

Testimony
of
Mary Spector
Associate Professor of Law
SMU Dedman School of Law¹
on
Examining the Uses of Consumer Credit Data
before
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, D.C.
September 13, 2012

Chairwoman Capito, Ranking Member Maloney, my name is Mary Spector. I am an associate professor at SMU Dedman School of Law where I teach consumer law and direct a consumer advocacy clinic. Thank you for the opportunity to appear before you today to discuss ways in which changes in consumer reporting might improve consumers' access to credit, eligibility for jobs and access to affordable housing and insurance.

Since 1970, The Fair Credit Reporting Act ("FCRA")² and its amendments have balanced the market's need for accurate information against consumers' interests in protecting sensitive personal and financial information.³ The primary method used to protect consumers is to limit or exclude the reporting of certain information. That is the general approach taken by the FCRA, which defines its requirements for reporting information largely by what is excluded. For

¹ My appearance before the Subcommittee is not in any representative capacity. I am not representing any organization or organizations in connection with my testimony. I provide my institutional affiliation for identification purposes only. The opinions contained in my testimony are my own and are not intended to reflect those of the University.

² 15 U.S.C. §§ 1681- 1681u.

³ See 15 U.S.C. § 1681.

example, credit reports may not contain bankruptcy filings that pre-date the report by more than 10 years,⁴ or civil suits, judgments and arrest records that pre-date a consumer report by more than seven years or until the applicable limitations period has expired.⁵ The Act also limits the reporting time for paid tax liens,⁶ accounts placed for collection and other adverse information, which may continue to appear on a credit report for seven years after payment.⁷ It is also the approach states take in preventing reporting of certain public record information regarding eviction litigation⁸ and payment histories with respect to public utilities.⁹ And, it is the approach taken in H.R. 2086 by the Medical Debt Responsibility Act, which I believe is an important first step in changing methods of consumer reporting in ways that benefit consumers' access to housing, employment, credit and insurance.

Some estimate that outstanding medical debt accounts for as much as 50% of the negative information appearing on credit reports.¹⁰ A researcher at the University of Minnesota

⁴ 15 U.S.C. § 1681c(a)(1).

⁵ 15 U.S.C. § 1681c(a)(2).

⁶ 15 U.S.C. § 1681c(a)(3).

⁷ 15 U.S.C. § 1681c(a)(4).

⁸ *See, e.g.*, Cal. Civ. Code § 1785.13.

⁹ E.g., N.J. Stat. Ann. § 48:3-85 (West); 52 Pa. Code § 54.8, D.C. Mun. Regs. tit. 15, § 3107. *See also* 2011 NY A.B. 4830 (NS), 2011 New York Assembly Bill No. 4830, New York Two Hundred Thirty-Fourth Legislative Session.

¹⁰ *See* Mark Rukavina, *The Financial Burdens of Health Care*, 20 COMMUNITIES & BANKING 9,11 (2009)

estimates the error rate in medical billing is between 30% to 40%.¹¹ When those numbers are plugged into a payment system in which entities other than the consumer may be responsible for payment, it should be no surprise that resolution of accounts can be confusing, time-consuming and frustrating. Even after the bills are paid, the presence of a paid medical debt on a credit report can have a devastating effect on a consumer's access to future credit and employment.

That was the case of Steve and Tara Barnes, whose medical bills for Tara's treatment had been turned over to a collection agency while Steve was still talking to the insurance company about who was responsible for what.¹² Even after Steve paid the bills -- amounting to about \$600 -- their presence on the Barnes' credit report cost the couple when they refinanced their home. They estimate they paid \$1700 more up front than they would have had to pay had the accounts not appeared on the credit report¹³ Passage of the Medical Debt Responsibility Act would help Steve and Tara Barnes and consumers like them by requiring the removal of medical accounts paid more than 45 days prior to the consumer report.

However, any benefits the Barnes might enjoy from the Medical Debt Responsibility Act could be overshadowed by the widespread addition of so-called alternative data contemplated in H.R. 6363. Described as a method to report "positive credit information," careful examination

¹¹ See Jessica Silver-Greenberg, *How to Fight a Bogus Bill: Many Medical Bills Contain Errors That Could End Up Wrecking Your Credit Score. Here's What You Need to Know*, WSJ Online (Feb. 28, 2011).

¹² Carla K. Johnson, *Medical bills can wreck credit, even when paid off*, USA Today (Mar. 5, 2012), available at <http://www.usatoday.com/news/health/story/health/story/2012-03-05/Medical-bills-can-wreck-credit-even-when-paid-off/53367464/1>.

