



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

Testimony of the New York State Office of the Attorney General

**Before the
New York State Assembly
Standing Committee on Banks
and**

Standing Committee on Consumer Affairs and Protection

Public Hearing re: Accuracy and Effectiveness of the Consumer Credit Reporting System

December 6, 2022

Thank you for the opportunity to present testimony to these committees concerning the accuracy and effectiveness of the consumer credit reporting system. My name is Christopher D'Angelo and I am the Chief Deputy Attorney General for Economic Justice at the New York State Office of the Attorney General (NYAG). I want to thank Chair Rozic and Chair Fahy for holding this hearing and inviting the NYAG to participate. Our office believes that the failures of our credit reporting system cause significant harm to consumers and serve as an impediment to the ability of consumers to achieve financial success. More critically, the systems are set up without sufficient accountability to consumers for these failures and in a manner that distributes harm disproportionately on communities of color. As I will discuss below, we believe that the federal government should act to address these inequities but, until that time, we think that there is a role for the state to help minimize these risks and level the playing field.

Credit reporting companies (CRCs) house consumer credit information on over 200 million Americans, including millions of New Yorkers. Because creditors, lenders, employers, insurance companies, landlords, and others routinely rely on this credit information, CRCs serve as critical gatekeepers for important commercial decisions that touch nearly every aspect of consumers' lives. Studies consistently indicate, however, that millions of Americans have material errors on their credit reports, and that these errors have a disparate impact on low-income communities and communities of color. In addition, the increasingly widespread use of credit information for purposes other than assessing creditworthiness, such as by employers to make hiring decisions and insurance companies to set rates, further exacerbates racial and economic disparities.

The NYAG and its state and federal partners have taken action to hold CRCs accountable under the Fair Credit Reporting Act and through the NYAG's general enforcement authority under New York Executive Law 63(12). State legislation establishing common-sense

protections for consumers and enhancing the accuracy of credit information could benefit millions of New Yorkers.

A. Credit reports contain widespread inaccuracies that exacerbate racial and economic disparities.

CRCs maintain consumer credit reports that record each consumer’s history of paying their debt obligations. These credit reports are compiled by CRCs based on voluntary submissions from “furnishers”—institutions where consumers have credit accounts or are responsible for payments, such as creditors or collection agencies. The nation’s three leading CRCs—Experian, Equifax, and TransUnion—house consumer credit information on over 200 million consumers. Although credit reports were originally intended to help lenders assess a consumer’s propensity to pay, they are now commonly used by numerous other commercial parties, including potential employers, insurance providers, and others. As a result, today CRCs serve as gatekeepers for numerous potentially life-changing commercial decisions, including whether consumers can rent an apartment, get a job, borrow money for higher education, access affordable auto, life and homeowners insurance, or make an important purchase such as a home or car.

The Fair Credit Reporting Act (FCRA), enacted by Congress in 1970, and relevant state laws including the New York General Business Law (“GBL”) Article 25, Section 380 *et seq.* require CRCs to maintain reasonable procedures to assure maximum possible accuracy of consumer credit information. When a customer disputes the accuracy of their credit information, CRCs are required to conduct a reasonable investigation, which includes considering all relevant information submitted by the consumer, and to report the results of the investigation to the consumer—generally within 30 days.¹ If the CRC’s investigation finds that the consumer’s credit information is inaccurate, incomplete or unverifiable, the CRC must promptly delete or modify the information.² Similarly, for consumer disputes raised with furnishers (either directly by a consumer or indirectly through a CRC), furnishers are required to conduct a reasonable investigation, review relevant information, and correct any inaccuracies to the relevant CRC.³

Notwithstanding the duties imposed on CRCs and furnishers to investigate and correct errors, study findings have consistently indicated that millions of consumers have material errors on their credit reports. A 2012 study by the Federal Trade Commission (FTC) found that 21 percent of study participants had at least one verified error in their credit report.⁴ More recently, a January 2021 study conducted by the nonprofit organization Consumer Reports found that 12 percent of consumers who had ever checked their credit reports reported finding errors.⁵ These

¹ 15 U.S.C. § 1681i(a)(1), (4).

² 15 U.S.C. §1681i(a)(5); GBL § 380-f(b).

³ 15 USC 1681s-2(b)(1)(A)-(B); 15 USC 1681s-2(a)(2)(B); 12 CFR 1022.43(e)(1). For direct disputes the furnisher must also generally complete its investigation of the dispute and respond to the consumer within 30 days.

⁴ FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (2015), available at <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>.

⁵ Consumer Reports, *A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It* (2022), available at <https://advocacy.consumerreports.org/wp-content/uploads/2021/06/A-Broken-System-How-the-Credit-Reporting-System-Fails-Consumers-and-What-to-Do-About-It.pdf>.

findings are echoed in the over one thousand consumer complaints received by our office regarding the three major CRCs since 2019, and in many more CRC-related complaints found in the Consumer Financial Protection Bureau (CFPB) complaint database, which consistently highlight credit reporting errors. Indeed, the CFPB recently reported that complaints about consumer credit and reporting accounted for more than 70% of the total consumer complaints that the CFPB received last year.⁶ While credit report errors arise from a variety of causes, such as identity theft, fraud, and the CRCs' process of matching information provided by furnishers, the severe consumer harm that results is often the same. Credit report errors can have life-changing consequences for consumers, who may lose out on a job, or access affordable housing, credit, or auto and homeowners' insurance.

