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MINIMIZING THE RISK OF THE UNDESERVED SCARLET LETTER: AN URGENT CALL TO AMEND § 1681E(B) OF THE FAIR CREDIT REPORTING ACT

Elizabeth Doyle O'Brien⁺

“A poor credit history is the ‘Scarlet Letter’ of 20th century America.”¹ The mechanism that attempts to capture an accurate picture of a consumer’s credit history is the consumer report,² which is often the sole ingredient in determining a consumer’s creditworthiness. The widespread usage of consumer reports is reflected in the large percentage of U.S. households that rely on credit. In 2001, seventy-five percent of households in the United States held some type of debt, whether through consumer credit markets or mortgage credit markets.³ In an age where consumers rely on credit for purchases ranging from real estate to groceries, the accuracy of a consumer’s credit report is of paramount importance. In a 2001 speech, Federal Trade Commission

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1. *Fair Credit Reporting Act: How it Functions for Consumers and the Economy: Hearing Before the Subcomm. on Fin. Inst. and Consumer Credit of the H. Comm. on Fin. Servs.*, 108th Cong. (2003) [hereinafter *June 4, 2003 Hearings*] (statement of Anthony Rodriguez, Staff Attorney, National Consumer Law Center); see also James P. Nehf, *A Legislative Framework for Reducing Fraud in the Credit Repair Industry*, 70 N.C. L. REV. 781, 783 (1992) (This article asserts that a poor credit history “can prevent a consumer from obtaining a broad range of valuable services. A consumer’s ability to receive credit, to rent an apartment, to cash a check, to secure insurance, or to obtain employment all may be jeopardized.”).

2. 15 U.S.C. § 1681a(d)(1)(A) (2000). A “consumer report” is defined in the FCRA as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used . . . for the purpose of serving as a factor in establishing the consumer’s eligibility” for general purposes, including credit “to be used primarily for personal, family, or household purposes.” *Id.* The FCRA also details certain exclusions to this definition of consumer report. See 15 U.S.C. § 1681a(d)(2) (2000 & Supp. III 2003). For example, one exclusion to this definition of a consumer report covers communications made by a consumer reporting agency (CRA) to a prospective employer of the consumer. *Id.* § 1681a(d)(2)(D); *id.* § 1681a(o) (2000). For a discussion of how recent amendments to the FCRA greatly expanded the exclusions to the definition of the term “consumer report” see Jacqueline S. Akins, *Fair Credit Reporting—The New Look*, 52 CONSUMER FIN. L.Q. REP. 324, 324 (1998).

3. MICHAEL E. STATEN & FRED H. CATE, THE IMPACT OF NATIONAL CREDIT REPORTING UNDER THE FAIR CREDIT REPORTING ACT: THE RISK OF NEW RESTRICTIONS AND STATE REGULATION 5 (2003) [hereinafter STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING], available at <http://www.ftc.gov/bcp/workshops/infoflows/statements/cate02.pdf>.

(FTC) Chairman Timothy J. Muris lauded the process that makes this all possible, referring to it as “the miracle of instant credit.”⁴

Efficient credit reporting not only allows consumers access to credit, but has also become a key contributor to the productivity of the United States economy.⁵ In passing the Fair Credit Reporting Act (FCRA) in 1970, Congress acknowledged the need for reasonable procedures and accurate credit reporting.⁶ Congress explicitly outlined a set of compliance procedures to ensure accurate credit reporting. Specifically, the FCRA requires consumer reporting agencies⁷ (CRAs) to “follow *reasonable procedures* to assure *maximum possible accuracy* of the information concerning the individual about whom the report relates.”⁸

Because accurate credit reporting is so important to the efficiency of the country’s credit markets and the economy as a whole,⁹ the FCRA’s accuracy provisions are critically important both to the economy and to consumers. In

4. Timothy J. Muris, Chairman, Fed. Trade Comm’n, Remarks at the Privacy 2001 Conference: Protecting Consumers’ Privacy: 2002 and Beyond (Oct. 4, 2001), <http://www.ftc.gov/speeches/muris/privisp1002.shtm> [hereinafter Muris Speech] (internal quotation marks omitted). When Muris’ tenure as FTC chairman began in 2001, consumer advocate groups were worried about some of his initial positions. See Stephen Labaton, *The Regulatory Signals Shift: F.T.C. Serves as Case Study of Differences Under Bush*, N.Y. TIMES, June 12, 2001, at C1 (stating that consumer groups have criticized Muris for his appointments to the consumer protection bureau and the fact that he argued on behalf of a CRA that the FCRA was unconstitutional before assuming his position as FTC chairman).

5. STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 20. Staten and Cate stated that “[t]he availability of comprehensive and timely credit report data contributes to the mobility of both labor and capital in the U.S. economy. As a result, credit reporting is arguably one of the key elements of the U.S. infrastructure that underpins the remarkable productivity growth of the past decade.” *Id.*

6. 15 U.S.C. § 1681(b) (2000) (The purpose of the FCRA is “to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit . . . in a manner which is fair and equitable to the consumer . . .”); see also 115 CONG. REC. 2410 (1969) [hereinafter Introduction of the Fair Credit Reporting Bill] (statement of Sen. Proxmire) (introducing the Fair Credit Reporting bill and referring to the growth of the credit reporting industry as “somewhat alarming” but contending that “what is even more alarming is the fact the system has been built up with virtually no public regulation or supervision”).

7. 15 U.S.C. § 1681a(f) (“[C]onsumer reporting agency means any person which . . . regularly engages in . . . the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.”). The three major consumer reporting agencies include Equifax, Experian, and Trans Union Corporation. Robert B. Avery et al., *An Overview of Consumer Data and Consumer Reporting*, FED. RES. BULL., 47 n.1 (Feb. 2003), available at www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf. Each of these agencies maintains records on roughly “1.5 billion credit accounts held by approximately 190 million individuals.” *Id.* at 49.

8. 15 U.S.C. § 1681e(b) (emphasis added).

9. See STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 7 (“[T]he macroeconomic benefits from smoothly functioning consumer credit markets can be linked back to the establishment of a comprehensive system for sharing customer borrowing and payment histories.” (emphasis omitted)).

introducing the bill that would later become the law, Senator William Proxmire stated that the purpose of the FCRA would be to “establish certain Federal safeguards over the activities of credit reporting agencies in order to protect consumers against arbitrary, erroneous, and malicious credit information.”¹⁰ Since its enactment in 1970,¹¹ there has been no change to § 1681e(b) of the FCRA,¹² despite massive overhauls in other parts of the FCRA.¹³

Although the statutory language of § 1681e(b) clearly requires maximum possible accuracy,¹⁴ courts are divided on how to interpret this requirement.¹⁵ Some courts adopt the view that a CRA fails to satisfy the maximum possible accuracy requirement of § 1681e(b) if it reports information about a consumer that might be factually correct but could be interpreted as misleading or not complete.¹⁶ Alternatively, other courts adopt the view that under the FCRA a CRA has a duty only to report information that is “technically accurate.”¹⁷ In order for the FCRA to continue to ensure accurate credit reporting, a CRA’s duty to assure maximum possible accuracy is not fulfilled if information on a consumer’s credit report is technically accurate yet factually misleading or incomplete.¹⁸

10. Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2410 (statement of Sen. Proxmire).

11. Amendment of Consumer Credit Protection Act, Pub. L. No. 91-508, 84 Stat. 1127 (1970) (codified as amended at 15 U.S.C. §§ 1681-1681x).

12. Compare 15 U.S.C. § 1681e(b), with Amendment of Consumer Credit Protection Act § 607(b), 84 Stat. at 1131.

13. See Jeffrey Taft & Christina Poulon, *The FACT Act: The Latest Attempt at Overhauling the Fair Credit Reporting Act and the Fairness and Accuracy of Consumer Reports*, 121 BANKING L.J. 194, 195 (2005) (outlining the “many significant additions and changes to the FCRA” including amendments to prevent identity theft, enhance the standards of accuracy of consumer reports, and increase consumer access to consumer reports); see also Stephen Gardner, *Credit Reports: Basic Rights and Responsibilities of Creditors and Consumers*, 59 CONSUMER FIN. L.Q. REP. 248, 248 (2005) (highlighting the changes that the FACT Act effected on the basic rights and duties of CRAs and creditors).

14. 15 U.S.C. § 1681e(b).

15. *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1156–57 (11th Cir. 1991) (“[C]ourts have . . . widely diverged in their interpretations of what constitutes an ‘accurate’ credit report.”). Compare *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 44 (D.C. Cir. 1984) (“[W]e are inclined to believe that section 1681e(b) covers at least some types of incomplete information.”), with *Grant v. TRW, Inc.*, 789 F. Supp. 690, 692 n.1 (D. Md. 1992) (finding that because the “completeness” of a credit report is not included as a requirement in § 1681e(b), it is a necessary part of a § 1681e(b) analysis).

16. See *Koropoulos*, 734 F.2d at 45 (incorporating an inquiry into the completeness of plaintiffs’ credit reports as a basis for remanding the case to the district court to determine whether the CRA complied with the requirements of § 1681e(b)).

17. See *id.* at 40 (discussing the technical accuracy approach taken by some courts); see also *Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 449 (E.D. Pa. 1977) (rejecting plaintiffs’ claim that the CRA violated § 1681e(b) because the plaintiffs failed to dispute the technical accuracy of their credit report).

18. See *Koropoulos*, 734 F.2d at 40 (rejecting the interpretation that § 1681e(b) requires only technical accuracy). Instead, this court looked to the legislative history of the FCRA to

This Comment will explore the meaning of “maximum possible accuracy” as a threshold requirement for a § 1681e(b) claim. First, it will examine the drafters’ original purpose in enacting the FCRA as a statute to protect consumers. Next, this Comment will highlight how courts have interpreted the maximum possible accuracy requirement. This section will show how some courts interpret maximum possible accuracy to require that information be factually correct and not misleading or incomplete, whereas other courts state that maximum possible accuracy requires that a CRA adhere to a very low standard of mere technical accuracy of information in a consumer report. This Comment will then analyze these different approaches, showing that, in light of the purpose of the FCRA, the standard for maximum possible accuracy must be as expansive as possible, to require both accuracy and completeness of consumer reports. Next, this Comment will discuss how the lack of uniformity among the courts in defining maximum possible accuracy weakens the application of the FCRA. Moreover, to resolve this weakness, Congress should amend § 1681e(b) to require both maximum possible accuracy and completeness. Finally, this Comment will conclude by summarizing the ambiguities in the law concerning the meaning of maximum possible accuracy and will reiterate the need for a statutory amendment.

