Consumer Protection: Regulation and Liability of the Credit Reporting Industry

Varda N. Fink

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CONSUMER PROTECTION: REGULATION AND LIABILITY OF THE CREDIT REPORTING INDUSTRY

I. Introduction

Consumer credit represents a revolutionary change in our economy and society. Only a generation ago, the idea of indebtedness was viewed as the mark of the imprudent man who suffered a major character weakness. ... Today, buying or borrowing on the installment plan is part of the American way of life. 

The consumer credit market has expanded rapidly since the end of World War II. In 1945 the consumer credit debt was $2.5 billion while in 1970 it equalled $100 billion. It has been estimated that 60% of individual income goes to pay off credit obligations. As credit buying has increased in volume, the credit reporting industry has grown to meet the demand for information on prospective credit buyers. The Association of Credit Bureaus of America (ACB of A), an association to which most credit reporting bureaus belong, was founded in 1906 by 25 credit bureaus. Today, it has 2,200 member bureaus serving 400,000 credit grantors in 36,000 communities; in 1967, its members maintained over 110 million files and issued 97.1 million reports. This expansion in the credit reporting industry is not limited to reporting on credit standing; insurance companies, employers, governmental licensing, lending, and investigative agencies, and prospective landlords all make use of the credit bureau files. Information commonly contained in credit bureau reports includes personal data such as name, address, employment history, marital status, previous bill paying habits, and legal involvements. However, in many cases the credit report issued on an individual is not limited to such information; insurance companies, in particular, request information on an individual's personal habits, moral character, and general reputation in the community. Because of the increased importance of credit to the consumer, there has been increasing concern over the accuracy of credit reports, the data gathering techniques of credit bureaus, and the relevance of the information in the reports to the purposes for which it was requested.
The purpose of this article is to examine the practices used by the credit bureaus in making reports, the extent to which credit bureaus are held liable for erroneous or irrelevant information contained in credit reports, and the effectiveness of the Fair Credit Reporting Act in regulating credit bureaus and providing relief to injured consumers.

II. Modes of Operation of Credit Bureaus and the Problems Raised

A credit bureau is any business engaged in the collection and dissemination to paying subscribers of information relating to the financial standing, credit, character, and general reputation of persons or firms. There are two basic types of credit bureaus: the economic data bureau and the investigative bureau. The former deals with purely economic data. One group of economic data bureaus supplies information only to businesses under contract with the bureau; the businesses in turn supply the bureau with information on all credit dealings they have with consumers. This is the only information reported. The other group of economic data bureaus supplements this information with information supplied by the consumer. These bureaus also check newspapers and court records for information on divorces, debtor suits and bankruptcy. The investigative bureaus’ services are most often sought by insurance companies and employers. These bureaus not only check public records and newspapers, but also make “field investigations,” interviewing friends, employers, and neighbors. They seek information on income, drinking habits, domestic relations, political affiliation, living conditions, and the general reputation of the individual.

The procedures used by credit bureaus raise a number of problems. First of all, the likelihood of inaccurate information entering an individual’s file is substantial. There are at least five possible kinds of errors in accuracy:

1. Confusion with other persons.
2. Biased information.
5. Incomplete information.


12 15 AM. JUR. 2d, Collection and Credit Agencies § 3, at 551 (1964).
13 See Testimony of H.C. Jordan, President, Credit Data Corp. at the Commercial Credit Bureau Hearings, supra note 3, at 67-68.
15 The largest investigative bureau is Retail Credit Company of Atlanta, Georgia, with 1,225 offices, 7,000 inspectors, and files on 48 million people. Countryman, Computers and Dossiers, 213 THE NATION 134, 136 (1971).
16 See A. MILLER, THE ASSAULT ON PRIVACY 69-70 (1971). See also forms used by Retail Credit Co. in the Fair Credit Hearings, supra note 10, at 478-85.
17 If it is assumed that 99% of the files are accurate, then the number of files containing errors would affect over one million people. Note, The Consumer vs. the Credit Bureau: Whom Does the Law Protect? 7 CAL. WESTERN L. REV. 216 (1970).
18 Hearings on S. 823, supra note 10, at 428-30.
Confusion with other persons frequently occurs because of industry practices in examining newspapers and court records. If the court record indicates that "Robert Jones" is being sued by a creditor, then some bureaus will use the "shot-gun approach" and record this entry in the file of every individual who is named "Robert Jones." Even if the "shot-gun approach" is not used, the probability of entering the lawsuit in the wrong "Robert Jones" file is quite high.

