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

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Updated September 13, 2018

**Congressional Research Service**
7-5700
www.crs.gov
R44125

# Summary

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

Congress has shown concern about consumer protection and consumer credit access in light of various challenges facing the credit reporting industry.

- Reporting inaccuracies may result in the rejection of consumer credit requests.
- Negative or derogatory information, such as multiple overdrafts, involuntary account closures, loan defaults, and fraud incidents, may stay on consumer reports for several years. Conversely, the exclusion of more positive or updated information, such as the timely repayment of noncredit obligations, may limit credit access. Having a nonexistent, insufficient, or a stale credit history may also prevent credit access.
- Differences in billing and collection practices can also adversely affect the consumer reports, an issue of particular concern with medical billing practices.
- The use of *alternative* or newer versions of credit scores, which have been developed in response to the above concerns, arguably may increase credit access. Implementing alternative scoring algorithms, however, takes time, and credit scores are only one factor among many that are used in lender underwriting decisions.
- The Equifax breach, which was announced on September 7, 2017, has increased congressional interest in data protection and security issues.

This report discusses these issues and provides some background information on the consumer data industry as well as a general overview of the current regulatory framework. Greater reliance by firms on consumer data significantly affects consumer access to financial products or opportunities, prompting congressional concerns about consumer protection. The Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) addresses some specific consumer protection challenges facing the industry. In addition, the Comprehensive Consumer Credit Reporting Reform Act of 2017 (H.R. 3755) would amend the Fair Credit Reporting Act to address consumer reporting and scoring concerns that could limit credit access. The PROTECT Act of 2017 (H.R. 4028) would establish cybersecurity supervision and examination of large consumer reporting agencies.

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# Introduction

The consumer data industry collects and subsequently provides information to firms about behavior when consumers conduct various financial transactions. Firms use this data to determine whether consumers have engaged in behaviors that could be costly or beneficial to the firms. For example, lenders rely upon credit reports and scoring systems to determine the likelihood that prospective borrowers will repay their loans. The data may also be used to predict consumer behaviors that would financially benefit firms.

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 consumer data use is much broader. Insured depository institutions (i.e., banks and credit unions) rely on consumer data service providers to determine whether to make checking accounts or loans available to individuals. Insurance companies use consumer data to determine what insurance products to make available and to set policy premiums.[1] Some payday lenders use data regarding the management of checking accounts and payment of telecommunications bills to determine the likelihood of failure to repay small-dollar cash advances. Merchants rely on the consumer data industry to determine whether to approve payment by check or electronic payment card. Employers may use consumer data information to screen prospective employees to determine, for example, the likelihood of fraudulent behavior. In short, numerous firms rely upon consumer data to identify and evaluate the risks associated with entering into financial relationships or transactions with consumers.

Greater reliance by firms on consumer data significantly affects consumer access to financial products or opportunities. For example, negative or derogatory information, such as multiple overdrafts, involuntary account closures, loan defaults, and fraud incidents, may stay on consumer reports for several years. 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 more favorable financial situations. Furthermore, consumers may find the process of making corrections 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.

This report provides background information on the consumer data industry and various specialty areas. One prominent specialty area—consumer scoring—is explained and includes information about various factors used to calculate credit scores. It provides a general description of the current regulatory framework of the consumer data industry. Furthermore, Congress has shown concern about consumer protection and consumer credit access in light of challenges such as the Equifax breach announced on September 7, 2017, as well as the effects of negative, inaccurate, or incomplete information on access to future financial products or opportunities. The Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) was passed during the 115th Congress and addresses some specific consumer protection challenges facing the industry. In addition, other bills have been introduced, including the Comprehensive Consumer Credit Reporting Reform Act of 2017 (H.R. 3755), which would amend the Fair Credit Reporting Act to address consumer reporting and scoring concerns that could limit credit access; and the PROTECT Act of 2017 (H.R. 4028), which would establish cybersecurity supervision and examination of large consumer reporting agencies. Hence, this report discusses selected policy

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

issues pertaining to credit scoring along with the corresponding legislative and regulatory developments geared toward expanding consumer protection and credit access.

# The Consumer Data Industry and Specialty Services

This section provides background information on the credit reporting agencies (CRAs) and some specialty areas, including credit scoring. It summarizes the key factors known to affect credit scores and describes the current regulatory framework for CRAs.

## Consumer Reporting Services

According to the Fair Credit Reporting Act (FCRA), CRAs are firms that prepare consumer reports based upon individuals' financial transactions history data.[2] Such data may include historical information about credit repayment, tenant payment, employment, insurance claims, arrests, bankruptcies, and check writing and account management. Consumer files, however, do not contain information on consumer income or assets.[3] Consumer reports generally may not include information on items such as race or ethnicity, religious or political preference, or medical history.[4]

Equifax, Experian, and TransUnion are the three largest nationwide providers of credit reports.[5] Other CRAs provide a variety of specialized consumer reporting services.[6] Some specialty CRAs collect data regarding payment for phone, utilities (e.g., electric, gas, water), and telecommunication (e.g., cable) services.[7] Utility and telecommunication service providers use the reports to verify the identity of customers and determine downpayment requirements for new customers. Property management companies and rent payment services may report to CRAs that specialize in collecting rent payment data for tenant and employment screening.[8] Some CRAs specialize in consumer reporting for the underbanked, near prime, and subprime consumer

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[2] P.L. 91-508. Title VI, §601, 84 Stat. 1128 (1970), codified as amended at 15 U.S.C. §§1681-1681x. For the legal definition, see 12 C.F.R. §1090.104, "Consumer Reporting Market," at http://www.ecfr.gov/cgi-bin/text-idx?SID=c13cb74ad55c0e8d6abf8d2d1b26a2bc&mc=true&node=se12.9.1090_1104&rgn=div8. The Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Equal Credit Opportunity Act are all consumer credit protection amendments included in the Consumer Credit Protection Act (P.L. 90-321). The complete list of consumer protection provisions that have been amended to the Consumer Credit Protection Act is in CRS Report RL30889, *The Consumer Credit Protection Act: An Overview of Its Major Components*, by Margaret Mikyung Lee (out of print; available to congressional clients upon request).