The failures of the credit reporting system have disproportionate negative impacts on communities of color for at least three reasons. First, a higher percentage Black and Hispanic consumers have no credit history or report at any of the three major CRCs, making it challenging for them to even access most credit markets.⁷ Second, people of color who do have credit scores at CRCs are more likely to have lower scores. A 2022 report from the Urban Institute, a non-profit think tank, found that rates of subprime credit scores in majority-Black, Hispanic and Native American communities are at least 1.5 times higher than in majority-white communities.⁸ These racial disparities reflect the persistent impact of historical inequities, such as discrimination in employment, housing access, lending policies, debt collection, and criminal justice involvement, that have limited economic choices and the creation of wealth in communities of color for generations. And, third, people of color are more likely to have errors on their credit reports, which artificially drive their scores even lower. The 2021 Consumer Reports study referenced above found that 26 percent of Black, non-Hispanic adults who had checked their credit reports found errors, as compared to just 8 percent of white, non-Hispanic adults.⁹

B. Despite significant enforcement efforts by NYAG, the credit reporting system remains broken.

NYAG has taken a lead role in holding CRCs and furnishers to their obligations, improving credit report accuracy, and increasing the fairness of the credit reporting system. For example, in 2015, NYAG reached a landmark settlement with the three nationwide CRCs that instituted a host of reforms, many of which had nationwide effect.¹⁰ These reforms included requiring CRCs to (i) devote additional resources to investigating disputes raised by consumers,

⁶ CFPB, *Consumer Response Annual Report* (2022), available at https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf.

⁷ CFPB, *Data Point: Credit Invisibles* (2015), available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

⁸ Urban Institute, *Credit Health during the COVID-19 Pandemic* (2022), available at <https://apps.urban.org/features/credit-health-during-pandemic/>.

⁹ Consumer Reports, *A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It* (2022), available at <https://advocacy.consumerreports.org/wp-content/uploads/2021/06/A-Broken-System-How-the-Credit-Reporting-System-Fails-Consumers-and-What-to-Do-About-It.pdf>.

¹⁰ NYAG, *A.G. Schneiderman Announces Groundbreaking Consumer Protection Settlement With The Three National Credit Reporting Agencies* (2015), available at <https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-groundbreaking-consumer-protection-settlement-three>.

(ii) institute a 180-day waiting period before reporting medical debt on consumers' credit reports, (iii) increase visibility of the website for accessing free credit reports, (iv) provide an additional free credit report per year for consumers who experience a change in their credit report from initiating a dispute, (v) cease including debt from predatory lenders on consumers' credit reports, (vi) improve CRCs' and furnishers' monitoring and data accuracy, and (vii) conduct an extensive consumer education campaign to better inform consumers of their statutory rights. In addition, in 2020, when the CFPB, under the direction of the prior administration, suggested that it would not enforce the FCRA's mandatory time frame for investigating customer disputes during the COVID-19 crisis, NYAG led a coalition of 22 attorneys general to step up and fill the void by committing to enforce all federal and state requirements against CRCs and furnishers during the pendency of the crisis.¹¹

Despite these significant enforcement efforts by NYAG, as well as those by other state attorneys general, the CFPB, and the FTC, the credit reporting system remains fundamentally broken. As discussed above, credit reporting errors remain all too common, jeopardizing ordinary consumers' ability to secure employment, rent or buy a home, obtain a credit card, or purchase a car. In addition, other significant problems in the credit reporting industry persist and continue to directly harm consumers. For example:

- Many commercial parties continue to rely on credit scores that penalize consumers with medical collections on their credit report. Medical debt has little-to-no relevance to assessing consumers' creditworthiness because consumers are often unaware of medical collections or view them as charges for which their insurance should have paid. The three nationwide CRCs recently announced that medical debt that has been paid in full, as well as medical debt under at least \$500, will no longer appear on consumer credit reports, and that the waiting period for including medical unpaid debt will increase from 180 days to one year.¹² These joint measures, once implemented, are expected to remove nearly 70% of medical collection debt tradelines from consumer credit reports.¹³ Nevertheless, a recent analysis by the CFPB concluded that nearly half of consumers with medical collections appearing on their credit reports will continue to see them after these changes take effect, and the medical collection tradelines that remain reflected on credit reports after the changes will likely represent most of the dollar amount of medical collections currently reported.¹⁴
- New York's Real Property Law was amended in 2019 to outlaw "tenant blacklisting," or efforts to deny housing to renters with a history of landlord-tenant court cases. NYAG recently took action against, and secured a settlement with, a New York City real estate

¹¹ NYAG, *Letter from State Attorneys General to CSRs* (2020), available at

https://ag.ny.gov/sites/default/files/credit_reporting_agencies_multistate_letter_4.28.20_final_12.52.pdf

¹² See Business Wire, *Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting* (2022), available at

<https://www.businesswire.com/news/home/20220318005244/en/Equifax-Experian-and-TransUnion-Support-U.S.-Consumers-With-Changes-to-Medical-Collection-Debt-Reporting>.