The problem of biased information has its source in the information supplied by merchants on the bill paying habits of a consumer. Just because an individual has defaulted on a payment does not mean that this individual is a poor credit risk. Nonpayment may be due to unpredictable causes such as illness. In addition, an adverse report does not reflect what may be a legitimate dispute between the consumer and the creditor.

Malicious gossip and hearsay is a problem when dealing with investigative reports. Investigative bureaus place a premium on derogatory information; investigators are rated according to the percentage of derogatory reports made. While investigators are required to make 10-15 reports per day, such hearsay information is not easily verified.

In Weatherby v. Retail Credit Co., a businesswoman was denied life insurance because of a report which stated that

[N]eighbors have been led to strong suspicions of Lesbian action between these women. . . . Informants will not come out and state [it] . . . but hint and hedge around and do everything but state it. . . .

The president of the Hooper-Holmes Bureau, a bureau which specializes in derogatory information and has files on nine or ten million people, has given the following description of the investigative procedure used to determine whether a man is having an extramarital affair:

You go to a neighbor and establish rapport. . . . Then you ask, "What's your opinion of X's home life; how do you think of him as a family man?" This will usually elicit some hint. . . . Then you start digging. You press them as far as they go, and if they become recalcitrant, you go somewhere else.

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19 Testimony of Rita B. Collins at the Hearings on S. 823, supra note 10, at 382.
23 Nader, supra note 22. See also the Testimony of Michael E. Tanner at the Hearings on S. 823, supra note 10, at 398-402.
24 Nader, supra note 22, at 19. In addition, Investigators receive a salary of only $475 to $500 per month; over half have no more than a high school education. Countryman, Computers and Dossiers, 213 The Nation 134, 136 (1971).
25 Testimony of H.C. Jordan at the Commercial Credit Bureau Hearings, supra note 3, at 88.
27 Id. at 238, 201 A.2d at 345.
28 A. Miller, Assault on Privacy 69-70 (1971).
The fear of computer errors is relatively new. Credit Data Corporation, which operates in California, Illinois, Michigan, and New York, has files on 27 million persons; it is adding files at the rate of a half a million per month, and is fully computerized.\(^\text{29}\) The ACB of A has plans to fully computerize and pool the files of all member bureaus.\(^\text{30}\) This computerization raises a number of problems. A significant computer-privacy problem is raised by the vulnerability of machine components and software to accident or intrusion. The possibility of human error is increased because of the extra human handling necessary to turn raw data into computer input.\(^\text{31}\) Computerization increases the possibility of injury to consumers by increasing the amount of information and number of files that can be kept as well as the audience to which the information can be disseminated.\(^\text{32}\) In a society in which the computer is seen as an all-powerful instrument, most people assume that information coming from a computer is accurate.\(^\text{33}\) When this presumption is coupled with the ability of bureaus to obtain information from any place in the United States, it becomes impossible for an individual to escape from a bad credit rating even if it is erroneous.

Inaccuracies because of incomplete information are caused by industry practices in checking public records for credit information.\(^\text{34}\) While bureaus peruse these sources for entry of lawsuits or arrests, they rarely conduct follow-up investigations to determine their outcome; they do not investigate the reasons for a legal action.\(^\text{35}\)

A second problem caused by industry procedures relates to the decreasing ability of consumers to keep facts about themselves private. Many credit bureaus collect highly personal information which may be accurate but which is seemingly irrelevant to the granting of credit, insurance, or employment.\(^\text{36}\) One can question the relevance of one's sexual habits to one's suitability for life insurance coverage. It has been observed that “the credit agencies probably collect more personal information about Americans than anyone in our society except the Federal Government.”\(^\text{37}\) At least one credit bureau refuses to report such information because it feels that its subscribers are not entitled to it.\(^\text{38}\) In addition, the techniques used by investigative bureaus can involve significant intrusions of an individual's privacy.