[3] See Consumer Financial Protection Bureau (CFPB), *Key Dimensions and Processes in the U.S. Credit Reporting System*, December 2012, at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[4] See Federal Reserve Board (FRB), "Federal Fair Lending Regulations and Statutes: Equal Credit Opportunity (Regulation B)," *Consumer Compliance Handbook*, at http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_reg_b.pdf; and Experian, "Basic Questions About Credit Reports and Credit Reporting," *Reports on Credit issue 1*, at https://www.experian.com/assets/consumer-education-content/brochures/Reports_Issue_1.pdf.

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

[6] Some specialty CRAs are subsidiaries of larger CRAs. Examples include the National Consumer Telecom & Utilities Exchange, at http://www.nctue.com/nctue, which is owned by Equifax; and RentBureau, at http://www.experian.com/rentbureau/renter-credit.html, which is owned by Experian.

[7] For example, see National Consumer Telecom & Utilities Exchange, at http://www.nctue.com/nctue.

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

segments, including those with minimal recorded data.[9] Some CRAs specialize in debt collection (recovering past due funds) and fraud verification data.[10]

**Examples of Specialty CRA Services: Checking Accounts and Check Verification**

When an individual applies for a checking account, a depository institution typically pays a fee to purchase a credit report from a specialty CRA, a component of the initial fixed costs incurred to begin a financial relationship with a new customer. The information about a prospective customer can be used to determine whether to offer a checking account and, if so, the range of product features (e.g., check-writing privileges, overdraft protection).

Specifically, depository institutions use credit reports to screen for certain types of borrower risks.[11] Banks must verify the identities of their customers as required by the Bank Secrecy Act.[12] In addition, depository institutions look for any incidents of fraudulent activity associated with a prospective customer.[13] Depository institutions typically reject consumers when problems verifying identity arise or incidents of fraud have been discovered. Next, depository institutions look for information about past banking relationships, particularly to see if any financial institutions closed checking or other accounts due to the inability to collect overdraft or insufficient funds fees.[14] Although some institutions may choose to reject applicants with adverse information, many institutions may offer specialized checking accounts with less overdraft coverage and fewer check-writing privileges. Prepaid cards may also be offered as a substitute for a checking account. The information obtained from CRAs may also allow depository institutions to infer the probability of cross-selling (or arguably preapproving access to) other financial products (e.g., mortgages, credit cards, savings accounts) to new customers.

Some specialty CRAs help facilitate consumer payments by check. For example, if a customer wants to use a check to pay for purchases, a merchant can electronically and quickly request check authorization from a specialty CRA that provides information at the point of sale (at the cash register).[15] The specialty CRA collects payment history and check-writing patterns, and the merchant pays a check authorization fee to obtain an instant recommendation of accept or decline.[16]

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

[10] See Consumer Data Industry Association, "About CDIA," at https://www.cdiaonline.org/about/index.cfm?unItemNumber=515.

[11] See ChexSystems, "ChexSystems—Credit System for Checking Accounts," AAACreditGuide, at http://aaacreditguide.net/chexsystems/.

[12] P.L. 91-508.

[13] Fraud may include, but is not limited to, identity theft and check kiting. Real Time Identity Check is a specialty CRA used for this purpose; see Access Payment Systems, "Real Time Check Verification," at http://www.accesspaymentsystems.com/real-time-check-verification.htm. Another specialty CRA used for this purpose is Early Warning, which offers a product known as *Deposit Chek*, at http://www.earlywarning.com/solutions/payment/deposit-chek-payment.html. In the payment system, fraud occurs when an unauthorized person accesses the value associated with a payment vehicle. See Mark Furletti and Stephen Smith, *The Laws, Regulations, and Industry Practices That Protect Consumers Who Use Electronic Payment Systems: ACH E-Checks & Prepaid Cards*, Federal Reserve Bank of Philadelphia, Payment Cards Center Discussion Paper, DP05-04, March 2005, at http://www.philadelphiafed.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2005/ConsumerProtection.pdf.

[14] For ChexSystems, which is owned by parent company Fidelity National Information Services (FNIS), this product is known as QualiFile. See Aldrich Bonnefin & Moore, "Impact of QualiFile Scores on FCRA Adverse Action Notices," at http://www.ablawyers.com/aldrich-11-23.PDF. For Early Warning, this product is known as *Deposit Chek* at http://www.earlywarning.com/deposit-chek.html.

[15] Certegy, which is owned by parent company FIS (see http://www.fisglobal.com/products-retailpayments), and Telecheck (see http://www.firstdata.com/telecheck/) are specialty CRAs often used to obtain check authorization at the point of sale (i.e., the moment customers pay for their purchases).

[16] The fee paid by the merchant is analogous to the merchant discount fee that merchants pay when accepting credit or debit card payments. See CRS Report R41913, *Regulation of Debit Interchange Fees*, by Darryl E. Getter.