¹³ See Gerri Detweiler, *Could A Medical Collection Account Keep You From Getting A Mortgage?*, Credit.com (Aug. 2, 2011).

of the proposal reveals much more:

- The bill is not limited to so-called positive information and would enable the reporting of all payment information, including whether the consumer qualifies for payment assistance program.
- The proposed bill does nothing to deter the transfer of billing errors, reduce errors on existing reports, or improve the system of dispute resolution, which a recent investigation by the *Columbus Dispatch* describes as a "mess that cries for redress."¹⁴

Widespread reporting of so-called alternative data has the potential for thickening a thin file or creating credit histories for consumers without existing files. However, in considering H.R. 6363, the following should also be taken into account:

- The thickening of a file with negative information or the creation of negative credit history where none previously existed can have a significant negative impact on a consumer, particularly with respect to employment matters. When it comes to employment and insurance, no credit history is better than a poor credit history.¹⁵ Of the nearly 50% of employers who currently use credit reports in

¹⁴ *The Inside Story: Our digging finds mess that cries for redress*, COLUMBUS DISPATCH (May 5, 2012), available at <http://www.dispatch.com/content/stories/insight/2012/05/06/1-our-digging-finds-mess-that-cries-for-redress.html>. In May 2012, the Columbus Dispatch published a multi-part series based on its year-long investigation into nearly 30,000 complaints made to the Federal Trade Commission and offices of attorneys general in 24 states. See Jill Riepenhoff and Mike Wagener *Dispatch Investigation: Credit Scars*, COLUMBUS DISPATCH (May 6, 2012).

¹⁵ See Karen K. Harris, *Full Utility Reporting: Panacea or Scourge for Low-Income Consumers?* THE SHRIVER BRIEF (July 18, 2012).

hiring decisions, the vast majority use them as a negative factor; only 14% use the credit report as a positive factor.¹⁶

- Two states and the District of Columbia currently prevent the reporting of all such information. The issue is under study in a third state, while others, like my own home state – Texas – prevent the reporting of disputed accounts unless and until the matter is resolved against the consumer.¹⁷
- For some consumers, creditors’ access to alternative information may enhance their creditworthiness. In such cases, existing voluntary opt-in opportunities to provide alternative data should be explored and, if appropriate, encouraged.¹⁸

Limits on reporting paid medical debt will almost certainly improve consumers’ access to affordable credit, housing, insurance and jobs. While the addition of alternative data to the reporting system may provide some benefits to consumers, it should be considered only as part of a larger package of reforms designed to reduce errors, increase accuracy and improve the

¹⁶ Society for Human Resource Management, *Background Checking: Conducting Credit Background Checks* 2, 4-10 (July 19, 2012), available at <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx>.

¹⁷ See Tex. Util. Code. § 17.152; Tex. Adm. Code § 25.481(c). Texas also prohibits collectors, including most creditors, from reporting account information to third parties as being undisputed when the consumer has given the creditor written notice of a dispute. Tex. Fin. Code § 392.301(a(4)).

¹⁸ Under the Equal Credit Opportunity Act and Regulations B, creditors must consider information upon the consumer’s request if the consumer believes the credit report or score is not providing an accurate picture (i.e., favorable enough) of credit. 15 U.S.C. § § 1691 - 1691f; 12 C.F.R. § 202.6(b)(6)(ii).

procedures for resolving consumer disputes.¹⁹ There are a number of alternatives available for improving the current system of credit reporting to provide fair and accurate information while protecting consumers' privacy. They include:

- Restricting or prohibiting the reporting of certain public records, such as civil filings until after final disposition,²⁰ or unpaid tax liens.²¹
- Limiting the amount of weight given to suits or judgments for amounts less than \$5,000 or \$10,000 in certain types of cases or from certain types of courts.
- Limiting the use of "name only" reports, which capture information that has nothing to do with the consumer whose report is actually sought, causing significant and potentially long-lasting harm.²²
- Heightening the duty of re-investigation to require CRAs and data furnishers to provide meaningful substantiation in disputed cases.²³
- Providing consumers with greater rights with respect to the reporting of court

¹⁹ See Karen K. Harris and Susan Ritacca, *Alternative Credit Data: To Report or Not to Report, That is the Question*, 44 CLEARINGHOUSE REV. 391, 399 (2010).

²⁰ See, e.g., Cal. Civ. Code § 1785.13.

²¹ See Danshera Cords, *Lien on Me: Virtual Debtors Prisons, the Practical Effect of Tax Liens and Proposals for Reform*, 49 U. LOUISVILLE L. REV. 341 (2011) (proposing FCRA be changed to remove unpaid tax liens from consumer reports seven years after they become unenforceable).

²² See Mike Wagner, *Dispatch Investigation: Credit Scars: Car-buyer flagged as terrorist*, COLUMBUS DISPATCH (May 7, 2012)

²³ See Karen K. Harris and Susan Ritacca, *Alternative Credit Data: To Report or Not to Report, That Is the Question*, 44 CLEARINGHOUSE REV. 391, 399 (2010) (advocating change in burden of proof from consumers to data furnishers).

records and other information that may be technically accurate but incomplete or misleading, as in the case of public records resulting from unfair collection or litigation practices.²⁴

Thank you for the opportunity to share my views with the Subcommittee.

²⁴ See Mary Spector, *Where the FDCPA Meets the FCRA: The Impact of Unfair Debt Collection Practices on the Credit Reports*, (Work in Progress) and Presentation Delivered at Symposium Credit Scoring and Credit Reporting, Suffolk University Law School (June 7, 2012). See also Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257 (2011) (finding evidence of unfair collection practices used in litigation to collect consumer debt); Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259 (2011) (discussing courts' treatment of robo-signed affidavits and advocating use of strict proof standards). See also *Sykes v. Mel Harris & Assoc, L.L.C*, No. 09-Civ.848, (S.D.N.Y. Sept. 4, 2012) (granting motion to certify class of more than 100,000 consumers against whom default judgments allegedly were entered fraudulently).