Another privacy-related problem is the case with which files may be obtained. Many credit bureaus have only vague policies as to whom they will furnish information.\(^\text{39}\) Information is frequently given out over the telephone


\(^{30}\) Id.


\(^{32}\) Id. at 1108-9.


\(^{34}\) *Hearings on S. 823*, supra note 10, at 430.

\(^{35}\) Testimony of Caspar W. Weinberger, Chairman, Federal Trade Commission, at the *Fair Credit Hearings*, supra note 10, at 270.

\(^{36}\) *Hearings on S. 823*, supra note 10, at 431.

\(^{37}\) Testimony of Prof. Arthur R. Miller, University of Michigan Law School, at the *Fair Credit Hearings*, supra note 10, at 183.

\(^{38}\) Testimony of H.C. Jordan at the *Commercial Credit Bureau Hearings*, supra note 3, at 88.

\(^{39}\) See Testimony of Prof. A. Westin at the *Commercial Credit Bureau Hearings*, supra note 3, at 6-7.
The Teamsters Union was able to obtain files on prospective jurors for Teamster president James Hoffa's trial. On March 17, 1969, CBS News reported an "experiment" it carried out to determine the ease with which reports could be obtained. Using a fictitious corporation as a ploy, it sent out requests to twenty randomly chosen bureaus for full reports on an individual allegedly seeking credit. Without checking to determine whether the request came from a bona fide creditor, nine bureaus sent full reports, three reported that they had no information, and two answered that they would send the information as soon as the corporation signed a subscriber's contract; only two refused pending a check on the corporation's standing.

While access to the files has been relatively easy for bureau clients, the consumer was denied access until the passage of the Fair Credit Reporting Act (FCRA). Under pre-FCRA procedures most bureaus required their subscribers to refrain from revealing the reason that credit was denied or the identity of the bureau. Even if the consumer discovered the name of the bureau, the bureau frequently refused to disclose the contents of its files or the sources of the information contained in them.

While much of the information collected by credit bureaus is valuable to its subscribers, the fact remains that the consumer has lost the ability to control what is known about him. This ability to control personal data is seen by many as necessary to one's mental health. Fear has been expressed that overzealous investigation might result in individuals tailoring their behavior to maintain a good credit rating. A consumer may be reasonably fearful that withholding payment on a defective product might injure his ability to obtain further credit. In addition, the maintenance of complete dossiers is seen as a threat to individuality—that is, the ability to live unconventionally and hold unconventional views without fear of penalty, legal or social.

III. Regulation of the Credit Reporting Industry

The twentieth century has seen an abandonment of a laissez-faire approach by government toward industries which have a major impact upon consumers. Congress has responded to the growth in power and national impact of the
transportation industry, the telephone and telegraph industry, and the food and drug industry, to name only a few, by passing regulatory legislation. Courts are increasingly imposing civil liability upon economic enterprises for the adverse consequences of their technological choices. This trend reflects the realization that in a highly technological society industry must be held accountable to the people it serves, and the society at large.

Regulation of the credit reporting industry has been late in coming. The predominant judicial attitude has been to protect the credit bureau rather than the injured consumer. Statutory regulation was virtually nonexistent until passage of the FCRA. This lack of governmental concern can be explained, in part, by the highly secretive nature of the industry. Until the legislative hearings on the FCRA, few people were aware of industry practices. In addition, consumers who were wrongly denied credit or insurance had no way of knowing if the denial was due to a faulty credit report. Therefore, few suits were brought, and courts assumed that faulty reports were infrequent. As a result the harm caused by faulty reports was deemed to be small in relation to the benefits of frank reports.