Firms that use consumer reports may also report information to CRAs, thus serving as *furnishers*. A *tradeline* is an account attached to a particular consumer that is reported to a CRA by a furnisher.[17] A tradeline serves as a record of the transaction (payment) activity associated with the account. Furnishing tradelines is voluntary, and furnishers are not required to submit tradelines to all CRAs. Furnishers also have different business models and policies, resulting in different reporting practices. Some furnishers may report all unpaid customer obligations that were deemed uncollectible and written off their balance sheets; some report when money balances owed surpass minimum threshold levels; some report only the principal balances owed minus the penalties and fees; and others may report all monies owed. Furnishers also have discretion over the types of obligations they wish to report.[18]

Benefits to users of consumer data increase as more individual companies choose to participate as furnishers, but furnishers do incur costs to report data. To become furnishers, firms must be approved and comply with the policies of a CRA, such as fee registration requirements.[19] 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 (CDIA) for transferring data.[20] Furnishers must be able to comply with industry data transfer requirements or some CRAs are unlikely to accept their data. Compliance may require investing in technology compatible with the computer systems of a CRA. 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 under the FCRA.[21] The FCRA requires furnishers to report accurate and complete information as well as to investigate consumer disputes. Hence, reporting obligations could possibly, under some circumstances, result in legal costs, which also influence the decision to become a furnisher.

Business models and policies of CRAs are also different. Different CRAs may collect the same information on the same individuals but adopt different conventions for storing the information. One CRA may report a delinquent debt obligation separately from the penalties and fees whereas another CRA may choose to combine both items into one entry. Consequently, consumer reports obtained from different CRAs on the same consumer are likely to differ due to different policies adopted by furnishers, CRAs, or both.

## Credit Scoring Services

A consumer score is a (numeric) metric that can be used to predict a variety of financial behaviors.[22] Consumer credit scores are prepared for lenders to determine, for example, the

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[17] See Experian, "Glossary of Credit Terms," at http://www.experian.com/credit-education/glossary.html.

[18] 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 the Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006, at http://www.federalreserve.gov/boarddocs/rptcongress/fcradispute/fcradispute200608.htm#toc4.

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

[20] The approved formats add security (privacy) protections to the data transfer process. See Consumer Data Industry Association, "Metro 2 Format for Credit Reporting," at https://www.cdiaonline.org/Metro2/content.cfm?ItemNumber=853&pnItemNumber=506.

[21] See FTC, "Consumer Reports: What Information Furnishers Need to Know," at https://www.ftc.gov/system/files/documents/plain-language/bus33-consumer-reports-what-information-furnishers-need-know_0.pdf.

[22] The predictability power of consumer scores, assuming no significant changes in consumer repayment patterns, may last for approximately one year to two years. For examples of various types of scores and corresponding estimated

likelihood of loan default. 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. Rather than maintaining a repository of credit records, some firms in the consumer data industry are primarily engaged in 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 to predict, there are many consumer scores that can be 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 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. Hence, consumers may not see the actual scores used until *after* the decisionmaking firms release them, particularly in cases when customized scores were requested and used in the decisionmaking process.[24]

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months of predictive power, see TransUnion, "Scores Overview," *TransUnion Scores*, at 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; their primary business is not to compile consumer reports.

[24] In recent Congresses, legislation was introduced that would have required disclosure of credit scores (based on frequently used factors) to consumers (in addition to their free annual credit report). For example, H.R. 402, the Fair Access to Credit Scores Act of 2017, introduced in the 115th Congress, would require certain CRAs to annually disclose, without charge, a credit score using the scoring methodology most frequently used to generate scores sold to creditors.

### Some Factors Frequently Used to Calculate Credit Scores[25]

Lenders, whether for mortgages or other forms of consumer loans (e.g., credit card loans, installment loans, and automobile loans), rely upon credit scores, which are calculated to represent the risk of delinquency or default of consumers seeking credit. 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. The payment history includes information related to late or missed payments, how late, how much was owed, bankruptcies, foreclosures, lawsuits, and wage garnishments. Negative information on a credit report negatively affects a credit score.
- **Credit utilization**. This factor provides information regarding 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 credit requests, particularly over a short period of time, can negatively affect a score. 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.[26]
- **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.

The firm that prepares or user that purchases a credit score 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.[27] Information for consumers on how to improve and maintain a good credit score is available from the CFPB (see http://publications.usa.gov/pdfs/pdf6118.pdf).

[25] See Fair Isaac, "What's In My FICO Scores: How My FICO Scores Are Calculated," at http://www.myfico.com/crediteducation/whatsinyourscore.aspx; and Board of Governors of the Federal Reserve System, "Credit Reports and Credit Score," at http://www.federalreserve.gov/creditreports/.

[26] See FRB, "Permissible Purposes of Consumer Reports (FRCA, Section 604) and Investigative Consumer Reports (FRCA, Section 606)," Fair Credit Reporting, at http://www.federalreserve.gov/boarddocs/supmanual/cch/200611/fcra.pdf; Consumer Financial Protection Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System*, Washington, DC, December 2012, p. 9, at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf; and "New Rules for Prescreening," at http://www.bankersonline.com/articles/v02n03/v02n03a3.html.

