial industry and could impact consumers with medical debt.[75]

In 2022, there were significant policy and market developments related to medical debt. In March 2022, the three nationwide credit bureaus—Experian, Equifax, and TransUnion—jointly made the following announcements:

- Paid medical debts will no longer be included on credit reports for consumers;
- Medical debts that are less than a year old will no longer be included on credit reports for consumers in order to give consumers time to work with insurance companies and medical providers to settle the debt; and
- Beginning in the first half of 2023, medical debts under $500 will no longer be included on credit reports for consumers.[76]

The credit bureaus believe that these actions will remove almost 70% of medical debts from consumer credit reports.[77] CFPB research estimates that about half of consumers with medical debt on their credit reports prior to the announced changes will no longer have any medical debts included in their credit reports and that consumers will experience additional access to credit now that this change is going into effect.[78]

In December 2020, Congress passed the No Surprises Act, part of the Consolidated Appropriations Act, 2021 (P.L. 116-260, Division BB, Title I), to address surprise medical bills—for example, out-of-network emergency bills. After this law went into effect, the CFPB released a bulletin stating that if debt collectors report debts barred by the No Surprises Act, they may violate the FCRA.[79]

In April 2022, the Biden Administration announced that (1) the Department of Health and Human Services would do a study of more than 2,000 health care providers to evaluate how billing practices impact the affordability of care and accumulation of medical debt; (2) the Administration would direct all federal agencies not to consider medical debt in underwriting their credit programs, such as for mortgages and small business loans; (3) the Department of Veterans Affairs would make their medical debt forgiveness process easier and stop reporting medical debt to credit bureaus; and (4) the CFPB would increase its education materials around medical debt.[80]

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[75] CFPB, *Medical Debt Burden in the United States*.

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

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

[78] 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/.

[79] 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.

[80] The White House, "Fact Sheet: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection," press release, April 11, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-announces-new-actions-to-lessen-the-burden-of-medical-debt-and-increase-consumer-protection/.

In September 2023, the CFPB announced that it is considering proposals in its rulemaking to limit the reporting of medical debts on credit reports.[81] For example, the CFPB is considering prohibiting medical debts "on consumer reports furnished to creditors for purposes of making credit eligibility determinations." Alternatively, the CFPB is also considering proposals to allow medical debts on credit reports but mandating a delay in furnishing medical debts or not allowing medical debts below a particular dollar amount to be furnished.

Some believe it is unfair for any medical debts to appear on credit reports, because these debts are often incurred for medically necessary reasons and are less likely to indicate whether someone is financially responsible. Moreover, health insurance disputes can take time to resolve. For these reasons, some argue that the credit bureaus should be prohibited from including debts related to medically necessary procedures in credit reports and from including medical debts that are less than a year old or paid. While the three nationwide credit bureaus may limit medical debt reporting voluntarily, some argue that these changes should be required by law and should apply to all credit bureaus. Others argue that medical debts may demonstrate consumers' credit risk and should therefore be included in credit reports.

Use of Credit Reports for Employment Decisions and Tenant Screening

According to the FCRA, consumer credit reports can be used in specific permissible ways beyond lenders using them to evaluate loan applications.[82] For example, some employers use credit reports or background screening companies to evaluate job applicants for job openings.[83] Many landlords may use credit and other information to help decide whether to rent to an individual or household, including what is sometimes called a *tenant screening report*. These reports may have information from the nationwide CRAs, as well as possibly other information, such as past rental history or criminal records.[84] To comply with the FCRA, employers and landlords must inform an applicant that his or her credit report is a part of the decision and acquire the applicant's written permission to obtain the report. If an applicant is denied a job or apartment due to information on a credit report, then the applicant must be given a copy of the report and a summary of his or her FCRA rights. Some states limit or place additional regulations around the use of credit information for these types of decisions.[85]

[81] CFPB, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking: Outline of Proposals and Alternatives Under Consideration*, September 15, 2023, pp. 17-19, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.

[82] 15 U.S.C. §1681b.

[83] 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.

[84] 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/.

[85] For example, see Rosemarie Lally, "Using Workers' Credit Information Increasingly Prohibited," Society for Human Resource Management, July 28, 2015, https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/states-credit-history.aspx.