The FCRA is a first national step in establishing a regulatory scheme for the credit reporting industry. The first formal legislation was initiated in the spring of 1969 in the Senate. While the bill was initially hailed by consumer groups as an effective starting point for regulation of the industry, industry lobbyists and bank-oriented senators diluted many of its provisions. Industry representatives objected, in particular, to any extension of liability for false reports, any provision actually allowing consumers to see their files or discover the sources of the information, and any regulation of the type of information contained in the credit reports. The statute which Congress eventually passed was a compromise between S. 823 and H.R. 16340, which aimed at more stringent regulation. The compromise was weighted in favor of the Senate version. The FCRA is an amendment to the Consumer Credit Protection Act. It applies to all consumer credit bureaus which use the facilities of interstate commerce in the preparation or dissemination of their reports.

This article will examine the legal remedies available to consumers before and after passage of the FCRA, and the remedies available under the FCRA itself.

50 Testimony of Prof. A. Westin at the Commercial Credit Bureau Hearings, supra note 3, at 4-5.
54 See Testimony of Sarah H. Newman, General Secretary, National Consumers' League, and Benny L. Kass, National Legal Aid and Defender Association, at Hearings on S. 823, supra note 10, at 123-39.
57 A. MILLER, ASSAULT ON PRIVACY 88 (1971).
59 FCRA § 603(f).
A. Legal Remedies Available to Injured Consumers

Before the FCRA the most frequent legal remedy used by consumers to obtain relief was the libel suit. However, consumers were rarely successful in such suits against a credit bureau. Libel is a strict liability tort based upon malice which is presumed to exist if a false and defamatory statement is published. It is defamatory to report falsely that one has gone bankrupt, engages in immoral conduct, is having marital trouble, is a drunk, is delinquent in paying debts, or has been indicted.

While such statements frequently appear in credit reports, consumers injured by false reports failed to recover in libel actions because the overwhelming majority of jurisdictions have allowed credit bureaus to raise the affirmative defense of "conditional privilege." When this privilege is raised a plaintiff must show that the defamatory statement was published with malice. The privilege was given credit bureaus because the bureau and the subscriber, who was furnished a report upon request, were deemed to have a common, legitimate interest in the subject matter of the report. Only three common law jurisdictions have refused to grant credit bureaus this privilege.

Consumer recovery under the common law depended upon the definition of malice. A few courts have held that the privilege is lost if there is publication without probable cause to believe in its truth, or if due care was not used in the collection and dissemination of the report. However, the majority of courts have required that either a "reckless disregard for the rights of another" or actual malice be shown. Since the false information contained in credit reports is most often due to carelessness in compiling the report, few consumers were able to satisfy the high burden of proof required of them.

A few consumers attempted to get around the privilege by suing for invasion of privacy. Such an action seems to be best suited to those cases in which there is disclosure of private and highly personal facts; while the truth of the facts disclosed is irrelevant in a privacy suit, it is a defense in libel. However, such suits have been unsuccessful for a number of reasons. Invasion of privacy was initially concerned with the publication of private facts in the public media. Therefore, a number of courts have held that publication of a report to a single

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60 Note, Protecting the Subjects of Credit Reports, 80 YALE L.J. 1035, 1049 (1971).
61 Id.
63 Id.
70 See Warren and Brandeis, The Right to Privacy, 4 HARV. L. REV. 193 (1890).
subscriber is insufficient publication to sustain an injury to one's right to pri-
vacy. Since the right to privacy is not absolute, a number of courts have applied
the conditional privilege in privacy suits.

As can be seen above a consumer injured by a faulty credit report is all but
unprotected by the common law of most jurisdictions. This was one of the
major reasons for the passage of the FCRA. The Act allows a consumer who
has been injured by a faulty credit report to sue if there has been either "willful" or
"negligent" noncompliance with the Act by the bureau which issued the
report or by the user of the report. The scope of protection given consumers by
the suit provisions is, in fact, quite broad. Credit bureaus are under a duty to
maintain reasonable procedures to insure that:

1. No consumer reports contain adverse information which antedates the
report by more than 7 years (except for bankruptcy information which
can antedate the report by 14 years).
2. A report is issued only upon court order, in accordance with the con-
sumer's written instructions, or to one who has a "legitimate business
need" for the report.