I. THE TWO SIDES OF THE FAIR CREDIT REPORTING ACT: STATUTORY TEXT AND THE MEANING IMPOSED BY THE COURTS

A. *The U.S. Credit Reporting System*

As a consequence of the implementation of the FCRA, the United States has the “most robust credit information system in the world.”¹⁹ Studies have shown that the majority of households in the United States have held some type of debt, owned credit cards, or participated in the consumer and mortgage credit markets.²⁰

show that “Congress did not limit the Act’s mandate to reasonable procedures to assure only technical accuracy; to the contrary, the Act requires reasonable procedures to assure ‘maximum accuracy.’” *Id.*

19. STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 4; see also *June 4, 2003 Hearings, supra* note 1, at 90 (testimony of Paul Wohkittel, president of Lenders’ Credit Services) (advocating that “the United States credit reporting system, in a macro sense, is the best such system in the world”). The kinds of benefits to which American consumers have access include:

- (a) widespread access to credit across the age and income spectrum, (b) relatively low interest rates on secured loans (e.g., home mortgages, automobiles), (c) exceptionally broad access to open end, unsecured lines of credit (e.g., bank card products), and (d) relatively low default rates across all types of consumer loans.

STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 4.

20. STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 5. In 2001, seventy-five percent of U.S. households held some type of debt and partook in the consumer and mortgage credit markets. *Id.* In 2001, about seventy-three percent of all

Both the consumer and the U.S. economy benefit from a consumer's use of credit. Credit offers a "'bridge' [to consumers] that can sustain them through temporary disruptions and declines in incomes."²¹ Moreover, a consumer's use of credit reveals optimism about the consumer's expectations of her future income.²² Finally, studies have shown that the United States "enjoys a macroeconomic growth advantage as a consequence of its well-developed consumer credit markets."²³ Because of these well-developed consumer credit markets, consumers enjoy the benefits of increased competition among credit providers.²⁴

The basis of the ease of transferability and increased competition of the credit industry is the consumer report, the vehicle by which credit information on a consumer is efficiently transferred.²⁵ Consumer reports allow lenders to "pierce the fog of uncertainty" that a potential new creditor presents.²⁶ Consumer reports are an effective way of presenting information on a potential borrower because they present a complete picture of a consumer's past and present credit behavior.²⁷ In addition to providing information to potential

households owned at least one credit card, such as Visa or American Express. *Id.* Additionally, nearly one-third of all U.S. households possessed loans or leases for automobiles. *Id.*

21. STATEN & CATE, *THE IMPACT OF NATIONAL CREDIT REPORTING*, *supra* note 3, at 7 ("Research has shown that credit markets that make loans accessible to large segments of the population provide a cushion that neutralizes the macroeconomic drag associated with temporary declines in income, lowering the risk of outright recession and reducing the magnitude of downturns when they do occur." (emphasis omitted)).

22. *Id.*

23. *Id.* (emphasis omitted); *see also June 4, 2003 Hearings*, *supra* note 1, at 90 (testimony of Paul Wohkittel, President of Lenders' Credit Services) (relying upon his diverse experiences working with the credit markets in Central Asia and Eastern Europe to testify about the strength of the U.S. credit market). Mr. Wohkittel further testified that his experiences in constructing a credit bureau in Kazakhstan has allowed him to incorporate some of the best aspects of the FCRA and the U.S. credit system into these international endeavors. *Id.*

24. STATEN & CATE, *THE IMPACT OF NATIONAL CREDIT REPORTING*, *supra* note 3, at 17 ("The ability of new entrants to use credit report data to establish and cultivate relationships with customers thousands of miles away has transformed the competitive landscape in the United States . . .").

25. *See* Nehf, *supra* note 1, at 783 (noting the increased efficiency of our country's credit markets when the information on a consumer's credit report is accurate and complete).

26. STATEN & CATE, *THE IMPACT OF NATIONAL CREDIT REPORTING*, *supra* note 3, at 11 (internal quotation marks omitted). What makes a new borrower so uncertain for a creditor is the potential risk that characterizes the new borrower. *Id.* Thus, "[r]isk assessment based on credit bureau data rewards those consumers who find a way to make their payments." *Id.* at 12; *see also* Avery et al., *supra* note 7, at 50–51 ("[R]esearch and creditor experience has consistently indicated that credit reporting company information, despite any limitations that it may have, generally provides an effective measure of the relative credit risk posed by prospective borrowers."). One side effect of the importance that creditors place on credit reports is to "reinforce borrower incentives to manage credit wisely and avoid delinquencies and defaults." STATEN & CATE, *THE IMPACT OF NATIONAL CREDIT REPORTING*, *supra* note 3, at 12.

27. *See* STATEN & CATE, *supra* note 3, at 11. Consumer credit reports contain information from a wide array of sources and are updated daily. *Id.* For instance, the CRAs collect

creditors, employers, or others who have a permissible purpose under the FCRA to access a consumer's credit report,²⁸ consumer reports also play an important role in preventing fraud and protecting consumers from identity theft.²⁹ Although consumer reports are extremely important for creditors in evaluating a consumer's creditworthiness, the statistics on the extent to which credit reports are accurate and complete is in dispute.³⁰

B. *The Purpose of the FCRA is Consumer Protection*

The FCRA is a statute designed to overcome deficiencies in the credit reporting system and to empower consumers to correct inaccuracies in their consumer credit reports.³¹ This statute reflects Congress's recognition of the "vital role" of CRAs in the banking system³² and the "need to insure that

information on individual credit accounts from commercial banks, credit unions, and finance companies. Avery et al., *supra* note 7, at 50. Utility and medical companies also provide information to CRAs on accounts held by their customers. *Id.* Additionally, CRAs seek out information from public records, such as court records and records from other government entities. *Id.* Accordingly, an estimated two billion items of information are processed by each of the three major CRAs each month. *Id.* at 49.

28. See 15 U.S.C. § 1681b (2000 & Supp. V 2003) (discussing permissible purposes of consumer reports). The FCRA outlines under which circumstances a CRA "may furnish a consumer report." *Id.* § 1681b(a). For example, CRAs are permitted to furnish consumer reports in response to court orders, in accordance with the written instructions of the consumer about whom the report relates, or to a person whom the CRA has reason to believe intends to use the information in connection with a credit transaction. *Id.* See Raymond A. Chenault et al., *Fair Credit Reporting Act Update*, 60 CONSUMER FIN. L.Q. REP. 655, 657–58 (2006) for a discussion of recent case law regarding permissible purposes set forth in the FCRA. Another permissible purpose is the furnishing of a consumer report in connection with prescreened offers of credit. 15 U.S.C. § 1681b(c) (2000). See R. Scott Johnson, *Prescreened Offers—Useful, But Are They Firm Offers of Credit?*, 60 CONSUMER FIN. L.Q. REP. 593, 593–95 (2006) for a discussion of the requirements for a prescreened offer of credit to fall within the scope of the permissible purposes permitted in the FCRA. Additionally, someone who obtains and uses a consumer report for a reason that is not defined as a permissible purpose under the FCRA can be held liable for violating the FCRA. 15 U.S.C. § 1681b(f).

29. STATEN & CATE, *THE IMPACT OF NATIONAL CREDIT REPORTING*, *supra* note 3, at 23.

30. Avery et al., *supra* note 7, at 50 (highlighting several studies that come to different conclusions as to the accuracy of credit reports).

31. Elwin Griffith, *The Quest for Fair Credit Reporting and Equal Credit Opportunity in Consumer Transactions*, 25 U. MEM. L. REV. 37, 38–41 (1994) (arguing that the enactment of the FCRA in the 1970s attempted to remedy abuses of the credit reporting system, including CRAs that circulated false and inaccurate information on consumers and the consumers' inability to challenge those inaccuracies).

The first section of the FCRA itself, "Congressional Findings and Statement of Purpose," states that "[t]he banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." 15 U.S.C. § 1681(a)(1).

32. 15 U.S.C. § 1681(a)(3).

consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."³³

Senator Proxmire, a member of the Committee on Banking and Currency, introduced the Fair Credit Reporting bill on January 31, 1969.³⁴ In introducing the proposed law, Senator Proxmire stated that "[p]erhaps the most serious problem in the credit reporting industry is the problem of inaccurate or misleading information."³⁵ Senator Proxmire's concern about some of the abuses of the credit reporting industry is evident in his remarks.³⁶

In order to combat some of the abuses of the industry, the statute succinctly delineates the responsibilities of CRAs. Under the compliance procedures section of the FCRA, Congress required that CRAs, when preparing consumer reports, "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."³⁷ Therefore, in order to state a successful § 1681e(b) claim, a plaintiff must establish that: (1) her credit report contains inaccurate information; (2) the inaccuracy is attributable to "defendant's failure to follow reasonable procedures to assure maximum possible accuracy;" (3) she was injured by this failure; and (4) her injury was the result of defendant's inclusion of the inaccurate information.³⁸

33. *Id.* § 1681(a)(4). Additionally, Congress designated that the purpose of the FCRA requires consumer reporting agencies to "adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." *Id.* § 1681(b).

34. S. REP. NO. 91-517, at 2 (1969).

35. Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2411 (statement of Sen. Proxmire). Senator Proxmire urged the passing of a federal law that would "protect consumers against arbitrary, erroneous, and malicious credit information." *Id.* at 2410.

36. *Id.* at 2411 (acknowledging the need to curb the abuses within the system, while also desiring to "insure that the credit information system is responsive to the needs of consumers as well as creditors"). In his statements, Senator Proxmire discussed the sources of error in credit reporting, including confusion of identities, biased information, reliance on hearsay for credit information, and basic computer errors. *Id.*

37. 15 U.S.C. § 1681e(b). Some commentators argue that this statutory language reflects a "utilitarian view" because "some accuracy must be sacrificed so that the credit industry can function in the way to which it has become accustomed." Gary Allen Gardner, *The Fair Credit Reporting Act: Implications for 1999 and Beyond*, 78 MICH. B.J. 298, 298 (1999).