The CFPB has highlighted many issues in the tenant screening market.[86] Incorrect or outdated information in tenant screening reports are a significant issue that may make it difficult for some consumers to find housing.[87] Some of the data that tenant screening reports regularly use, such as eviction records, may have data quality issues.[88] While the National Consumer Assistance Plan (discussed earlier in this report) led to the removal of most court records in nationwide CRAs' credit reports due to accuracy concerns, this did not apply to many tenant screening companies. Even if a consumer is able to fix errors in a tenant screening report, the apartment may get rented to somebody else before the errors are fixed, especially in a competitive rental market. Moreover, CFPB research highlights how consumers may know less about the tenant screening industry and have less awareness about how to get issues with their information addressed compared to the nationwide CRAs.[89] For these reasons, the CFPB has recently issued guidance related to tenant screening report accuracy[90] and issued a request for information along with the FTC.[91]

Policy questions are related to whether and under what conditions it is appropriate to use consumer reports or credit bureau data outside of extending credit to consumers, including in employment or rental decisions. While this information may better inform employers or landlords before making employment or rental decisions, it could also disadvantage some consumers. Because many employment and tenant screening companies exist, a consumer may not be aware of an error in his or her consumer report until after a denial of employment or an apartment. Therefore, it may be more difficult for consumers to assert their FCRA rights, and incorrect information issues may be more likely to reoccur, harming some consumers. For these reasons, some argue that the CFPB should prioritize supervising for accuracy in these markets or that consumer report information should not be allowed to be used for these purposes.

Alternative Data in Credit Reports[92]

The CFPB estimates that credit scores cannot be generated for approximately 20% of the U.S. population due to their limited credit histories.[93] The CFPB distinguishes between different types

[86] 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/.

[87] CFPB, *Consumer Snapshot: Tenant Background Checks*, November 2022, https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

[88] 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.

[89] CFPB, *Consumer Snapshot: Tenant Background Checks*, p. 21.

[90] CFPB, "CFPB Takes Action to Stop False Identification by Background Screeners," press release, November 4, 2021, https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-stop-false-identification-by-background-screeners/; and CFPB, "As Federal Eviction Protections Come to an End, CFPB Warns Landlords and Consumer Reporting Agencies to Report Rental Information Accurately," press release, 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/.

[91] 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/.

[92] For more information on alternative data in financial services, see CRS In Focus IF11630, *Alternative Data in Financial Services*, by Cheryl R. Cooper.

[93] For more information on credit access policy issues, see CRS Report R45979, *Financial Inclusion and Credit Access Policy Issues*, by Cheryl R. Cooper.

of consumers with limited credit histories.[94] One category of consumers, referred to as *credit invisibles*, have no credit record at the three largest credit bureaus and, thus, do not exist for the purposes of credit reporting. This group represents 11.0% of the U.S. adult population, or 26 million consumers. Another category of consumers do have credit records, but they still cannot be scored and are considered *nonscorable*.[95] According to the CFPB, nonscorable consumers represent about 8.3% of the U.S. adult population, or approximately 19 million consumers. Younger adults may be more likely to be a part of the credit invisible or nonscorable population because they lack sufficient credit histories.[96]

Alternative data generally refers to information used to determine a consumer's creditworthiness that the nationwide CRAs do not regularly include in traditional credit files.[97] New technology makes it possible for financial institutions to gather other information, including financial and nonfinancial data, from a variety of sources. In 2017, the CFPB included examples of alternative data, 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.[98]

These data can be used either in credit reports or by lenders directly to underwrite loans. Alternative data could potentially be used to expand access to credit consumers, particularly consumers without extensive credit histories, such as young people and immigrants. Recent findings suggest that some types of alternative data—such as education, employment, and cash-flow information—might expand access to credit or make credit cheaper for some consumers.[99] For example, analysis of a private credit model that uses alternative data to make credit and pricing decisions suggests that the model expands the number of consumers approved for credit; lowers the rate consumers pay for credit on average; and does not increase disparities based on race, ethnicity, gender, or age.[100] Another recent study suggests that cash-flow data may more

[94] See Kenneth P. Brevoort, Philipp Grimm, and Michelle Kambara, *Data Point: Credit Invisibles*, CFPB, May 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[95] Because credit scoring models vary by firms, consumers who cannot be scored by some models might still be scored by other models. Thus, being nonscorable may depend upon the credit reporting data records and scoring models used.