In addition, the credit bureau must follow "reasonable procedures to assure
maximum possible accuracy" of the information contained in every credit
report issued.

Many industry practices reflect a lack of concern with the accuracy of
credit reports. Failure to recheck court records, use of unverified hearsay, and
the pressures put upon investigators to unearth derogatory information are
only a few examples. Such practices are conducive to the publication of false
reports and are a violation of the bureau's duty to use reasonable procedures
which insure the accuracy of credit reports. While the scope of protection given
the consumer by the Act has yet to be determined by the courts, it would seem
that the Congressional intent is to provide injured consumers with a remedy
which is unhampered by the traditional judicial attitude which favors the credit
bureau over the consumer. Although Congress has not deprived credit bureaus
of the protection given by the conditional privilege, it has created a new remedy,
independent of the common law, for consumers injured by false credit reports.

While the FCRA has improved the lot of many injured consumers, there
are a number of serious weaknesses with the present suit provisions. First, re-
covery is allowed only when there is fault on the part of the credit bureau. The

73 See Hearings on S. 823, supra note 10, at 434-35.
74 FCRA § 616.
75 Id. § 617.
76 Id. § 607(a).
77 Id. § 605.
78 Id. § 604.
79 Id. § 607(b).
80 Id. § 610(e). This section provides that no consumer may bring any action in the
nature of defamation, invasion of privacy, or negligence against any credit bureau based on
information obtained under the Act unless the false information is furnished with malice of
willful intent to injure.
consumer must still bear the full burden of credit report "accidents" which are inherent in the collection and dissemination of vast amounts of data. The general legal trend in the past half century has been to hold industry liable for both avoidable and unavoidable injuries in the belief that the consumer should not be made to bear the full burden for injuries caused by the failures of technological advances. By making credit bureaus strictly liable, the cost of safeguards and insurance would become part of the price of the reports. The credit report is invaluable to most of its subscribers; therefore, the demand for credit reports is relatively inelastic, and is insensitive to price change. If strict liability has an adverse effect upon the ability of credit bureaus to survive, then the volume of business of credit bureaus in jurisdictions which deny the conditional privilege should be significantly lower than in jurisdictions which grant it. A recent study comparing credit practices among retail furniture and appliance dealers in Boise, Idaho, and Spokane, Washington, suggests that there is no difference even though Washington grants the privilege and Idaho denies it. The credit bureau is in a better position to absorb and spread the losses which result from false credit reports. It is no longer a fledgling industry which must be protected from suits in order to survive. The FCRA gives the credit reporting industry a higher degree of protection than is given manufacturers of defective products or businesses engaged in ultra-hazardous activities. Sound tort liability rules must be based not only upon ability to bear the cost of accidents but also upon fairness. Fairness would seem to require that a credit bureau, whose sole motive in exposing consumers to risk of harm is profit, be made to compensate all consumers who are injured by faulty credit reports.

Second, the suit provisions as they are presently written may contain a major stumbling block to recovery for even those consumers injured by noncompliance with the Act. The Act can be construed as placing the burden of proving noncompliance upon the consumer. It will be extremely difficult for injured consumers to show that there has been a breach of duty by the credit bureau since only the credit bureau is aware of how the faulty information was obtained. It would seem that in order to facilitate recovery, a presumption of noncompliance should be raised whenever a credit report is found to contain false information. The credit bureau could then rebut this presumption by showing that it has performed its duty under the Act.

Finally, the FCRA's suit provisions provide no relief to those consumers injured by the disclosure of highly personal data. The bill as introduced in both the House and Senate had provisions limiting the information contained in a report to information relevant to the purposes for which it was requested. Under industry pressure, these provisions were deleted from the FCRA as passed.

82 Note, Protecting the Subjects of Credit Reports, 80 YALE L.J. 1035, 1045 (1971).
83 Id. at 1042.
84 Id. at 1035-54.
87 See Testimony of W. Lee Burge, Retail Credit Co., at the Hearings on S. 823, supra note 10, at 173-74.
Therefore, a credit bureau is still free to report that an applicant for life insur-
ance is a Lesbian or that an applicant for automobile insurance has long hair
and is a member of the peace movement. This information is not relevant
and has not been shown to serve a useful business purpose. Yet, a consumer who
is denied insurance because such information has been provided has no recourse.
A minimal first condition for the disclosure of noncredit information, such as
sexual habits or hair length, should be the establishment of a relationship between
the information requested and risk prediction.