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

## Existing Consumer Protections and Regulation of CRAs

The FCRA includes consumer protection provisions. Under the FCRA, consumers must be told when their information from a CRA has been used after an adverse action (generally a denial) has occurred, and disclosure of that information must be made free of charge.[28] Consumers have a right to one free credit report every year (from each of the three largest nationwide credit reporting providers) in the absence of an adverse action. Consumers also have the right to dispute inaccurate or incomplete information in their report. The CRAs must investigate and correct, usually within 30 days. The FCRA also limits the length of time negative information may remain on reports. Negative collection tradelines typically stay on credit reports for 7 years, even if the consumer pays in full the item in collection; a tradeline associated with a personal bankruptcy stays on a credit report for 10 years.[29]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Consumer Financial Protection Bureau (CFPB), consolidating many federal consumer financial protection powers from other federal agencies.[30] The CFPB currently has rulemaking and enforcement authorities over all CRAs for certain consumer protection laws; it has supervisory authority over the larger CRAs. In July 2012, the CFPB announced that it would supervise CRAs with $7 million or more in annual receipts, which included 30 firms representing approximately 94% of the market.[31] Specifically, the CFPB conducts examinations of the CRAs, reviewing procedures and operating systems regarding the management of consumer data and enforcing applicable laws.

# Policy Issues

This section discusses selected policy issues pertaining to the use of credit reports and scores in consumer lending decisions. The use of consumer credit data ideally would reduce two types of costly errors. A "type 1 error" occurs when credit is provided to individuals who are not creditworthy, meaning that they are more likely to be delinquent or default on their loans, thus resulting in financial losses for lenders. Lenders rely upon consumer credit data to identify creditworthy individuals and reduce type 1 errors. A "type 2 error" occurs when creditworthy individuals who are more likely to repay their loans are denied credit. The focus of consumer protection efforts in the context of credit reporting and scoring is to reduce type 2 errors and increase credit access to creditworthy borrowers. Lenders also prefer to minimize type 2 errors, which represent forgone profitable lending opportunities. Hence, the policy issues discussed in this section address various efforts geared toward increasing credit access for consumers and the challenges associated with reducing the probabilities of making costly type 1 and type 2 errors for lenders.[32]

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[28] See FTC, *A Summary of your Rights Under the Fair Credit Reporting Act*, at https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf.

[29] CRS Report RL31666, *Fair Credit Reporting Act: Rights and Responsibilities*, by Margaret Mikyung Lee. (Out of print; available to congressional clients upon request.)

[30] P.L. 111-203. See CRS Report R42572, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, by David H. Carpenter.

[31] Consumer Financial Protection Bureau, "CFPB to Supervise Credit Reporting," July 16, 2012, at http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-superivse-credit-reporting/.

[32] Issues related to the protection of consumer data from cybersecurity breaches are not discussed in this report. For more information on cybersecurity issues, see CRS Report R43821, *Legislation to Facilitate Cybersecurity Information Sharing: Economic Analysis*, by N. Eric Weiss, and CRS Report R43831, *Cybersecurity Issues and Challenges: In*

## Inaccurate or Disputed Information

The accuracy of consumer information has been an ongoing policy concern. In 2012, the Federal Trade Commission (FTC) reported that, based upon a study of credit report accuracy, 26% of survey participants 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.[33] After the corrections were made, 13% of participants in the FTC study saw one or more of their credit scores increase, and those increases for over half were by less than 20 points. A 20-point increase potentially could bump a consumer into a more favorable bracket if the initial consumer score prior to the correction lies near the upper quartile of a credit risk bracket. In the FTC study, the approximate 20-point increase, in some cases, allowed 5.2% of surveyed consumers to move to a more favorable risk bracket, thus increasing the likelihood of being offered less expensive credit terms.

Reporting inaccuracies may occur for various reasons. Consumers may inadvertently provide inaccurate data when applying for financial services. 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. 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 minimize both type 1 and type 2 errors, would be enhanced to the extent that consumer tradelines are regularly updated with correct and current information. In December 2012, the CFPB reported that the top 100 furnishers provide 76% of tradeline information to the largest nationwide CRAs, and the furnishers regularly update the account status of reported tradelines.[34] In addition, the CFPB requires the largest consumer reporting firms to provide standardized accuracy reports on a regular basis.[35] The reports must specify the frequency that consumers dispute information, list furnishers and industries with the most disputes, and provide dispute resolutions information. The larger CRAs have also made improvements to the communication tool used to facilitate the dispute resolution process between consumers and furnishers.[36] Further, the CRAs announced that enhanced public record data standards for the collection and timely updating of civil judgements and tax liens would go into effect beginning July 1, 2017.[37] Public record data must contain minimum identifying information (i.e., name, address, and Social Security number or date of birth) and must be updated at least

*Brief*, by Eric A. Fischer.

[33] See FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2012, at 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.

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

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

[36] The CRAs use a web-based tool, the Online Solution for Complete and Accurate Reporting (e-OSCAR), to investigate credit reporting disputes. e-OSCAR is owned and operated by four companies: Equifax, Experian, Innovis, and TransUnion. See http://www.e-oscar.org/.

[37] See Consumer Data Industry Association, "New Public Record Credit Reporting Standards to Begin July 1, 2017; Civil Judgments and some Tax Liens to be removed from many credit reports," press release, June 28, 2017, at http://s3.amazonaws.com/rdcms-cdia/files/production/public/PDFs/CDIA.NCAP.July1Changes.6.28.pdf.

every 90 days; otherwise, the tax lien and civil judgment information will no longer be reported. The accuracy of credit reports, nonetheless, ultimately depends upon consumers to monitor and dispute any discrepancies.