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

[97] Consumers could also potentially build credit histories by using credit building loans, such as secured credit cards, or through 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 credit reporting "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/.

[98] CFPB, "Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process," 82 *Federal Register* 11185, February 21, 2017.

[99] See Julapa Jagtiani and Catharine Lemieux, "The Roles of Alternative Data and Machine Learning in Fintech Lending: Evidence from the LendingClub Consumer Platform," Federal Reserve Bank of Philadelphia, https://www.philadelphiafed.org/consumer-finance/the-roles-of-alternative-data-and-machine-learning-in-fintech-lending; and Alexei Alexandrov, Alyssa Brown, and Samyak Jain, "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/.

[100] Patrice Ficklin and Paul Watkins, "An Update on Credit Access and the Bureau's First No-Action Letter," CFPB, August 6, 2019, https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/; and Marco Di Maggio, Dimuthu Ratnadiwakara, and Don Carmichael, "Invisible Primes: Fintech Lending with Alternative Data," *NBER Working Paper Series*, March 2020.

accurately predict creditworthiness and that its use would expand credit access to more borrowers while meeting fair lending rules.[101]

The collection and use of alternative data, however, raises various policy concerns related to data security and consumer protection.[102] In terms of using alternative data in consumer lending, questions exist about how to comply with fair lending laws.[103] In addition, some prospective borrowers may be unaware that alternative data have been used in credit decisions, or such information may be incorrect, raising privacy and consumer protection concerns. In an effort to address such concerns, many consumer reporting agencies and firms currently use alternative data only when consumers choose to participate (i.e., opt in or consumer-permissioned data).[104]

The CFPB and federal banking regulators have been monitoring alternative data developments in recent years. In December 2019, they released a brief policy statement on the appropriate use of alternative data in the underwriting process, highlighting the potential benefits and risks.[105] The release followed an October 2017 statement from the CFPB outlining nine principles for consumer-authorized financial data sharing and aggregation. These principles included, among other things, consumer access and usability, consumer control and informed consent, and data security and accuracy.[106]

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[101] FinRegLab, "The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings," July 2019, https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf.

[102] For a longer discussion on the benefits and risks of alternative data to consumers, see CFPB, "Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process," 82 *Federal Register* 11185-11188, 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.

[103] For example, 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 both intentional discrimination and disparate impact discrimination, in which a facially neutral business decision has a discriminatory effect on a protected class. Alternative data may pose fair lending risks if they are correlated with ECOA-protected characteristics, such as race or ethnicity. In these cases, lenders' uses of alternative data to make credit decisions could result in disparate impacts. 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 CRS Report R44203, *Disparate Impact Claims Under the Fair Housing Act*, by David H. Carpenter.

[104] For example, FICO introduced the UltraFICO Score, a voluntary opt-in product that relies on bank account transaction data. For more information, see FICO, "Introducing UltraFICO Score," October 2, 2019, https://www.fico.com/ultrafico/. For the unscorable population, FICO also developed FICO Score XD for bankcard issuers by using landline phone, mobile phone, and cable payments history data. For more information, 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/.

[105] 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.

[106] CFPB, *Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation*, October 18, 2017, pp. 3-5, https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf.

Data Protection and Security Issues

Congressional interest in data protection and security in the consumer data industry increased following the 2017 Equifax data breach.[107] CRAs are subject to the data protection requirements of Section 501(b) of the Gramm-Leach-Bliley Act (GLBA; P.L. 106-102).[108] Section 501(b) requires the federal financial institution regulators to "establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—(1) to insure the security and confidentiality of consumer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access or use of such records or information which could result in substantial harm or inconvenience to any customer."