B. Governmental Regulation of Credit Bureaus

Even if the FCRA as passed provided consumers with an adequate remedy,
the remedy by itself would not be sufficient to insure future accuracy in credit
reports. Legal remedies serve a curative function; they compensate victims for
injuries which have been already sustained. In the long run, legal remedies do
not prevent the injury. Definitive standards for the operation of credit bureaus
are necessary for the effective prevention of faulty credit reports. Such standards
would do much to insure the accuracy of reports before they are issued.

While a major impetus for the passage of the FCRA was the virtual lack
of state or federal legislation, the Act is aimed at correcting defects in credit
reports rather than preventing them. The Act attempts to insure accuracy in
credit bureau files by giving consumers access to the files and by providing a
procedure through which consumers have some control over the contents of
their files.

The consumer has an absolute right to be informed of the "nature and
substance of all information (except medical records)" contained in the con-
sumer's file. While the bureau does not have to show the file to the consumer,
but must provide trained personnel to explain to the consumer what is in the file
and its meaning. The consumer also has a right to be informed of the sources
of the information; the bureau need not disclose the sources used to compile
investigatory reports unless the consumer obtains discovery after bringing suit
under the Act.

The major difficulty with the access provisions is that a consumer cannot
see the file. There is no way of assuring that the substance of the file is being
completely disclosed. The Act assumes that the credit bureau will comply with
the disclosure provisions. However, it provides no method for insuring this com-
pliance. In light of the strong industry objection to disclosure, this assumption

89 1970 CONG. Q. ALMANAC 624. Oklahoma, California, New York, New Mexico, and
Massachusetts have laws regulating credit bureaus. See OKLA. STAT. ANN. tit. 24, §§ 81-85
(1955); CAL. CIV. CODE §§ 1750-57 (West California Legis. Serv., 1971 ch. 1348); N.Y. GEN.
BUS. LAW §§ 370-76 (McKinney N.Y. Leg. Serv., 1971 chs. 300, 301); N.M. STAT. ANN. §
90 FCRA § 609(a)(1).
91 Id. § 610(c).
92 Id. § 609(a)(2).
93 A recent statement by Salvatore Sangiorgi, assistant Director of the Federal Trade
Commission's New York office, indicates that many consumers have been refused disclosure.
Others have been discouraged by tactics designed to avoid disclosure to consumers. Some con-
seems to be unwarranted. In addition, the credit bureau may impose a "reasonable charge" for disclosures unless the request for disclosure comes within 30 days after receipt by the consumer of notice that a request for credit, insurance, or employment has been adversely affected by the bureau's report. The only way to insure that a false credit report is not sent out is to make periodic trips to the credit bureau rather than wait for an adverse credit determination. Such a procedure can be utilized only by those consumers who can afford the "reasonable charges" imposed by the credit bureau. A number of people have suggested that a better procedure would require the credit bureau to send a copy of the credit report to the consumer each and every time a credit report on the consumer is issued. While this procedure would inform the consumer that a faulty credit report has been issued, it would not prevent the faulty report from being sent out. Another alternative is to require the credit bureau to notify each consumer on whom it has a file that such file exists; the consumer should then be allowed to see the file once without charge. In addition, the credit bureau should be required to notify the consumer whenever an adverse item of information is added to the file; the consumer should be informed of the nature and substance of such new information.

The FCRA allows the consumer some control over the contents of the file if there is a dispute over the accuracy of an item in the file, and the bureau is informed of the dispute. The bureau must then reinvestigate the item and correct its files if it cannot reverify it; however, the bureau need not reinvestigate a disputed item if it has reasonable grounds to believe that the dispute is "frivolous or irrelevant." If reinvestigation does not resolve the dispute, then the consumer has a right to file a brief statement setting out his position. The statement or a summary thereof must accompany any subsequent report issued by the bureau which contains the disputed item unless there are reasonable grounds to believe it is "frivolous or irrelevant." The Act does not define what is meant by "frivolous or irrelevant." In addition, there are no provisions for appealing an adverse determination by the credit bureau.