## Length of Time to Retain Negative Information

The length of time negative information should be allowed to remain on a credit report has become another leading policy issue. Negative information generally refers to delinquencies or defaults, which typically remain on credit reports for seven years. Negative information often results in consumers appearing more risky, causing them to either pay more for financial services or be denied access. Limiting access to financial services, such as depository checking accounts or lower cost loans, may disproportionately affect the cost of engaging in financial transactions. The use of consumer reports by potential employers also limits job opportunities that could arguably help applicants overcome financial challenges.[38]

On the one hand, under circumstances in which the underlying information is inaccurate or has not been updated, consumers may improperly be considered riskier and would likely be offered costlier options or face denials. On the other hand, the more time information stays on the credit report arguably allows lenders to see trends that may be helpful for distinguishing between a rare occurrence and a consistent pattern in consumer behavior. Shorter or insufficient periods of time in which negative tradelines appear on consumer *reports* may also compromise the ability to compute reliable *scores*. If lenders determined that credit reports and scores would no longer be reliable due to premature removal of negative information, they could increase downpayment requirements across the board for all credit applicants, reduce loan amounts, and provide more favorable terms to their customers with longer established relationships. In short, lenders might adopt stricter underwriting and lending policies to limit type 1 errors if they grew less confident about data reliability. In addition, the Association of Certified Fraud Examiners (ACFE) found that poor credit can signal criminal activity, and earlier removal of negative information may increase the difficulty to detect fraud, which may be particularly costly for small businesses and nonprofit organizations.[39]

Many preparers and users of credit scores have adopted weighting schemes that place less weight on older information. Maintaining longer (rather than shorter) durations of negative tradelines on reports allows preparers to make greater use of variable-weighted algorithms to calculate scores, which may be useful when the importance of a weight needs to be modified over time. In the meantime, P.L. 115-174, Section 602 allows a one-time opportunity to remove a reported default on a qualified (private) student loan from a credit report if borrowers satisfy the requirements of loan rehabilitation programs that private lenders may be willing to offer (with the approval of prudential regulators), which is analogous to procedures followed when federal student loans are in default.[40] (The text box below explains the typical rehabilitation program for federal student

[38] See Dana Dratch, "States Weigh Limits on Credit Checks for Employment," CreditCards.com, at http://www.creditcards.com/credit-card-news/states-weigh-limits-credit-checks-for-employment-1282.php.

[39] See Michelle Long, "Internal Controls for Small Businesses to Reduce the Risk of Fraud," Intuit, at http://longforsuccess.com/wordpress/wp-content/uploads/2010/09/Good-Internal-Controls.pdf, and Association of Certified Fraud Examiners (ACFE), Report to the Nations on Occupational Fraud and Abuse: 2012 Global Fraud Study, Fraud Q&A with James Ratley, President and CEO of the ACFE, at https://www.acfe.com/uploadedFiles/ACFE_Website/Content/rttn/2012-report-to-nations.pdf. Approximately 36% of fraudsters live beyond their means and 27% undergo personal financial difficulties. See *Preventing and Detecting Fraud in Not-For-Profit Organizations*, at http://www.kellerandowens.com/resources/FraudBooklet.pdf.

[40] P.L. 115-174, Section 601 prohibits a private student loan lender from accelerating a debt or declaring a default against a student loan borrower if upon the bankruptcy or death of a co-signer. Section 601 also releases a co-signer

loans and describes the challenges for depository institutions to offer similar programs for private student loans.) Additionally, H.R. 3755, if enacted, would shorten the time period that adverse information could remain on a person's credit report by three years (such that it remains on the report for a total of four years), among other things.

**Rehabilitation of Education Loans**

Borrowers who default on some federal student loan programs (defined as not having made a payment in more than 270 days) have a one-time loan rehabilitation option.[41] A loan rehabilitation (as opposed to a loan consolidation) requires a defaulted borrower to make nine on-time monthly payments during a period of 10 consecutive months.[42] The loan is considered rehabilitated if the borrower satisfies the requirements, and then the loan may be reinstated. In addition, the borrower's credit report is generally updated to show that the loan is no longer in default (or the default record would be eliminated); however, the information pertaining to the late payments that led up to the rehabilitation would still remain for seven years.[43]

By contrast, students who default on private loans are less likely to receive a rehabilitation option.[44] For one reason, depositories (i.e., banks and credit unions), which are regulated for safety and soundness, treat their student loans like all other private consumer loans. Private student loans must still satisfy underwriting requirements, typically requiring co-signers who become responsible for the loans if the students are unable to repay. After 120 days past due (closed-end), consumer loans held by depositories are treated as uncollectible.[45] The Office of the Comptroller of the Currency also points out: "Banks have some latitude to offer similar federal workout programs to private student loans. Banks, however, should do so while adhering to safety and soundness requirements and following existing banking guidance and GAAP."[46] Apart from safety and soundness requirements, the information pertaining to the late payments that led up to the rehabilitation would likely remain on the students' credit reports for seven years even if the default records were removed. Hence, this information would still be likely to be incorporated in students' credit scores.

## Inconsistent Billing and Reporting Practices: Medical Tradelines

One form of consumer debt—medical debt—raises some specific issues. The CFPB used a random sample of approximately 5 million consumers as of December 2012 to determine what types of tradeline accounts were reported most frequently and the amounts.[47] The CFPB found that approximately 33% of credit reports surveyed had collection tradelines, and approximately 52% of those collection tradelines were related to medical collections. After medical obligations,

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from the debt obligation upon the death of the student.

[41] See CFPB, "What does it mean to "default" on my federal student loans?" press release, August 4, 2016, at https://www.consumerfinance.gov/ask-cfpb/what-does-it-mean-to-default-on-my-federal-student-loans-en-649/.

[42] See CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

[43] See Experian, "I've defaulted on my students loans. Should I consider loan rehabilitation?" press release, October 18, 2016, at https://www.experian.com/blogs/ask-experian/defaulted-on-student-loans-should-i-consider-loan-rehabilation/.