38. *Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *3 (E.D. Pa. 2003) (citing *Philbin v. Trans Union Corp.*, 101 F.3d 957, 963 (3d. Cir. 1996)); *see also Heupel v. Trans Union LLC*, 193 F. Supp. 2d 1234, 1239 (N.D. Ala. 2002) (offering a similar interpretation of the *prima facie* case for a § 1681e(b) violation); *Grant v. TRW, Inc.*, 789 F. Supp. 690, 692 (D. Md. 1992) ("[T]he Eleventh Circuit has recently stated, 'in order to make out a *prima facie* violation of . . . [Section 1681e(b)], the Act implicitly requires that a consumer must present evidence tending to show that a credit reporting agency prepared a report containing 'inaccurate' information.'" (quoting *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1156 (11th Cir. 1991)) (alteration in original)).

In its official commentary to the FCRA, the FTC expressly pronounces that this section of the FCRA does not require error-free consumer reports.³⁹ If a consumer report is deemed to be inaccurate, however, the consumer plaintiff must prove that defendant CRA did not follow reasonable procedures to assure maximum possible accuracy.⁴⁰ Under 15 U.S.C. § 1681i(a), a consumer has the right to dispute the completeness or accuracy of information in her consumer report, and the CRA has the responsibility to conduct a “reasonable reinvestigation” of the accuracy or completeness of the disputed information.⁴¹

39. Commentary on the Fair Credit Reporting Act, 16 C.F.R. pt. 600, App. (2007) (“If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable, and which is credible on its face, the agency does not violate [§ 1681e(b)] by reporting an item of information that turns out to be inaccurate.”).

40. *See* Davis v. Equifax Info. Servs. LLC, 346 F. Supp. 2d 1164, 1171 (N.D. Ala. 2004) (articulating the rule as: “Equifax is not strictly liable under the FCRA merely for reporting inaccurate information; rather, Plaintiff must show that Equifax failed to follow reasonable procedures”); Todd v. Associated Credit Bureau Servs., Inc., 451 F. Supp. 447, 449 (E.D. Pa. 1977) (stating that a court “does not need to reach the issue of reasonableness if it finds initially that the report furnished was accurate”).

41. 15 U.S.C. § 1681i(a)(1)(A) (2000 & Supp. V 2005). This provision requires that the consumer notify the agency either directly or indirectly through a reseller and requires that the CRA conduct its “reasonable reinvestigation” free of charge within a thirty day period starting from when the agency receives notice of the dispute. *Id.* This thirty day period is subject to an extension of fifteen days if the consumer provides additional information relating to the reinvestigation. *Id.* § 1681i(a)(1)(B).

The scope of a CRA’s duties to investigate sources in addition to the original source of its information depends on factors including

- (1) whether the consumer has alerted the reporting agency to the possibility that the source may be unreliable or the reporting agency knows or should know that the source is unreliable; and
- (2) the cost of verifying the accuracy of the source versus the possible harm inaccurately reported information may cause the consumer.

Evantash, 2003 WL 22844198, at *5. However, the effectiveness of this reinvestigation system has been questioned. *See* FED. TRADE COMMISSION BOARD OF GOVERNORS OF THE FED. RESERVE SYSTEM, REPORT TO CONGRESS ON THE FAIR CREDIT REPORTING ACT DISPUTE PROCESS 27–30 (2006) [hereinafter FED. RESERVE SYSTEM REPORT] (contrasting the viewpoint of consumer advocate groups, who believe that the reinvestigation process is flawed, with the industry perspective that the reinvestigation process is working properly).

C. FCRA Amendments Show a Desire to Enhance Accuracy Standards

The FCRA has been amended numerous times since its inception in 1970.⁴² However, the language of the FCRA specifically dealing with compliance procedures remains unchanged from its original form.⁴³

1. 1996 Amendments

After many years without substantial overhaul, the FCRA was amended in 1996 through the enactment of the Consumer Credit Reporting Reform Act (CCRA).⁴⁴ Not only did the CCRA provide guidance on issues such as prescreening and permissible uses of credit reports,⁴⁵ but these revisions also enhanced the accuracy of credit reporting by providing more opportunities for consumers to access their credit reports to dispute and correct certain entries.⁴⁶

42. Micheal F. McEneny & Karl F. Kaufmann, *Fair Credit Reporting Act Developments*, 59 BUS. LAW. 1215, 1216 (2004) (summarizing some of the changes to the FCRA). The first major change to the FCRA came in 1996, when Congress amended the FCRA to “improve the accuracy of consumer reports and to strengthen consumers’ ability to correct that information.” *Id.* (citing the amendment codified at 15 U.S.C. § 1618s-2 (2000)). In 2003, the FCRA was again amended in an effort to improve the fairness and accuracy of consumer reports. Gardner, *supra* note 13, at 248; see also Taft & Poulon, *supra* note 13, at 194 (analyzing changes to the FCRA made by the 2003 Amendments).

43. Compare Amendment of Consumer Credit Protection Act, Pub. L. No. 91-508, § 607(b), 84 Stat. 1127, 1131 (1970) (“[W]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”), with 15 U.S.C. § 1681e(b) (2000) (“[W]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”).

44. Consumer Credit Reporting Reform Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996). The CCRA was part of the voluminous Economic Growth and Regulatory Paperwork Reduction Act of 1996, which affected several laws that concerned institutions dealing with consumer financial services. Carl A. Ahern & Jeffrey P. Taft, *The Consumer Credit Reporting Reform Act of 1996: An Attempt to Make the Fair Credit Reporting Act More Fair*, 51 CONSUMER FIN. L.Q. REP. 304, 304 (1997) (noting that many of the revisions to the FCRA had been proposed in both the House and the Senate in prior years, but had never been passed).

45. See MICHAEL E. STATEN & FRED H. CATE, DOES THE FAIR CREDIT REPORTING ACT PROMOTE ACCURATE CREDIT REPORTING? 15-17 (2004) [hereinafter STATEN & CATE, DOES THE FRCA PROMOTE ACCURATE REPORTING], available at http://www.jchs.harvard.edu/publications/finance/babc/bac_04-14.pdf; Ahern & Taft, *supra* note 44, at 305-07, 311-12.

46. STATEN & CATE, DOES THE FRCA PROMOTE ACCURATE REPORTING, *supra* note 45, at 15; see also Akins, *supra* note 2, at 327 (detailing the process of a CRA’s reinvestigation of consumer complaints about items on their consumer reports). The 1996 amendments expanded a consumer’s access to the contents of her credit report by requiring CRAs to disclose all information in a consumer’s file, not only her credit score. *Id.* The revisions also strengthened a consumer’s attempt to correct erroneous information found on her credit report by requiring that CRAs delete disputed information that they cannot verify within thirty days. *Id.*

Moreover, these revisions emphasized the importance of uniform national standards in the regulation of the credit industry.⁴⁷

2. 2003 Amendments

The FCRA was amended again in 2003 through the Fair and Accurate Credit Transactions Act (FACT Act).⁴⁸ These amendments and relevant legislative history demonstrate a desire to further enhance the accuracy standards found in the FCRA.⁴⁹ The changes dealing with the accuracy of consumer credit reporting established a few procedures to increase the accuracy of consumer reports, including providing additional methods for a consumer to dispute the validity of her consumer report.⁵⁰ In addition, the legislative history of the

47. STATEN & CATE, *THE IMPACT OF NATIONAL CREDIT REPORTING*, *supra* note 3, at 2 (noting that some state-level legislation nearly upset the effectiveness of the FCRA “by subjecting key elements of the increasingly national credit reporting system to inconsistent state standards”). Equally important, the 1996 amendments safeguarded the national reporting system by “preempt[ing] state and local laws that would impact specific core elements of the credit reporting system.” *Id.*

48. Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952 (2003).

49. *Id.* The 2003 amendments also include changes in the law that “address identity theft, the accuracy of consumer reports, affiliate sharing, and prescreening.” McEneny & Kaufmann, *supra* note 42, at 1217. See FED. RESERVE SYSTEM REPORT, *supra* note 41, at 7 for a discussion of the ways that the 2003 amendments to the FCRA affect the process by which consumers dispute problems with their consumer reports.

50. See 15 U.S.C. § 1681s-2(a)(8) (Supp. V 2005) (establishing that consumers can now dispute the accuracy of items found on their consumer reports directly with the furnisher of that information, and not just with the CRA reporting the information). This provision also requires that the National Credit Union Administration (NCUA) and the FTC “jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.” *Id.*

In addition, the FACT Act requires a data furnisher that provides negative information to one or more CRAs to give notice to its customers when it does so. *Id.* § 1681s-2(a)(7)(A)(i). The statute also sets out a thirty-day time limit in providing this notice. *Id.* § 1681s-2(a)(7)(A)(ii). See McEneny & Kaufmann, *supra* note 42, at 1220 for an analysis of the changes in the responsibilities of data furnishers.

To further enhance the accuracy standards of the FCRA, the FACT Act also requires that the federal banking agencies, the NCUA, and the FTC must “establish and maintain guidelines” to which furnishers should adhere in order to ensure the “accuracy and integrity” of its consumer information. 15 U.S.C. § 1681s-2(e)(1)(A)-(B). These guidelines are currently undergoing notice and comment rulemaking procedures in the administrative agencies. See Interagency Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 72 Fed. Reg. 70,944 (Dec. 13, 2007) (offering “proposed regulations to implement the direct dispute provisions” of the FCRA).