The regulatory system established in GLBA splits responsibilities across multiple agencies.[109] The FTC issues the implementing rules, referred to as the Safeguards and Privacy Rules, that financial institutions (including nonbank institutions like CRAs) are obligated to follow.[110] However, for CRAs, there is no agency with the authority to supervise for compliance with these rules. Further, if a violation is discovered, then enforcement is also possible at many agencies. In March 2019, GAO released a report that recommended actions for the FTC, the CFPB, and Congress to strengthen oversight of credit bureaus' data security.[111]

The Dodd-Frank Act granted the CFPB broad authorities to regulate and enforce for unfair, deceptive, and abusive acts in consumer financial products or services.[112] Recently, the CFPB published guidance asserting that insufficient data protection or information security of sensitive consumer data could be considered an unfair act or practice under the Consumer Financial Protection Act.[113]

Consumers maintain consumer protection rights related to data protection and security of their credit report data. Section 301 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) requires credit bureaus to provide fraud alerts for consumer files for at least one year under certain circumstances. In addition, it established the right to a free credit freeze, which allows consumers to stop new credit from being opened in their name, to protect themselves from fraud and identity theft. Currently, an identity theft victim may receive credit monitoring from the company that housed data that was exposed as part of a breach. Credit

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[107] For more information, see CRS Testimony TE10021, Consumer Data Security and the Credit Bureaus, by Chris Jaikaran.

[108] See CRS Insight IN11199, *Big Data in Financial Services: Privacy and Security Regulation*, by Andrew P. Scott; and CRS Report R44429, *Financial Services and Cybersecurity: The Federal Role*, by M. Maureen Murphy and Andrew P. Scott.

[109] GLBA delegated the authority for federal consumer privacy provisions to the federal banking regulators for federally insured depository institutions; the Securities and Exchange Commission for brokers, dealers, investment companies, and investment advisors; state insurance regulators for insurance companies; and the FTC for all other financial institutions. See CRS Report R44429, *Financial Services and Cybersecurity: The Federal Role*, by M. Maureen Murphy and Andrew P. Scott.

[110] FTC, "Privacy of Consumer Financial Information," 65 *Federal Register* 33646-33689, May 24, 2000.

[111] GAO, *Consumer Data Protection: Actions to Strengthen Oversight of Consumer Reporting Agencies*, GAO-19-196, February 2019, https://www.gao.gov/products/GAO-19-196.

[112] 12 U.S.C. §5531(a).

[113] CFPB, "Consumer Financial Protection Circular 2022-04: Insufficient Data Protection or Security for Sensitive Consumer Information," August 11, 2022, https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information/.

bureaus charge fees for these services, paid for by the private company after a data breach incident or by consumers if they choose to subscribe to that service.

Appendix. Natural Disasters and the COVID-19 Pandemic

If consumers experience disruptions in their income following unexpected events, such as natural disasters or a pandemic, they are more likely to be delinquent or default on loans and other regularly scheduled payments. Lenders have various options to mitigate the impact on consumers' credit scores and future credit access following disasters or catastrophic events. For example, furnishers may use special codes to report delinquencies due to special circumstances.[114] In addition, lenders may offer forbearance plans, which are agreements that allow extended time for consumers to become current on their payments.[115] If lenders and consumers enter into loan forbearance agreements, then furnishers have the option to report to the credit bureaus that these consumers are current on their credit obligations.

Congress has also responded to mitigate the financial consequences of adverse events on consumers. For example, Section 4021 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) required furnishers during the COVID-19-pandemic-covered period to report to the credit bureaus that consumers are current on their credit obligations if they enter into agreements to defer, forbear, modify, make partial payments on, or get any other assistance on their loan payments from financial institutions and fulfil those requirements, provided they were current before this period.[116] In other words, prior to the act, lenders could choose whether to report loans in forbearance as paid on time. Under the act, lenders were required to report such obligations as paid on time during the COVID-19 pandemic period. Although the act protected the credit histories of consumers with forbearance agreements, some consumers may still have experienced harm to their credit records, because lenders could choose whether to enter into assistance agreements for many types of consumer loans.[117]

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Acknowledgments

This report was originally written by Darryl Getter, and the current author recognizes his significant contributions to this report.

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[114] During natural disasters, lenders can flag affected borrowers by using special comment codes when reporting to credit bureaus. See CFPB, *Natural Disasters and Credit Reporting*, November 2018, https://files.consumerfinance.gov/f/documents/bcfp_quarterly-consumer-credit-trends_report_2018-11_natural-disaster-reporting.pdf.

[115] Loan forbearance may be more difficult for some institutions if they require changes in credit contracts.

[116] See CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott.

[117] For more information on consumer loan forbearance and debt relief during the COVID-19 pandemic, see CRS Insight IN11550, *COVID-19: Consumer Debt Relief During the Pandemic*, by Cheryl R. Cooper.

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