[44] CFPB, *Private Student Loans*, Report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Financial Services, and the House of Representatives Committee on Education and the Workforce, August 29, 2012, at http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

[45] After 120-180 days, a depository firm may hire a debt collector, who receives a percentage of the collected amount, or sell the defaulted loan outright to a collection agency. The debt collection process is guided by the Fair Debt Collection Practices Act (P.L. 90-321).

[46] See Office of the Comptroller of the Currency, *Comptroller's Handbook*, Version 1.0, May 2016, p. 34, at https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/student-lending/pub-ch-student-lending.pdf.

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

the CFPB found that the remaining collection tradelines of significant relevance were associated with unclassified debts (17.3%), cable or cellular bills (8.2%), utilities (7.3%), and retail stores (7.2%). All other categories of collectible tradelines were approximately 2% or less of the survey. For 85% of the respondents, the amounts owed for medical debt were for less than $1,000. In short, more than half of collection tradelines were associated with medical debt, and they were for relatively small amounts. Specifically, the median amount owed for the medical collection tradelines was $207, and 75% of all medical collection tradelines were under $490.

The CFPB study also reports that medical billing poses challenges for consumers. Consumers are unlikely to know when and how much various medical services cost in advance, particularly those associated with accidents and emergencies. People often have difficulty understanding co-pays and health insurance deductibles.[48] Consequently, consumers may delay paying medical obligations as they either assume their insurance companies will pay or attempt to figure out why they have been billed, which often results in medical debt appearing unpaid on credit reports.

Inconsistent reporting practices result in variation of the timing with which unpaid debts appear on consumer reports. Medical providers may assign unpaid bills to debt collectors or sell outstanding debts to debt buyers. Some medical providers may assign or sell the debt after 60 days, but some may do so after 30 days.[49] Some firms may turn obligations over to collections as a tool to encourage consumers to settle unpaid balances, blurring the distinction between billing and collecting policies.[50] Debt collectors or buyers subsequently furnish negative information to CRAs, causing tradeline accounts to appear on consumer reports. Unlike furnishers of financial or banking collections, furnishers of medical collections do not regularly update tradelines.[51] Hence, medical tradelines are disputed most often by consumers.

Some actions have been taken that may consequently reduce medical tradelines and their associated negative effects on consumer credit data. On December 31, 2014, the Internal Revenue Service (IRS) announced a final rule requiring the separation of billing and collection policies of nonprofit hospitals.[52] Hospitals that have or are pursuing tax-exempt status would be required to make reasonable efforts to determine whether their patients are eligible for financial assistance before engaging in "extraordinary collection actions," which may include turning a debt over to a collection agency (thus creating a medical tradeline) or garnishing wages. In short, tax-exempt hospitals must allow patients 120 days from the date of the first billing statement to pay the obligation before initiating collection procedures.[53] The separation of billing and collections, by

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[48] Confusion about costs and co-pays may increase when medical care is administered outside of a consumer's state of residence, given that health insurers and providers determine costs that vary and are influenced by state regulations. See CRS In Focus, *Introduction to Financial Services: Insurance Regulation,* by Baird Webel.

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

[50] See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, December 2014, p. 36, at http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf. Other firms may not immediately employ a collections strategy to encourage repayment of obligations for fears of reputational risk.

[51] The CFPB found that, between December 2013 and June 2014, only a small fraction of medical, utility, and telecommunication collection tradelines were updated on a regular basis. See CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, December 2014, p. 35, at http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[52] See Department of the Treasury, Internal Revenue Service, *New Requirements for 501(c)(3) Hospitals Under the Affordable Care Act*, at http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/New-Requirements-for-501(c)(3)-Hospitals-Under-the-Affordable-Care-Act.

[53] See Department of the Treasury, Internal Revenue Service, "Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirements of a Section 4959 Excise Tax Return

incorporating a standardized grace period before turning obligations over to collections, may reduce the ad hoc reporting of negative medical tradelines until it becomes more apparent that such bills are less likely to be paid. The CFPB may not have the regulatory authority to require standardization of billing practices of for-profit hospitals.[54] The CFPB is, however, requiring CRAs to identify furnishers and industries with the highest dispute rates in the standardized accuracy reports previously discussed.[55] In the meantime, on September 15, 2017, the three major credit reporting agencies—Experian, Equifax, and TransUnion—established a 180-day (6 month) waiting period before posting a medical collection on a consumer credit report.[56] Additionally, H.R. 3755, if enacted, would impose restrictions on the appearance of medical collections on consumer credit reports and require expedited removal of fully repaid or settled medical collections.

P.L. 115-174, Section 302 amends the FCRA to provide credit reporting protections for veterans.

- Certain medical debt incurred by a veteran must be excluded from the credit report if the hospital care or medical services relating to the debt predates the credit report by less than one year.
- A fully paid or settled veteran's medical debt previously characterized as delinquent, charged off, or in collection must be removed from the credit report.
- Consumer reporting agencies must establish a dispute process and verification procedures for veterans' medical debt.
- Active duty military personnel receive free credit monitoring.

## Consumers with Limited Credit Histories and Use of *Alternative* Scoring Methods

The CFPB estimates that credit scores cannot be generated for approximately 20% of the U.S. population because they have limited credit histories, making it difficult to calculate credit scores for these individuals. The CFPB distinguishes between different types of consumers with limited credit histories.[57] 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. According to the CFPB, this group represents 11.0% of the U.S. adult population or 26 million consumers. Another category of consumers do exist (have a credit record), but they still cannot be scored or are considered *nonscorable*. Nonscorable consumers either have insufficient (short) histories or outdated (stale) histories. The insufficient and stale unscored groups, each containing more than 9 million individuals, collectively represent 8.3% of the U.S. adult

and Time for Filing the Return," 79 *Federal Register* 78954-79016, December 31, 2014.