Despite the importance of these guidelines with regard to the duties of furnishers, the term “furnisher” is not defined within the FCRA. See FED. RESERVE SYSTEM REPORT, *supra* note 41, at 4. While not specifically defined, furnishers are understood to be “entities that provide

2003 amendments shows the importance of credit to the U.S. economy, the need for consumer protection, and the need for accurate and fair credit reporting.⁵¹

D. Courts Have Conflicting Interpretations of the Maximum Possible Accuracy Requirement

The threshold question in a § 1681e(b) claim is the accuracy of a consumer's report.⁵² If a consumer's report is not accurate, then a court will determine whether the CRA followed "reasonable procedures."⁵³ However, the meaning of maximum possible accuracy has varied greatly from court to court.⁵⁴

1. Maximum Possible Accuracy Means That the Information Must Be Factually Correct and Cannot Be Misleading or Incomplete

The seminal case in the debate over the meaning of maximum possible accuracy is *Koropoulos v. Credit Bureau Inc.*, in which the Court of Appeals for the D.C. Circuit established a balancing test in order to determine whether a 1681e(b) violation occurred.⁵⁵ In *Koropoulos*, the plaintiffs' applications for various credit cards were denied on the basis of bad credit reports issued by Credit Bureau Incorporated (CBI) of Georgia.⁵⁶ Mr. Koropoulos' poor credit report resulted from him defaulting on payments for a loan that he had

information about their customers to CRAs, including information about customers' payments on their accounts." *Id.*

51. See, e.g., *June 4, 2003 Hearings, supra* note 1, at 90 (written testimony of Paul Wohkittel, President of Lenders' Credit Services) (advocating on behalf of the credit industry for a credit reporting structure that "to fairly and efficiently accommodate the needs of lenders while offering solid and strong protections[to consumers]"); *H.R. 2622—Fair and Accurate Credit Transactions Act of 2003: Hearing Before the H. Comm. on Fin. Servs.*, 108th Cong. 8–10 (2003) [hereinafter *July 9, 2003 Hearings*] (testimony of John W. Snow, Sec'y, Dep't of the Treasury) (emphasizing the need for accurate credit reporting and the importance of "information pooling" that has allowed many lower income people access to credit opportunities).

In a hearing of the House Financial Services Committee, Treasury Secretary Snow emphasized the importance of the FCRA by remarking that "the FCRA is the invisible infrastructure of the credit markets of the United States, and that invisible infrastructure makes possible the most extensive and widely available credit at the best rates anywhere in the world." *July 9, 2003 Hearings, supra*, at 9 (testimony of John W. Snow, Sec'y, Dep't of the Treasury).

52. *Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *3 (E.D. Pa. Nov. 25, 2003); see also *Heupel v. Trans Union LLC*, 193 F. Supp. 2d 1234, 1239 (N.D. Ala. 2002).

53. *Heupel*, 193 F. Supp. 2d at 1239.

54. *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1156–57 (11th Cir. 1991) (stating that courts have "widely diverged in their interpretations of what constitutes an 'accurate' credit report").

55. *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 41–42 (D.C. Cir. 1984).

56. *Id.* at 38. Mr. Koropoulos was denied credit on a number of occasions, including being denied a credit card from the Bank of Virginia. *Id.* Mrs. Koropoulos' application for a credit card from Lord & Taylor was denied as well. *Id.* Both denials were attributed to a poor credit report from CBI. *Id.*

obtained from Virginia National Bank approximately four years earlier.⁵⁷ However, the circumstances surrounding the denial of credit to Mrs. Koropoulos were less clear.⁵⁸

The plaintiffs' attorney contacted the credit bureau in January 1982, and the credit bureau turned over Mr. Koropoulos' file, which showed a balance of zero dollars on the bank loan.⁵⁹ The report also showed a current status of "I9" meaning "that [the bank] either wrote the loan off as a bad debt, placed it for collection, instituted a civil suit against the debtor to collect it, or determined that the debtor 'skipped' (*i.e.*, could not be located)."⁶⁰

Six months later, Mr. and Mrs. Koropoulos filed suit under the FCRA against the credit bureau "alleging that this characterization of the [bank] loan was misleading," especially considering that the credit bureau knew as of November 1977 that the loan had been repaid in full.⁶¹ The district court granted the credit bureau's summary judgment motion and dismissed the Koropoulos' claims of the inaccuracies in the report.⁶² The court found that "the rating was accurate," citing that there was indeed a balance of zero dollars, and that the bank lost forty percent of the money Mr. Koropoulos owed in collection costs.⁶³ Plaintiffs appealed the dismissal of their FCRA claims.⁶⁴

The D.C. Circuit extensively reviewed the case law concerning § 1681e(b) liability⁶⁵ and rejected the district court's analysis on the basis that it, in essence, made a CRA "liable for damages only if the report contains statements that are technically untrue."⁶⁶ The court then cited the purpose of the FCRA in support of its position that the FCRA requires CRAs to maintain "reasonable procedures to assure 'maximum accuracy.'"⁶⁷ The court created a balancing test to determine whether a violation of § 1681e(b) occurred.⁶⁸ Following this rationale, a court should "weigh the potential that the information will create a misleading impression against the availability of

57. *Id.* Mr. Koropoulos had defaulted on a loan of just over \$2,000 in June 1976. *Id.* By November 1977, Mr. Koropoulos repaid the entire loan in addition to a forty percent collection fee to Nationwide Credit Corporation, the company to whom the bank sent the defaulted loan for collection. *Id.*

58. *Id.* at 39. Plaintiffs alleged that since CBI claimed to have never sent a report at all on Mrs. Koropoulos, CBI may have erroneously sent Mr. Koropoulos' report out in a request for credit information on Mrs. Koropoulos. *Id.*

59. *Id.* at 38.

60. *Id.*

61. *Id.* Mr. Koropoulos' concern about the misleading characterization of the debt was that "[the bank] wrote the loan off as a total loss, and that Mr. Koropoulos never paid the debt." *Id.*

62. *Id.* at 39.

63. *Id.*

64. *Id.*

65. *Id.* at 39-40.

66. *Id.* at 40.

67. *Id.*

68. *Id.* at 42.

more accurate [or complete] information and the burden of providing such information.”⁶⁹

The D.C. Circuit also examined the issue of a CRA’s duty under the FCRA when it reviewed plaintiffs’ claims that the credit bureau’s credit reporting was so imprecise that it could not ensure “a reasonable procedure” for maximum possible accuracy, as required by the statute.⁷⁰ The court concluded that the duty imposed on CRAs by the FCRA calls for CRAs to “adopt reasonable procedures to ensure complete and precise [credit] reporting.”⁷¹ As to whether the credit bureau failed to fulfill this standard of reasonable procedures, the court held that the record was “too sparse” to make a conclusion and left the decision to the district court on remand.⁷²

The court’s analysis shows a willingness to bring the concept of completeness of the information in credit reports into its analysis of maximum possible accuracy.⁷³ The court determined that, based on the legislative history of § 1681e(b), “Congress did not . . . intend to exclude altogether incomplete reports from section 1681e(b)’s requirement of reasonable procedures.”⁷⁴ Consequently, the court considered the completeness of the Koropoulos’ credit report in determining whether the credit bureau achieved the requisite level of maximum possible accuracy.⁷⁵

Many courts have relied on the *Koropoulos* decision. In 2003, for instance, the Eastern District of Pennsylvania stated that it would apply the *Koropoulos* balancing test because the Third Circuit does not allow the “technical accuracy defense.”⁷⁶ In *Evantash v. G.E. Capital Mortgage Services, Inc.*, the plaintiff’s husband filed for bankruptcy under Chapter 7 and included an account in which both he and his wife, plaintiff Mrs. Evantash, were co-obligors.⁷⁷ Once

69. *Id.*

70. *Id.* at 42–43.

71. *Id.* at 45. The court stated that “we do not suggest that the Act requires all relevant credit information be included in agencies’ reports . . .” *Id.*

72. *Id.* (The court claimed that the record did not provide enough information “for [it] to conclude at this early stage in the proceeding either that [the credit bureau’s] ‘9’ classification is so broad that it unreasonably fails to distinguish between fundamentally different credit histories, or that it is sufficiently narrow to be reasonable.”). The court noted that no matter how the district court were to come out on the issue of reasonableness, the plaintiffs must still show that CBI’s system of classification somehow caused them harm in order to be entitled to punitive damages. *Id.* at 45 n.14 (citing 15 U.S.C. § 1681n, which provides “punitive damages [are] available for willful violation of the Act”).

73. *See id.* at 43–44.

74. *Id.* at 44. The court reasoned that the absence of “completeness” from the maximum possible accuracy requirements in the statute may have been the result of this provision being “added so late in the legislative process.” *Id.*

75. *Id.* at 42–43.

76. *See Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *4 (E.D. Pa. Nov. 25, 2003).

77. *Id.* at *1. The account was for a mortgage with defendant, G.E. Capital Mortgage Services, Inc. *Id.*

another defendant, Trans Union LLC, received notification of this bankruptcy filing, Trans Union recorded the bankruptcy filing on Mrs. Evantash's credit report.⁷⁸ Plaintiff's application for a line of credit from Dial National Bank to purchase a dishwasher was later denied, and the bank cited this bankruptcy as the reason for its denial.⁷⁹ Mrs. Evantash repeatedly requested that Trans Union remove the bankruptcy notation from her credit report, but because of communications with G.E. Capital that reaffirmed the bankruptcy, Trans Union removed and reinserted the notation multiple times throughout the next few months.⁸⁰ The district court sided with Mrs. Evantash and relied on the *Koropoulos* framework to determine that there was a genuine issue of material fact of whether Trans Union represented the account on the plaintiff's credit report in a way that was "so misleading" that it made her report inaccurate under § 1681e(b).⁸¹

More recently, a California district court, in *Yourke v. Experian Information Solutions, Inc.*, relied on *Koropoulos* to deny the defendant's motion for summary judgment and to find a triable issue of fact in a case in which the plaintiff had attempted to have five tax liens removed from his consumer report.⁸² The IRS released the liens once plaintiff filed the returns for those years, yet Experian, a CRA, improperly reported only two of the five as released, creating a problem of misleading information on the plaintiff's credit report.⁸³ The court held that both Experian's original reporting of misleading information and continued inclusion of that information after plaintiff brought it to Experian's attention presented a triable issue of fact for a § 1681e(b)

78. *Id.* Trans Union recorded this filing on plaintiff's credit report as "INCLUDED IN BANKRUPTCY." *Id.* (internal quotation marks omitted).

79. *Id.*

80. *Id.* at *1–2. The court delineated, in substantial detail, all of the correspondence between Mrs. Evantash, G.E. Capital, and Trans Union that caused the bankruptcy notation to be removed and reinserted on a number of occasions. *Id.*

81. *Id.* at *4.