The FCRA also makes some effort to regulate the type of information contained in bureau files in order to insure that the files are up-to-date. However, some of these provisions are of dubious value. For example, bankruptcies can be reported as long as the bankruptcy does not antedate the report by more

sumers have been told that "the man who handles that sort of thing isn't here right now and won't be back for three or four days." Some bureaus have told consumers that they did not have a file for that consumer when they, in fact, had one. One bureau requires a consumer to fill out a two-page questionnaire; others require consumers to sign a statement waiving their rights to sue under the Act. In addition, some bureaus have attempted to charge the consumer up to $25.00 to "see" his file. See Wall Street Journal, Dec. 29, 1971, at 1, col. 6 and at 17, col. 5, 6.

94 FCRA § 612.
95 Id. § 615. This requires users of reports to inform consumers that their request for credit, insurance, or employment has been adversely affected by a credit report; the user must provide the consumer with the name and address of the credit bureau which issued the report.
96 Senator Mark Hatfield of Oregon is about to introduce such a measure in the Senate.
98 Id. §§ 611(a).
99 Id. §§ 611(b).
100 Id. §§ 603, 618, 614.
than 14 years.\textsuperscript{101} Such a length of time is seen by one expert as unnecessarily long.\textsuperscript{102} In addition, the FCRA provides that a credit bureau which is furnishing an employment report must notify the consumer that an adverse public information item is being reported, or the bureau must maintain strict procedures to insure that the current public record status of the item is being reported.\textsuperscript{103} There is no reason for allowing a credit bureau to opt for one alternative over the other. Credit bureaus should be required to recheck public records to insure that the current status of suits and indictments is reported. Furthermore, credit and insurance seekers are also deserving of such protection. The one provision which offers consumers adequate protection from injury caused by obsolete information requires the credit bureau to reinvestigate and reverify any adverse item (other than public record information) contained in an investigative report which antedates the report by more than three months.\textsuperscript{104}

The FCRA also attempts to limit access to credit reports.\textsuperscript{105} However, the terms used to determine who may have access are defined so broadly that there is, in effect, no control on access by private persons. The Act does restrict access to the files by governmental investigative bureaus such as local police or the F.B.I.\textsuperscript{106} While in the past such agencies were freely allowed access to files on individuals under investigation,\textsuperscript{107} under the FCRA they must obtain a court order\textsuperscript{108} before they can learn more than an individual's name, address, and place of employment.\textsuperscript{109}

The governmental agency charged with enforcing the Act is the Federal Trade Commission (FTC).\textsuperscript{110} A violation of the Act is an unfair and deceptive trade practice, subject to sanctions under the Federal Trade Commission Act.\textsuperscript{111} While an administrative agency is in the best position to insure compliance with the Act, the enforcement procedures used by the FTC are ineffective; the FTC relies mainly on the voluntary compliance of those industries under its regulation and has not been known to take swift action in processing complaints.\textsuperscript{112} In addition, under the FCRA the FTC does not have rulemaking powers; therefore, even small changes in the regulations have to be made by Congress.\textsuperscript{113}

The major weakness of the FCRA is its lack of definitive regulatory provisions. This lack is demonstrated, in part, by the broad language with which the statute is written. For example, as discussed above, bureaus do not have to reinvestigate or record frivolous consumer disputes; the Act in no way indicates