[54] See Robert Pear, "New Rules to Limit Tactics on Hospitals' Fee Collections," *New York Times*, January 11, 2015, at http://www.nytimes.com/2015/01/12/us/politics/new-rules-to-limit-tactics-on-hospitals-fee-collections.html?_r=0. The regulation of the insurance industry, which is likely to include their billing and collection practices, occurs at the state level. Whether federal, state, and local regulators currently have the authority to standardize the billing and collection practices of other (nonfinancial) industries would need to be determined on a case-by-case basis.

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

[56] See Experian, "Medical Debt and Your Credit Score: Here's What You Need to Know," press release, August 8, 2017, at https://www.experian.com/blogs/ask-experian/medical-debt-and-your-credit-score/.

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

population or approximately 19 million consumers according to the CFPB. The ability to compute reliable scores for these groups is challenging. Younger adults may lack a sufficient history. As consumers get older, the problem of being credit invisible or belonging to the insufficient part of the nonscorable group typically declines, but may begin to reoccur after the age of 60. Older adults, who may have considerably reduced their credit usage, perhaps as they prepare to enter retirement years, may encounter the problem of having stale credit records.[58] Because credit scoring models vary by firms, consumers that cannot be scored by some models might still have the ability to be scored by other models; thus the state of being nonscorable depends upon the credit reporting data records and scoring models used.

Borrowers with missing or impaired credit histories may be able to improve their ability to get reliable credit scores by using *secured credit cards*, which require either security deposits as collateral for the amount of the line of credit or links to checking or savings accounts, thereby allowing lenders to recover funds if payments are missed. The security deposit is refunded if borrowers do not miss payments. Secured credit card lending can help borrowers build or repair their credit histories, assuming that the more favorable customer payment activity is reported to credit bureaus. In addition, the use of alternative credit scores may also help the credit invisibles because other types of consumer payment activity (discussed below) may be predictive in regard to how borrowers would manage credit. In short, options that increase the ability to calculate scores for the invisible or currently nonscoreable consumer groups could allow lenders to better determine the quantity and scope of financial relationships that can be established.

Consumer advocates argue for using *alternative* credit scoring models that would include some factors and exclude others. For example, some credit score models do not distinguish between unpaid and paid (resolved) tradelines.[59] Some credit scores are calculated without utility and rent payments information. Arguably, including this information would benefit the credit scores for some individuals with limited or no credit histories, potentially increasing their accessibility to and lowering their costs of credit.[60] Conversely, information about medical debts has often been included in credit scores, but the unevenness in medical reporting, as previously discussed, raises questions about whether medical debt tradelines should be considered reliable predictors of creditworthiness or credit performance.[61] In short, developing credit scores that address the shortcomings of those currently in use might work toward the reduction of type 2 lending errors.

Newer versions of credit scoring apply less weight to medical debt and differentiate between paid and unpaid obligations.[62] Meanwhile, the Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs) that purchase mortgages in the secondary market, to consider using more updated credit scoring models in their mortgage underwriting prior to P.L. 115-174.[63] Under P.L. 115-174, FHFA is required to define,

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[58] The CFPB estimated some additional information about these groups by age, income, and race. See Kenneth P. Brevoort, Philipp Grimm, and Michelle Kambara, *Data Point: Credit Invisibles*, Consumer Financial Protection Bureau, May 2015, at http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[59] The treatment of paid and unpaid collection tradelines varies among different credit scoring models. See "New FICO Score Model Could Boost Credit for Millions—Medical Bills in Focus," *NerdWallet*, August 8, 2014, at http://www.nerdwallet.com/blog/health/2014/08/08/new-fico-score-boost-credit-medical-bills-focus/.

[60] Experian, *New Study Shows How Alternative Payment Data Helps U.S. Consumers' Credit Profiles*, February 25, 2015, https://www.experianplc.com/media/news/2015/alternative-data-to-credit-reports-utilities-and-rent-2015/.

[61] 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.

[62] See John Ulzheimer, "New FICO Score Coming Soon to a Credit Bureau Near You," *Credit Sesame Daily*, August 7, 2014, at http://www.creditsesame.com/blog/new-fico-score-coming-soon/.

[63] See Kevin Wack, "Fannie, Freddie to Evaluate Alternative Scoring Models," *American Banker*, September 22, 2014,

through rulemaking, the standards and criteria the GSEs will use for validating credit score models used when evaluating whether to purchase a residential mortgage.[64] In addition, if enacted, the Credit Access and Inclusion Act of 2017 (H.R. 435, 115th Congress) that was passed by the House, and the JOBS and Investor Confidence Act of 2018 (S. 488, Section 201) as amended by the House, would allow CRA firms to collect alternative predictive data on the payment of bills for utilities, telecommunications, and rents.

Full implementation of newer versions of credit scoring models, however, is not likely to occur quickly.[65] Upgrading automated underwriting systems is costly for the GSEs, FHA, and loan originators. Not all originators will choose to update their automated underwriting systems, particularly those depository institutions that suffered large losses or incurred higher regulatory costs following the 2007-2009 recession.[66] Even if alternative credit scoring models were widely adopted, the credit score is not the only variable considered during the underwriting process. Just as several factors are included in the development of a credit score, a credit score is only one of several factors included in an automated underwriting model (also referred to as an underwriting scorecard).[67] The debt-to-income ratio, for example, may still be an important variable for mortgage underwriting. Higher levels of medical and student loan debts may still affect mortgage underwriting decisions.[68] Any unwillingness to lend to applicants with credit scores below a certain threshold may also dampen the impact of an alternative credit score.[69] Hence, the use of alternative credit scores may help some borrowers close to a threshold or borderline yet still not translate into significant changes in credit access across the board.