82. *Yourke v. Experian Info. Solutions, Inc.*, No. C 06-2370, 2007 WL 1795705, at *5 (N.D. Cal. June 20, 2007). In this case, plaintiff was assessed five tax liens for not filing a series of tax returns in which he claimed he did not have any tax liability. *Id.* at *1.

83. *Id.* at *1. *Yourke* first contacted Experian's customer service department in an attempt to correct the inaccurate reporting of his tax liens. *Id.* On October 27, 2005, *Yourke* contacted Experian in writing and included letters from the Franchise Tax Board (FTB) that showed that *Yourke* had paid all taxes and penalties and FTB filed a "release of lien" for each tax lien. *Id.* Over the next few months, *Yourke* and Experian discussed how the released liens would be reported on his consumer report. *Id.* at *1–2. Finally, in April 2006, Experian reported a zero dollar balance on the tax liens. *Id.* at *2.

violation.⁸⁴ In addition, the court emphasized the plaintiff's diligence and persistence in attempting to rectify the situation.⁸⁵

2. Technical Accuracy Defense: Other Courts Put a Low Burden on CRAs to Ensure Maximum Possible Accuracy

Many courts interpret the maximum possible accuracy requirements of the FCRA very strictly.⁸⁶ One case from the nascence of the FCRA demonstrates this hard-line approach to the accuracy requirement. In *Todd v. Associated Credit Bureau Services, Inc.*, the court granted summary judgment in favor of the defendants on the plaintiffs' § 1681e(b) claims.⁸⁷ After the plaintiffs failed to pay off a balance of \$1,200.00 on their account with Hess' department store, Hess' sent the account to General Credit Control for collection.⁸⁸ About two years later, in September 1974, the plaintiffs had fully paid all money owed to Hess'.⁸⁹ In November 1975, however, the plaintiffs' credit report continued to show that, as of 1973, they owed Hess' \$1,200, but failed to mention that the plaintiffs eventually paid the debt.⁹⁰

In analyzing whether Associated, as the CRA, followed reasonable procedures to assure maximum possible accuracy under § 1681e(b), the court noted that it "does not need to reach the issue of reasonableness if it finds initially that the report furnished was accurate."⁹¹ The court concluded that the report furnished by Associated was "not inaccurate" and that, consequently, the Todds had no cause of action.⁹²

84. *Id.* at *5 ("Experian's continued inclusion of the liens as released but with the full amount for which they were originally filed could be viewed as misleading.").

85. *Id.* The court cited Experian's delay in responding to Yourke's request for corrections as well as Yourke's "continued pressure" on Experian to make the changes as enough to create a triable issue as to the reasonableness required by § 1681i(a) of the reinvestigation process. *Id.*

86. *See, e.g.,* *Davis v. Equifax Info. Servs. LLC*, 346 F. Supp. 2d 1164, 1170-72 (N.D. Ala. 2004) (showing a strict interpretation of the maximum possible accuracy requirement by not holding the CRA liable for maintaining an incomplete consumer report on the plaintiff). In *Davis*, the court determined that the CRA did not violate § 1681e(b) when it deleted the plaintiff's mortgage account from her consumer report, even though the plaintiff protested the entry because it reflected late payments. *Id.* at 1171.

87. *Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 450 (E.D. Pa. 1977) *aff'd*, 578 F.3d 1376 (3d Cir. 1978). In addition to bringing suit against Associated Credit Bureau Services (Associated), the plaintiff also brought his suit against Hess', Inc. (Hess'), and General Credit Control, Inc. (General). *Id.* at 448.

88. *Id.* at 448.

89. *Id.*

90. *Id.*

91. *Id.* at 449. The court immediately granted summary judgment in favor of Hess' and General because neither fell within the definition of a CRA and therefore would not have been subject to the statutory requirements of this section of the FCRA. *Id.*

92. *Id.* The court provided a very terse and cursory analysis in order to come to this conclusion. *See id.* The court noted that the Todds did not dispute that their account reached \$1,200 in October 1972, which caused Hess' to charge the debt to profit and loss and to give the

The Southern District of New York recently took the *Todd* approach one step further. In *Boothe v. TRW Credit Data*, the court dismissed the plaintiff's § 1681e(b) claim against TRW Credit Data, a CRA,⁹³ and held that the CRA's reliance on bankruptcy court documents in preparing plaintiff's credit report was appropriate, despite the plaintiff's protest of the accuracy of some of those documents.⁹⁴

In *Boothe*, the plaintiff borrowed money on many occasions from Avco Financial Services.⁹⁵ Avco requested copies of plaintiff's credit profile from TRW, a company that furnished credit information on consumers to its subscribers.⁹⁶ A few months later, the plaintiff requested that TRW provide him copies of his credit profiles, and TRW complied with each of plaintiff's requests.⁹⁷ In one of those credit reports, the plaintiff found information that he believed to be incorrect, including a bankruptcy petition filed years before and false information on payment of a loan from another creditor, the New York State Higher Education Services.⁹⁸

On more than one occasion, the plaintiff requested that the information be corrected.⁹⁹ He also requested, multiple times, that TRW add a statement to his profile showing that he disputed the accuracy of the bankruptcy petition and the loan with Higher Education Services.¹⁰⁰ Finally, in March 1988, TRW added a short consumer statement concerning only the Higher Education Services loan.¹⁰¹ After the plaintiff was denied a loan with Avco in May 1988, he sued, alleging that this denial of credit was caused by "an inaccurate credit profile from TRW."¹⁰²

account to General for collection. *Id.* The court stated that "[t]hese facts are unquestionably accurate" and held that this technical accuracy complied with § 1681e(b). *Id.*

93. *Boothe v. TRW Credit Data*, 768 F. Supp. 434, 439 (S.D.N.Y. 1991). In this case, the court referred to § 1681e(b) as a "607(b)" violation since that is the section number of the FCRA itself. *Id.* at 435.

94. *Id.* at 438.

95. *Id.* at 435.

96. *Id.*

97. *Id.* *Boothe* requested copies of his profiles on three separate occasions. *Id.*

98. *Id.* *Boothe* disputed his credit profile's reference to a bankruptcy petition that he had filed in U.S. Bankruptcy Court in July 1981. *Id.* He also had a dispute with the balance of a loan with the New York State Higher Education Services, which he claimed failed to show his payments on the loan. *Id.*

99. *Id.* at 436. *Boothe* requested that the consumer statement be added to his profile on three separate occasions: twice in December 1987 and again in March 1988. *Id.*

100. *Id.* *Boothe* originally questioned the bankruptcy entry on his profile in February 1987, and disputed the accuracy of his Higher Education Services loan in September 1987. *Id.* at 435.

101. *Id.* at 436. TRW added the statement "I dispute the amount [Higher Education Services] says I owe." *Id.*

102. *Id.* *Boothe*, representing himself in this lawsuit, also alleged that TRW violated § 1681i(a) of the FCRA that requires that a CRA shall reinvestigate within a reasonable amount of time disputed information in a consumer's credit report so long as the CRA does not have reason to believe that the consumer's request for reinvestigation is frivolous. *Id.* at 437-38.

In analyzing whether TRW violated § 1681e(b) of the FCRA, the court emphasized the official court documents from which TRW prepared its consumer profile on the plaintiff.¹⁰³ The court failed to consider any of the plaintiff's attempts to have his credit profile revised, but instead focused on the fact that the plaintiff offered no evidence to challenge the substance of these documents themselves.¹⁰⁴ The court concluded, on that basis, that TRW "conclusively established the accuracy of [plaintiff's] credit profile."¹⁰⁵

Another recent case that relied heavily on *Todd* is *Heupel v. Trans Union LLC*.¹⁰⁶ In this case, plaintiff Heupel's application for a Discover credit card was rejected based on information of a bankruptcy action by the plaintiff that the credit card company received from Trans Union, a CRA.¹⁰⁷ Upon investigation, the plaintiff realized that the bankruptcy action reported on her credit report was actually attributable to her ex-husband, who had filed for bankruptcy after their divorce and reported an account with Dial Bank on which she was a co-obligor.¹⁰⁸ Although Trans Union complied with most of the plaintiff's requests for correction of her credit report, Heupel nonetheless filed the action in early 2000.¹⁰⁹

In analyzing the defendant's motion for summary judgment, the court acknowledged the position espoused by the court in *Koropoulos*,¹¹⁰ but concluded that following the analysis of *Todd*¹¹¹ was more sound.¹¹² The court

103. *Id.* at 437–38. On the issue of the bankruptcy filing, the court stated that "[t]he petition and the Bankruptcy Court order dismissing it, in view of Boothe's failure to controvert their authenticity, are conclusive proof of Boothe's bankruptcy filing." *Id.* at 438.

104. *Id.* at 438.

105. *Id.* (holding that TRW "is entitled to summary judgment dismissing [plaintiff's § 1681e(b)] claim").

106. *See Heupel v. Trans Union LLC*, 193 F. Supp. 2d 1234, 1240 (N.D. Ala. 2002).

107. *Id.* at 1236–37. The plaintiff applied for the credit card in October 1999, and was notified of her rejection later that month. *Id.* Discover stated that the principal reason that they rejected Heupel's application was "BANKRUPTCY." *Id.* at 1237.

108. *Id.* at 1237. Heupel requested a copy of her credit report from Trans Union a few days after she was denied for the credit card. *Id.* At that point she discovered that her status as "joint obligor," on a Dial Bank account with her ex-husband, caused the bankruptcy notation on her credit report even though her husband had filed the Chapter 13 bankruptcy *after* their divorce. *Id.* Upon examining her report, the plaintiff also discovered other errors, including a reporting that she was an obligor on two Fidelity Acceptance accounts, when she was only an obligor on one such account. *Id.*

109. *Id.* at 1238. Heupel's FCRA claims challenged the accuracy of several errors on her credit report. *See id.* at 1239–40.

110. *See supra* notes 65–69 and accompanying text (discussing the *Koropoulos* balancing test).

111. *See supra* notes 91–92 and accompanying text (discussing the *Todd* approach).