\textsuperscript{101} Id. § 605(a)(1).
\textsuperscript{102} See Statement of Royal E. Jackson, Chief, Bankruptcy Division, U.S. Courts at the \textit{Fair Credit Hearings}, supra note 10, at 306-7.
\textsuperscript{103} FCRA § 613.
\textsuperscript{104} Id. § 614.
\textsuperscript{105} Id. §§ 604, 606.
\textsuperscript{106} Id. §§ 604(1), 604(3)(D). 608.
\textsuperscript{108} FCRA § 604(1).
\textsuperscript{109} Id. § 608.
\textsuperscript{110} Id. § 621(a).
\textsuperscript{113} Id. at 262-63.
what is meant by “frivolous or irrelevant.” In the past credit bureaus have considered a buyer’s claim of defective merchandise to be irrelevant to his refusal to pay. There is nothing in the Act which indicates that they cannot continue to treat a legitimate dispute as frivolous and irrelevant. This lack of definite regulatory standards can be potentially troublesome to the industry as well as to the consumer, for the Act provides few guidelines which allow credit bureaus to determine whether they are complying with the Act.

Closely related to the lack of regulatory provisions in the FCRA is its lack of enforcement procedures. The major burden of insuring compliance by the industry is placed upon the consumer. Yet, consumers are probably the least effective group to enforce the Act. They may be hesitant to bring suit under the Act since attorney’s fees are borne by the consumer unless the suit is successful. In addition, if the denial of credit for the purchase of a small appliance is the only result of a faulty credit report, a law suit is hardly worthwhile. Many consumers, particularly the poor, may be unaware of their rights under the Act; many working people might decide that inspecting their files is not worth losing a day’s work.

IV. Suggestions for the Regulation of the Credit Reporting Industry

The credit reporting industry is one of the largest collectors of data about individuals. It has a major impact on the lives of consumers. Such an industry must be subject to effective regulation in order to prevent injury to consumers. The protective cloak which is thrown around the industry benefits neither the consumer nor the businessman. Businessmen who refuse to deal with consumers because of false credit reports are losing valuable customers. One reason for the large number of bankruptcies and defaults is the inefficiency of credit bureaus; there have been many instances in which credit bureaus have failed to report crucial information on a consumer, which, in turn, has resulted in the extension of credit when it should not have been extended. The inability of many people to obtain credit provides business for the illegal loan sharks and “gray market” businessmen, who charge high interest and use deceptive business practices.

An act designed to give consumers adequate protection would be aimed at preventing rather than correcting defects in credit reports; it would be specific enough to inform consumers of their rights, and would inform credit bureaus of their duties. The basic outline of the FCRA provides a good starting point for future legislation. Future legislation should, at least, provide:

1. A more detailed system of regulating the contents of credit bureau files. The information should be limited to relevant information. Credit bu-

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114 See Testimony of H.C. Jordan at the Commercial Credit Bureau Hearings, supra note 3, at 75-6.
115 FCRA §§ 616(3), 617(2).
116 Under FCRA § 617 a consumer is allowed only actual damages for negligent non-compliance with the Act.
reaus should be required to maintain procedures to insure that the current status of all information is provided.

2. Consumers with greater control over their files. Consumers should be allowed to see their files and should be notified whenever an adverse item is added. In addition, credit bureaus should be required to reinvestigate and reverify any disputed item unless the bureau can show that there is no relationship between the consumer's claims and the item.

3. A remedy which holds credit bureaus strictly liable for injuries caused by defects in credit reports.

An administrative agency with rulemaking powers should be set up to regulate the credit reporting industry as well as other information gathering bodies, both public and private. Many of the issues involved in the regulation of credit bureaus are too specific in nature for either legislative or judicial regulation. For example, neither the courts nor the legislature have the time or facilities for making the specific rulings necessary to resolve the problem of irrelevant information contained in credit reports. The agency could be used by consumers as a forum to which complaints are addressed before going to the courts for relief. This would be especially useful when only a small injury has been sustained. The agency would be in a position to inform consumers of their rights through publicity.

In the long run the major issue involved is whether the law is going to protect the consumer, to whom credit is becoming increasingly important, or the credit bureau. The law in any society is a reflection of the values of that society. In a society which is moving toward the protection of the consumer rather than the industry which caused him injury, it would seem inconsistent if an industry which has such a major impact upon the nature of contemporary society is not effectively regulated.

Varda N. Fink

119 The credit reporting industry is not the only information gathering body which can adversely affect the lives of individuals in our society. See A. Miller, Assault on Privacy 54-161 (1971).