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at http://www.americanbanker.com/issues/179_183/fannie-freddie-to-evaluate-alternative-credit-scoring-models-1070140-1.html. Similarly, the Federal Housing Administration (FHA), which provides federal mortgage insurance, is also considering whether to use updated versions of credit scoring models. See National Association of Realtors, "HUD Secretary Tells Realtors that FHA is Exploring Alternative to Credit Scoring Models to Expand Mortgage Access," news release, April 1, 2015, at http://www.realtor.org/news-releases/2015/04/hud-secretary-tells-realtors-fha-is-exploring-alternative-credit-scoring-models-to-expand-mortgage.

[64] Specifically, the law allows Fannie Mae and Freddie Mac to employ alternative credit scoring models when purchasing mortgages rather than rely exclusively on the FICO scoring model. See Federal Housing Finance Agency, *FHFA Announces Decision to Stop Credit Score Initiative: No Decision in 2018; Focus Shifts to Implementing New Law*, News Release, July 23, 2018, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Decision-to-Stop-Credit-Score-Initiative.aspx.

[65] See Mary Ellen Podmolik, "Rollout is Slow for FICO's New Credit Scoring Model," *Chicago Tribune*, October 14, 2014, at http://my.chicagotribune.com/#section/-1/article/p2p-81674330/.

[66] See Adrian Nazari, "How FICO's New Credit Score Will Impact Consumers," *Huffington Post*, September 19, 2014, at http://www.huffingtonpost.com/adrian-nazari/how-ficos-new-credit-score-will-impact-consumers_b_5844530.html.

[67] An underwriting scorecard may include information such as income, assets, and employment history obtained from the borrower's application not taken into account while preparing the credit score. See Federal Deposit Insurance Corporation, *Credit Card Activities Manual, Chapter VIII.-Scoring and Modeling*, March 2007, at https://www.fdic.gov/regulations/examinations/credit_card/pdf_version/ch8.pdf; and Cary Collins, Keith D. Harvey, and Peter Nigro, "The Influence of Bureau Scores, Customized Scores, and Judgmental Review on the Bank Underwriting Decision-Making Process," *Journal of Real Estate Research*, vol. 24, no. 2 (2002), pp. 129-152.

[68] Carrying higher levels of debt may become an equally or, under some circumstances, a more important factor in mortgage approval decisions relative to other factors in light of recently adopted mortgage underwriting requirements. See CRS Report R43081, *The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues*, by Sean M. Hoskins; and Rachel Witkowski, "How the New FICO Score Model Will Affect Banks," *American Banker*, August 13, 2014, at http://www.americanbanker.com/issues/179_156/how-the-new-fico-score-model-will-affect-banks-1069413-1.html?zkPrintable=1&nopagination=1.

[69] See Laurie S. Goodman, Jun Zhu, and Taz George, "Where Have All the Loans Gone? The Impact of Credit Availability on Mortgage Volume," *Journal of Structured Finance*, vol. 20, no. 2 (2014).

## Data Protection and Security Issues

Congressional interest in data protection and security has increased following the Equifax cybersecurity breach that was announced on September 7, 2017, potentially revealing sensitive information for 143 million U.S. consumers.[70] On October 2, 2017, Equifax announced that an additional 2.5 million consumers may have been affected, for a total of 145.5 million.[71] CRAs are subject to the data protection requirements of Section 501(b) of the Gramm-Leach-Bliley Act (GLBA).[72] 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 safeguard—(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."[73]

The CFPB does not have the authority to prescribe regulations with regard to safeguarding the security and confidentiality of customer records.[74] Instead, the FTC has the authority to enforce Section 501(b) as the federal functional regulator of nonbank financial institutions, including CRAs.[75] The FTC has promulgated rules implementing the GLBA requirement.[76] Because the FTC has little upfront supervisory or enforcement authority, the agency typically must rely upon its enforcement authority after an incident has occurred. Meanwhile, P.L. 115-174, Section 301 requires credit bureaus to provide fraud alerts for consumer files for at least a year under certain circumstances. In addition, consumers must be provided with one free freeze alert and one free unfreeze alert per year. Further requirements to protect minors also are established.

[70] See Equifax, "Equifax Announces Cybersecurity Incident Involving Consumer Information," press release, September 7, 2017, at https://www.equifaxsecurity2017.com/2017/09/07/equifax-announces-cybersecurity-incident-involving-consumer-information/.

[71] See Equifax, "Equifax Announces Cybersecurity Firm has Concluded Forensic Investigation of Cybersecurity Incident," press release, October 2, 2017, at https://investor.equifax.com/news-and-events/news/2017/10-02-2017-213238821.

[72] See CRS Report R44429, *Financial Services and Cybersecurity: The Federal Role*, by N. Eric Weiss and M. Maureen Murphy.

[73] See 15 U.S.C. §6801 and CRS Insight IN10792, *The Equifax Data Breach: An Overview and Issues for Congress*, by N. Eric Weiss.

[74] See CRS Testimony TE10021, *Consumer Data Security and the Credit Bureaus*, by Chris Jaikaran.

[75] 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 N. Eric Weiss and M. Maureen Murphy.

[76] For the regulations published by the FTC, see Federal Trade Commission, "Privacy of Consumer Financial Information," 65 *Federal Register* 33646-33689, May 24, 2000.

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## Acknowledgments

The author acknowledges the contributions made by Sean Hoskins, Katie Jones, Margaret Lee, Baird Webel, N. Eric Weiss, Pauline Smale, and Ronda Mason.