112. *Heupel*, 193 F. Supp. 2d at 1240. The court acknowledged that the Eleventh Circuit identified both the *Koropoulos* and *Todd* approaches, and decided that a CRA "should be entitled to summary judgment if it reports factually correct information." *Id.*

reasoned that *Todd* is “fairer to reporting agencies and a better conservator of judicial resources.”¹¹³

The court’s discussion stressed reducing the burden of accurate credit reporting on CRAs.¹¹⁴ Moreover, the court decided that requiring “technical accuracy” in credit reports would ensure the balance that Congress wanted to keep between a consumer’s desire for fair credit reporting and the goal of CRAs to maintain “cost-effective credit reporting.”¹¹⁵ The court found that Trans Union’s reporting of the Dial Bank account was technically accurate, and therefore the plaintiff did not have an actionable § 1681e(b) claim.¹¹⁶

The Eleventh Circuit’s hesitancy to adopt the *Koropoulos* approach for evaluating the completeness of a credit report in making a § 1681e(b) analysis is seen in two cases from the 1990s.¹¹⁷ In the first case, *Cahlin v. General Motors Acceptance Corp.*, the plaintiff claimed that he was denied credit several times because of information on his credit report, which included the denial of his application for a mortgage loan.¹¹⁸ The plaintiff’s claims against two CRAs, TRW and CBI, were based on how each CRA handled plaintiff’s complaints regarding a debt on a car lease with General Motors Acceptance Corporation (GMAC).¹¹⁹ Despite repeated attempts to correct his credit report,¹²⁰ both CRAs reported that the plaintiff had unfavorable credit information, namely that plaintiff had a debt to GMAC, even though GMAC had released him from all debts.¹²¹ CBI, for instance, gave the plaintiff an I-9 rating for his GMAC account, signifying that he had a bad debt, while

113. *Id.* at 1240 n.8.

114. *Id.* (“[R]equiring that each report be void of material omission would place too great a burden on credit reporting agencies and could subject them to liability for omitting information of which they did not and had no reason to know.”).

115. *Id.*

116. *Id.* at 1240–41. Interestingly, the court discussed Trans Union’s misreporting of Heupel’s Fidelity account as “prima facie . . . inaccurate reporting.” *Id.* at 1239. However, the court does not seem to take this into account when deciding that plaintiff did not have a case under § 1681e(b). *See id.* The court ultimately granted Trans Union’s motion for summary judgment as to all of Heupel’s allegations. *Id.* at 1242.

117. *See Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1157–58 (11th Cir. 1991); *Grant v. TRW, Inc.*, 789 F. Supp. 690, 692 (D. Md. 1992).

118. *Cahlin*, 936 F.2d at 1155–56.

119. *Id.* at 1154–55. The plaintiff claims that when he leased a car for five years from GMAC, a salesman made an oral promise that he could return the car within 90 days and be free from obligations under the lease. *Id.* at 1154. The salesman’s promise was not made in writing so GMAC threatened the plaintiff with legal action. *Id.* GMAC released the plaintiff of all debts upon settlement of the legal action. *Id.* at 1154–55.

120. *Id.* at 1155. CBI continued to report that the plaintiff had an “I9” rating with a balance due of \$3,383.44. *Id.* From August 1986 through October 1987, the plaintiff took numerous steps to correct this erroneous rating, including mailing a customer dispute form and directing written complaints to CBI. *Id.*

121. *Id.* at 1154–55.

simultaneously reporting that plaintiff had a zero balance on that same account.¹²²

In *Cahlin*, the Eleventh Circuit held that although the FCRA requires that a CRA make reasonable efforts to report “‘accurate’ information . . . [the CRA] has no duty to report only that information which is favorable or beneficial to the consumer.”¹²³ As a result, the court rejected plaintiff’s claim that “CBI should have ceased reporting *any* derogatory credit information about his GMAC account after the settlement in May, 1986.”¹²⁴ The court concluded that CBI’s seemingly-contradictory recording of the plaintiff’s GMAC account was “more accurate than the negative-free report” that the plaintiff desired.¹²⁵

A year later, the Eleventh Circuit rejected the *Koropoulos* approach. In *Grant v. TRW, Inc.*, plaintiff’s application for a credit card was denied because his credit report indicated that his landlord had received a judgment against him.¹²⁶ In determining whether TRW “violated the FCRA by failing to follow reasonable procedures assuring ‘maximum possible accuracy,’” the court made a clear distinction between a consumer report that is accurate and one that is complete.¹²⁷ The court stated that the qualitative difference between these two standards is that accuracy “can be tested by verification” but completeness “requires the exercise of judgment on potentially difficult questions concerning the meaning and effect of contextual information.”¹²⁸

The Eleventh Circuit, in *Grant*, rejected the *Koropoulos* approach which added a completeness element to the maximum possible accuracy analysis.¹²⁹ The court noted that although the plaintiff did not dispute the accuracy of the notation on his credit report, he disputed the misleading nature of the information and officially informed TRW of this concern.¹³⁰ The court ultimately denied TRW’s motion to dismiss because of its failure to properly reinvestigate the plaintiff’s dispute.¹³¹

122. *Id.* at 1155.

123. *Id.* at 1158.

124. *Id.*

125. *Id.* at 1159 n.19.

126. *Grant v. TRW, Inc.*, 789 F. Supp. 690, 691 (D. Md. 1992). The judgment, which was awarded a year earlier, amounted to \$608.00. *Id.*

127. *Id.* at 691–92.

128. *Id.* at 692.

129. *Id.* at 692 n.1 (“[A]dding a ‘completeness’ element to § 1681e(b) substantially expands the duties imposed under consumer reporting agencies under the Act and exposes them to dramatically increased litigation.”).

130. *Id.* at 692.

131. *See id.* at 693.

II. DISPARITIES BETWEEN THE FCRA AND CASE LAW INTERPRETATION WEAKEN THE OBJECTIVES OF THE FCRA

A. Standards of Accuracy within the FCRA are Contradictory

In preparing consumer reports under § 1681e(b), a CRA “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”¹³² While perfect accuracy in credit reporting is an impossibility,¹³³ the FCRA does not clearly identify how the phrase “maximum possible accuracy” should be defined.¹³⁴ Furthermore, § 1681i, titled “Procedure in case of disputed accuracy,” sets out the procedures that consumers and CRAs must follow “[i]f the completeness or accuracy of any item of information contained in a consumer’s file . . . is disputed.”¹³⁵ Completeness and accuracy are two very different standards, and by requiring only accuracy in § 1681e(b) and completeness or accuracy in § 1681i, the FCRA creates two different standards.¹³⁶

As a result of this contradiction in the statute, courts have exhibited different, and often conflicting, methods of incorporating these principles.¹³⁷

132. 15 U.S.C. § 1681e(b) (2000).

133. Virginia G. Maurer & Robert E. Thomas, *Getting Credit Where Credit is Due: Proposed Changes in the Fair Credit Reporting Act*, 34 AM. BUS. L.J. 607, 617 (1997) (“[O]btaining perfect accuracy is expensive and probably not feasible due to the immense volume of information processed by the agencies.”).

134. 15 U.S.C. § 1681e(b); *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1157 (11th Cir. 1991) (stating that because the statute does not define the accuracy standard in § 1681e(b), courts have exhibited a wide range of interpretations). The *Cahlin* court argued that “[a]ccuracy is not quite clearly a self-defining concept, and FCRA’s fragmentary legislative history provides little, if any, guidance as to how Congress intended this statute to be applied.” *Id.*

135. 15 U.S.C. § 1681i(a)(1)(A) (2000 & Supp. V 2005) (emphasis added); see also *supra* notes 39–41 and accompanying text (explaining the mechanics of the FCRA’s reinvestigation process).

136. See *Grant v. TRW, Inc.*, 789 F. Supp. 690, 692 (D. Md. 1992) (discussing the differences between an analysis of a credit report’s accuracy and an analysis of its completeness). The court stated that the qualitative difference between these two standards is that “[a]ccuracy can be tested by verification” but “‘completeness’ required the exercise of judgment on potentially difficult questions concerning the meaning and effect of contextual information.” *Id.* In contrast to the court’s analysis in *Grant*, the *Koropoulos* court believed that the absence of “completeness” from § 1681e(b) was not intentional. See *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 43–44 (D.C. Cir. 1984).

137. Compare *Cahlin*, 936 F.2d at 1157 (stating that the information needs only to be “technically accurate,” which can be satisfied by being incomplete), and *Grant*, 789 F. Supp. at 692 n.1 (discussing the differences between accuracy and completeness and reasoning that reading a completeness requirement into § 1681e(b) is inappropriate), with *Koropoulos*, 734 F.2d at 44 (introducing the concept of completeness into a 1681e(b) analysis), and *Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *3–4 (E.D. Pa. Nov. 25, 2003) (applying the *Koropoulos* approach to analyzing a § 1681e(b) claim).

For instance, in *Grant v. TRW, Inc.*, the court concluded that incorporating the concept of completeness of consumer reports into the maximum possible accuracy standard of § 1681e(b) unnecessarily expanded the duties of consumer reporting agencies.¹³⁸ Furthermore, in *Cahlin*, the Eleventh Circuit emphasized the objective nature of the accuracy standard and stated that the accuracy standard “should be interpreted in an evenhanded manner toward the interests of both consumers and potential creditors.”¹³⁹ By contrast, in *Koropoulos*, the court expressly stated that completeness of a consumer’s credit information should be part of the analysis to determine maximum possible accuracy.¹⁴⁰ This confusion has resulted in courts taking varying positions on the levels of duties that the CRAs have as far as ensuring the accuracy of consumer reports.¹⁴¹

B. FCRA is a Consumer Protection Statute, But the Case Law Interpretation Does Not Always Reflect a Pro-Consumer Attitude

The consumer-protection approach of the FCRA is explicitly stated in various subsections of § 1681.¹⁴² In drafting the FCRA, Congress did not require mere “accuracy,” but instead required “*maximum possible accuracy*.”¹⁴³ The legislative history of the original version of the FCRA shows that Congress prioritized consumer protection in drafting the statute.¹⁴⁴ In addition,

138. *Grant*, 789 F. Supp. at 692 n.1.

139. *Cahlin*, 936 F.2d at 1158.