¹³ *Id.*

¹⁴ CFPB, *CFPB Publishes Analysis of Potential Impacts of Medical Debt Credit Reporting Changes* (2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-publishes-analysis-of-potential-impacts-of-medical-debt-credit-reporting-changes/>.

company for continuing to engage in this unlawful practice.¹⁵ However, landlords still can—and routinely do—use credit reports to screen potential tenants. As discussed above, those reports often contain significant errors and relying on them has the effect of reducing access to housing for low-income communities and communities of color.

- Employers routinely use credit reports to make employment decisions, even though credit information generally is unrelated to job performance or capabilities and blocking access to jobs based on credit reports can further exacerbate racial and class discrimination. New York City recently passed a law that generally prohibits employers from considering credit history when making employment decisions, but there is currently no analogous prohibition at the state level.¹⁶
- Auto insurance companies often set significantly higher rates for consumers with lower credit scores. This practice has nothing to do with assessing a consumers’ driving history. Instead, insurance companies generally justify the rate increases by asserting that consumers with lower credit scores tend to file more claims. Although several states ban the use of credit reports in determining insurance rates, this practice is currently permitted in New York and results in disproportionately high rates for consumers with low income and people of color. Indeed, the effect appears to be particularly pernicious in New York. A recent study found that New York is one of three states where low credit scores more than doubles consumers’ auto insurance rates.¹⁷

C. State legislation that provides additional consumer protections would benefit New Yorkers.

Consumers wishing to protect themselves from inaccurate credit reports already have several statutory rights available under FRCA and state laws. These include the right to be notified and receive an explanation when their credit report has been used to take adverse action against them, whether by a lender, a landlord, an employer, or an insurance company. Consumers also have the right to obtain their credit score, dispute incorrect information, and to seek damages for violations of the FCRA.

While these rights help protect consumers, and NYAG and other authorities have enforcement tools available, New York can do more to protect consumers by passing common-sense legislation. The CFPB, which shares responsibility for enforcing the FRCA at the federal level, recently issued interpretive guidance re-affirming that “States play an important role in the regulation of consumer reporting.”¹⁸ The CFPB’s guidance makes clear that “State laws that are not ‘inconsistent’ with the [FRCA] are generally not preempted by that statute,” and the

¹⁵ NYAG, *Attorney General James Cracks Down on Tenant Blacklisting* (2022), available at <https://www.nysenate.gov/newsroom/press-releases/brian-kavanagh/attorney-general-james-cracks-down-tenant-blacklisting>.

¹⁶ See N.Y.C. Admin. Code § 8-107(24).

¹⁷ ValuePenguin, *How Does Your Credit Score Affect Auto Insurance Rates?* (2022), available at <https://www.valuepenguin.com/how-does-your-credit-score-affect-auto-insurance-rates>. The other two states are Arizona and New Hampshire. *Id.*

¹⁸ CFPB, *The Fair Credit Reporting Act’s Limited Preemption of State Laws* (2022), available at https://files.consumerfinance.gov/f/documents/cfpb_fcra-preemption_interpretive-rule_2022-06.pdf.

guidance recognizes that “States therefore retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens.”

Existing legislative proposals would, if passed into law, represent important steps forward in improving the accuracy and effectiveness of the consumer credit reporting system. This includes prohibiting using a consumer’s credit score for determining their access, price, or premium for an insurance policy, prohibiting the use of consumer credit history in hiring, employment and licensing determinations, prohibiting rental discrimination based on consumer credit history; and requiring that CRCs contact consumers when an inquiry is made into their credit history, and provide them with information about the inquiring party upon request.

In addition, legislation that would generally prohibit CRCs from including medical unpaid debt on credit reports would greatly benefit consumers. Indeed, CFPB’s interpretive guidance notes that such “State laws relating to what or when items generally may be initially included on a consumer report . . . would generally not be preempted” by the FCRA. Such legislation would benefit millions of New York consumers by providing common-sense protections and better ensuring the accuracy of consumer credit information.

Conclusion

I want to thank Chair Rozic and Chair Fahy again for holding this hearing and for inviting the NYAG to participate. The AG shares the concerns of these committees regarding the accuracy, fairness and effectiveness of the consumer credit reporting system. The federal government should act to overhaul the consumer reporting system to address this systemic inequity, including by considering proposals to create a public option for credit reporting that eliminates the misaligned incentives embedded in the current system.

In the meantime, NY can act to provide immediate relief to our residents by enacting the some of the proposals discussed above. In particular, eliminating the use of credit history in auto insurance underwriting could result in immediate savings for New Yorkers, and eliminating the use of credit history for hiring decisions could immediately open up employment opportunities for some of the most vulnerable New Yorkers.

Our office shares the concerns that motivate this hearing, and we look forward to working with you to improve and bring accountability to the credit reporting system.