140. *Koropoulos*, 734 F.2d at 44. The court stated that “we are inclined to believe that section 1681e(b) covers at least some types of incomplete information.” *Id.* The court acknowledged that § 1681i explicitly mentions the completeness of information, but rejected the assertion that the absence of the completeness standard from § 1681e(b) signals that Congress did not intend to include it. *Id.* In fact, the court cited Senator Proxmire’s remarks in the FCRA’s legislative history as evidence of this assertion: “[t]he failure of section 1681e(b)’s language itself to specifically mention completeness in addition to accuracy may well be attributable to the fact that it was added so late in the legislative process that there was not time for careful semantic accommodation with earlier adopted provisions.” *Id.*

141. Compare *Heupel v. Trans Union LLC*, 193 F. Supp. 2d 1234, 1240 (N.D. Ala. 2002) (requiring that a CRA produce credit reports that contain only “technically accurate” information), and *Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 449 (E.D. Pa. 1977) (finding accurate a credit report that reported a debt that plaintiffs had already paid off), with *Koropoulos*, 734 F.2d at 42 (emphasizing the need to carefully weigh the potential that information on a credit report could be misleading against the burden of retrieving such information in determining whether a § 1681e(b) violation occurred).

142. See *supra* Part II.A.

143. See Griffith *supra* note 31, at 72 (“It might have been less complicated for Congress to demand simply that reporting agencies . . . use reasonable procedures to assure accuracy of the information about the consumer. Instead, Congress required ‘maximum possible accuracy,’ leaving no doubt that there was at least some minimum standard of accuracy that might not be acceptable if it was reasonably possible for the agency to do better.”).

144. Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2414 (Statement of Sen. Proxmire) (remarking that the purpose of the bill that would become the FCRA was to “provide consumers with more protection than they are now getting [and] . . . to make uniform throughout

the legislative history of the later amendments shows a faithful commitment to this consumer-driven purpose.¹⁴⁵

In contrast to this statutory intent to protect consumers, the case law does not always reflect a pro-consumer attitude.¹⁴⁶ The *Todd* court's analysis of the plaintiffs' § 1681e(b) claim is so cursory that it is inadequate to fully address the plaintiffs' concerns about the accuracy of their credit report.¹⁴⁷ The court stated that "[b]ecause the report is not inaccurate, [it must be concluded] . . . that the Todds can not sustain their cause of action."¹⁴⁸ It then offered a straight summary of the facts, which the court stated were "unquestionably accurate" and "extremely important to merchants and retailers in deciding whether or not to extend credit to persons such as the plaintiff."¹⁴⁹ The court's recitation of the facts and very brief analysis of the Todds' accuracy claims shows an unwillingness to adopt a pro-consumer attitude, as the FCRA requires.¹⁵⁰ When courts do choose to adopt a pro-consumer approach as espoused in *Koropoulos*, they are more reluctant to grant summary judgment to defendants.¹⁵¹

The court in *Koropoulos* acknowledged that the FCRA's reasonableness requirement "severely limits an agency's duty to maximally assure precise and

the industry procedures designed to insure the consumer's right to a reporting system that is accurate and relevant and which safeguards confidentiality"); S. REP. NO. 91-517, at 1 (1969) ("The purpose of the fair credit reporting bill is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information [and] . . . to prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information.").

145. *July 9, 2003 Hearings, supra* note 51, at 208 (prepared statement of the Honorable Timothy J. Muris, Chairman, Federal Trade Commission) (stating "it is critical that our credit system protect the rights of consumers in the privacy, security, and accuracy of their financial information").

146. *See, e.g., Davis v. Equifax Info. Servs. LLC*, 346 F. Supp. 2d 1164, 1170-72 (N.D. Ala. 2004) (holding that defendant CRA did not violate the FCRA by deleting a mortgage account from the plaintiff's consumer report); *Heupel*, 193 F. Supp. 2d at 1240 n.1 (following the *Todd* framework denying plaintiff's § 1681e(b) claim since "the *Todd* approach is fairer to reporting agencies and a better conservator of judicial resources").

147. *See Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 449 (E.D. Pa. 1977).

148. *Id.*

149. *Id.*

150. *See Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 414-15 (4th Cir. 2001) (showing that Congress's motivation to enact the FCRA was concern for protecting consumers in light of the abuses in the credit industry); S. REP. NO. 91-517, at 1 (1969) (construing the FCRA to be a bill whose purpose "is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report").

151. *See, e.g., Yourke v. Experian Info. Solutions, Inc.*, No. C 06-2370, 2007 WL 1795705, at *5-6 (N.D. Cal. June 20, 2007) (adopting the *Koropoulos* approach and denying defendant CRA's motion for summary judgment on the basis that there is a triable issue of fact as to plaintiffs' § 1681e(b) claims); *Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *4-5 (E.D. Pa. Nov. 25, 2003) (relying on *Koropoulos* to hold that plaintiff did show that she had a prima facie case for a § 1681e(b) claim).

complete reporting.”¹⁵² However, the court did recognize that “certain distinctions . . . may be so fundamental to the message [the] credit report conveys that it is reasonable to place a burden on the credit reporting agency to report them.”¹⁵³

What are those “certain distinctions”?¹⁵⁴ The court mentions the distinction between bankruptcy and wage earner plans as being so fundamental to the message of the credit report that it merits the burden on a CRA to report them.¹⁵⁵ Unfortunately, the court does not expand on this dissimilarity.¹⁵⁶ One could question whether distinctions between ex-spouses who are joint obligors on an account that is part of the bankruptcy proceedings of the other spouse, as the plaintiff in *Heupel* was forced to contend, also merit the same burden.¹⁵⁷

C. Consumers Should Be Rewarded for Attempting to Correct Inaccuracies on Credit Reports

It has been argued that a consumer’s vigilance in monitoring her consumer report is a surefire method of combating the problems of inaccuracy of consumer reports.¹⁵⁸ Case law shows that plaintiffs have gone to great lengths to rectify perceived inaccuracies on their credit reports before bringing lawsuits alleging violations of § 1681e(b).¹⁵⁹ In both *Boothe* and *Yourke*, the plaintiffs made numerous attempts to correct their credit reports upon discovering inaccuracies.¹⁶⁰

152. Koropoulos v. Credit Bureau, Inc., 734 F.2d 37, 45 (D.C. Cir. 1984).

153. *Id.*

154. *Id.*

155. *Id.*

156. *See id.*

157. *Heupel v. Trans Union LLC*, 193 F. Supp. 2d 1234, 1237–38 (N.D. Ala. 2002).

158. *See Avery et al.*, *supra* note 7, at 72 (suggesting that consumer vigilance may be a possible remedy for problems with inaccuracies in a consumer’s credit files). *But see Nehf*, *supra* note 1, at 794–95 (“Even if a consumer gains access to information stored in his file at a credit bureau, the exercise yields no economic benefit unless erroneous or misleading information is purged from the consumer reporting system.”).

159. *See, e.g., Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1155–56 (11th Cir. 1991) (highlighting that plaintiff submitted a customer dispute form and a number of letters to two separate CRAs in an effort to correct misleading information on his consumer report); *Yourke v. Experian Info. Solutions, Inc.*, No. 06-2370, 2007 WL 1795705, at *1–2 (N.D. Cal. June 20, 2007) (describing the repeated efforts that the plaintiff made in contacting the CRA to dispute the accuracy of his consumer report); *Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *1–2 (E.D. Pa. Nov. 25, 2003) (delineating the plaintiff’s efforts in contacting the defendant CRA to get the inaccurate bankruptcy notation on her consumer report removed).

160. *Yourke*, 2007 WL 1795705, at *1–2; *Boothe v. TRW Credit Data*, 768 F. Supp. 434, 435-36 (S.D.N.Y. 1991).

The *Yourke* opinion is notable because the court considered the plaintiff's efforts to correct his consumer report.¹⁶¹ The court concluded that the CRA's failure to correct the plaintiff's consumer report "until five months after [the plaintiff] first complained, and only under continued pressure" from the plaintiff created a triable issue of fact as to whether the CRA had reasonable procedures in place under § 1681i(a).¹⁶²

By contrast, the court in *Boothe* did not consider the fact that the plaintiff disputed the accuracies of his consumer reports. Instead, the court chose to focus on the court documents showing that the so-called "errors" on plaintiff's credit report were technically accurate.¹⁶³ As a result, the court granted the defendant's motion for summary judgment, dismissing plaintiff's § 1681e(b) claims.¹⁶⁴

III. ENSURING NATIONAL APPLICATION OF THE *KOROPOULOS* PRINCIPLES BY AMENDING § 1681E(B)

Even though credit reporting today is a process completed largely by computers,¹⁶⁵ errors in credit reporting are an undeniable reality.¹⁶⁶ Even when the FCRA was first passed, the potential for computer errors in credit reporting

161. *Yourke*, 2007 WL 1795705, at *5 (reasoning that "after *Yourke* demonstrated that the liens had all been released with the payment of little or no money, Experian's continued inclusion of the liens as released but with the full amount for which they were originally filed could be viewed as misleading").

162. *Id.* at *5.

163. *Boothe*, 768 F. Supp. at 438 ("Boothe offers no evidence to dispute the substance of either of these records confirming the accuracy of the information contained in Boothe's credit profile.").

164. *Id.*

165. See Kenneth Gunter, *Computerized Credit Scoring's Effect on the Lending Industry*, 4 N.C. BANKING INST. 443, 443 (2000). Gunter notes that credit decisions were formerly based upon a complex set of financial criteria analyzed by institutional lending officers. *Id.* Now, however, credit investigations are produced "by a method in which a computer program takes information provided by the applicant, as well as several outside sources, and . . . produces a single number by which to rate the applicant's credit risk." *Id.*

166. See Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2411 (statement of Sen. Proxmire) (Senator Proxmire referenced the problem of errors in credit reporting and cautioned that the problem of errors in credit reporting and cautioning that "[e]veryone is a potential victim of an inaccurate credit report. If not today, then perhaps tomorrow."); see also Maurer & Thomas, *supra* note 133, at 612 (citing one study in which the rate of error in credit reporting was about thirty-three percent, calculated by comparing the number of errors investigated with the number of consumer reports that had been issued).

Senator Proxmire's introduction to the fair credit reporting bill reflected lawmakers' concern about the pervasiveness of credit reporting errors. Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2411 (statement of Sen. Proxmire). Concern over credit reporting errors continues today. In testimony before the passage of the 2003 FACT Act, a representative from the National Consumer Law Center stated that twenty-nine percent of credit reports contained "serious errors" including listing accounts that never belonged to the consumer. *June 4, 2003 Hearings*, *supra* note 1, at 94 (testimony of Anthony Rodriguez).

was a major concern.¹⁶⁷ Because errors are bound to occur, procedures and remedies for correcting the errors must be as strong as possible in order to remain true to the goals of the FCRA.

A. Consumer Protection, the Foundation of the FCRA, Is Enhanced by Uniform Application of the Law

The legislative history of the FCRA and its amendments demonstrate the need for uniform national standards.¹⁶⁸ Furthermore, both the 1996 and 2003 amendments to the FCRA reflect the importance of enacting uniform national standards.¹⁶⁹

In deciding § 1681e(b) claims, courts have to choose which application of the law they will follow: the *Koropoulos* balancing test or the technical accuracy approach.¹⁷⁰ This choice gives courts too much discretion in deciding how to apply this consumer protection law. The FCRA is a federal law that should protect consumers uniformly throughout the country.¹⁷¹ Therefore, the interpretation and application of the FCRA must also be uniform.¹⁷²

167. Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2411 (statement of Sen. Proxmire) (remarking that even in 1969 “[w]ith the growing trend toward computerization, the incidence of computer errors is on the [rise]”).

168. S. REP. NO. 91-517, at 3-4 (1969). This report noted that the credit reporting industry has “agreed upon the need for Federal legislation to insure that guidelines apply uniformly and fairly to all segments of the industry.” *Id.* at 3. Additionally, in the legislative history of the 2003 amendments to the FCRA, FTC Chairman Timothy Muris referenced the need for the legislation to make a permanent renewal of the FCRA’s “uniform national standards.” *July 9, 2003 Hearings, supra* note 51, at 208 (prepared statement of the Honorable Timothy J. Muris, Chairman, Federal Trade Commission).

169. See STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 2 (discussing the importance of uniform national standards to the 1996 amendments). The 2003 amendments to the FCRA also underscore the importance of uniform national standards:

Abandoning uniform national standards would mark a radical change in a credit reporting system that has evolved almost entirely without state or local regulation of its core functions. Such a step puts at risk the benefits that flow from the existing national reporting system—the foundation for the most dynamic consumer and mortgage credit markets in the world.

Id. at 1.

170. See, e.g., *Evantash v. G.E. Capital Mortgage Servs., Inc.*, No. 02-CV-1188, 2003 WL 22844198, at *4 (E.D. Pa. Nov. 25, 2003). In deciding which application of the law to follow, the court stated that “[b]ecause the Third Circuit has not endorsed the ‘technical accuracy defense,’ we shall apply the less stringent approach articulated in *Koropoulos*.” *Id.* (footnote omitted).

171. See STATEN & CATE, THE IMPACT OF NATIONAL CREDIT REPORTING, *supra* note 3, at 25 (“Proposals to abandon uniform national standards . . . threaten the diverse array of benefits that flow from the current credit reporting system under the FCRA.”).

172. See Introduction of the Fair Credit Reporting Bill, *supra* note 6, at 2414 (statement of Sen. Proxmire) (“The bill does not seek to curb the growth of credit reporting agencies but rather to make uniform throughout the industry procedures designed to insure the consumer’s right to a reporting system that is accurate and relevant.”).

B. *The Koropoulos Approach Should Be Adopted as the National Standard*

The *Koropoulos* balancing test establishes that courts should weigh the misleading nature of the consumer report information that the consumer is disputing against the availability of ascertaining more accurate or complete information.¹⁷³ This balancing test seeks to find an equilibrium between a consumer's right to have the most accurate credit report possible and the burden of ensuring accuracy that is placed on the CRA.¹⁷⁴

The *Koropoulos* approach must be followed because of its expansive understanding of accuracy and because it "protects an agency which does its best to get at the facts."¹⁷⁵ By allowing the element of completeness to become a factor in the accuracy of consumer reports, the *Koropoulos* court avoided the mistake that the court in *Grant* made by taking such a narrow view of the maximum possible accuracy standard of § 1681e(b).¹⁷⁶ The *Grant* court mistakenly attempted to separate accuracy and completeness, two concepts that are inevitably intertwined.¹⁷⁷

C. *Section 1681e(b) Needs Revision*

Although the requirement of maximum possible accuracy in § 1681e(b) has not been revised since its inception, the case law and other revisions to the FCRA have enhanced the accuracy requirements.¹⁷⁸ This section of the FCRA must be revised to state the following: whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy *and completeness* of the information concerning the individual about whom the report relates.¹⁷⁹

The court in *Koropoulos* incorporated the concept of completeness into its maximum possible accuracy analysis under § 1681e(b) because it did not think that its exclusion from the statute was intentional.¹⁸⁰ The court believed that "Congress did not, in fact, intend to exclude altogether incomplete reports from

173. *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 42 (D.C. Cir. 1984).

174. *See* Griffith, *supra* note 31, at 72.

175. *Id.*

176. *See* *Grant v. TRW, Inc.*, 789 F. Supp. 690, 692-93 (D. Md. 1992).

177. *See id.* at 692 (stating accuracy and completeness are "qualitatively different"). In *Grant*, the court defined the term "accuracy" as something that "can be tested by verification." *Id.* In contrast, the court argued that "a determination of 'completeness' requires the exercise of judgment on potentially difficult questions concerning the meaning and effect of contextual information." *Id.*; *see also* *Henson v. CSC Credit Servs.*, 830 F. Supp. 1204, 1207 n.2 (S.D. Ind. 1993), *rev'd on other grounds*, 29 F.3d 280, 285 n.4 (7th Cir. 1994).

178. *See supra* notes 42-51 and accompanying text.

179. *See generally* *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 44 (D.C. Cir. 1984) (suggesting that Congress did not "intend to exclude" completeness from § 1681e(b)); Griffith, *supra* note 31, at 72 (supporting the *Koropoulos* approach).

180. *See Koropoulos*, 739 F.2d at 44.

section 1681e(b)'s requirement of reasonable procedures."¹⁸¹ Rather, the court asserted that the absence of the word "completeness" from this section of the FCRA was the result of clumsy legislative drafting.¹⁸² *Koropoulos* relied on the testimony of Senator Proxmire and others to show that Congress used the terms "'accuracy' and 'completeness' interchangeably."¹⁸³

Accuracy standards must be as strong as possible because frequently consumers are not aware that their credit reports are being accessed and evaluated.¹⁸⁴ For instance, in the process called "pre-screening," CRAs are permitted to furnish consumer reports in connection with credit transactions not initiated by the consumer if the transaction consists of a firm offer of credit.¹⁸⁵ Although the consumer does have the option to opt-out of these prescreened offers of credit,¹⁸⁶ it is not known the extent to which consumers actually take advantage of this opt-out opportunity.¹⁸⁷ Furthermore, although the information provided on a consumer's report under this provision is minimal, a consumer's name is still generated as being part of a certain bracket of credit scores.¹⁸⁸ Consequently, undiscovered inaccuracies on a consumer's credit report may contribute to misinformation about a consumer's credit profile being disseminated to potential creditors.¹⁸⁹

IV. CONCLUSION

The varied interpretations of the maximum possible accuracy requirement of the FCRA show a need for congressional action. The FCRA is crucial to the functioning of the credit reporting industry and the protection of consumers'

181. *Id.*

182. *See id.* The court reasoned that "[t]he failure of section 1681e(b)'s language itself to specifically mention completeness in addition to accuracy may well be attributable to the fact that it was added so late in the legislative process that there was not time for careful semantic accommodation with earlier adopted provisions." *Id.*

183. *Id.* at 44 n.12.

184. *See* 15 U.S.C. § 1681b (2000) (indicating the various non-consumer initiated purposes for which credit reports may be used). One of the permissible purposes for which a CRA may furnish a consumer report to a third party is through the process of pre-screening. *See supra* note 28.

185. *See* 15 U.S.C. § 1681b(c)(1)(B)(i); Richard Gottlieb, *Firm Offers of Credit: Recent Developments*, CONSUMER FIN. L.Q. REP. 596, 596 (2006).

186. 15 U.S.C. § 1681b(e) (2000 & Supp. V 2005).

187. *See* BD. OF GOVERNORS OF THE FED. RESERVE SYS., REP. TO THE CONG. ON FURTHER RESTRICTIONS ON UNSOLICITED WRITTEN OFFERS OF CREDIT AND INSURANCE 15 (Dec. 2004); Taft & Poulon, *supra* note 13, at 201 ("[M]any commenters believe that consumers are unaware of the ability to opt out of [prescreened] solicitations and the method for exercising such right.").

188. *See* April B. Chang, Note, *Valuables in Your Mailbox? How the Concept of Value in Cole v. U.S. Capital, Inc. Enhances the FCRA's Guidelines Concerning Creditor Marketing*, 10 N.C. BANKING INST. 209, 213 (2006).

189. *See* Avery et al., *supra* note 7, at 50 (describing the frequency of errors in consumer reports and the potential for those errors to be the cause of the denial of credit for consumers).

interests. Thus, consistent national standards of consumer protection should be the law when consumer rights are the subject of the debate.

The best interpretation of “maximum possible accuracy” puts a high burden on the CRAs to ensure that they produce consumer reports with information that is accurate in all senses of the word: factually correct and complete. Courts should not be deciding whether to hold CRAs to a standard that is factually correct, and without misleading or incomplete information, or to a standard that is merely “technically accurate.” Rather, § 1681e(b) of the FCRA must be amended to require a uniform national standard of maximum possible accuracy and completeness. If it is true that “[a] poor credit history is the ‘Scarlet Letter’ of twentieth century America,”¹⁹⁰ then no American consumer should have to wear that letter undeservedly.

190. *June 4, 2003 Hearings, supra* note 1 (testimony of Anthony Rodriguez, Staff Attorney, National Consumer Law Center).