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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL PROTECTION, *Plaintiff*, v. PROGREXION MARKETING, INC., *et al.*, *Defendants.*	Case No. 2:19-cv-00298-BSJ

PLAINTIFF'S MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF JOHN ULZHEIMER

Under Federal Rules of Evidence 104(a), 401, 402, 403, 702, and 703, plaintiff Bureau of Consumer Financial Protection (Bureau) respectfully moves the Court to exclude testimony from John Ulzheimer relating to the opinions proffered in his August 19, 2021 report[1] and the amended and supplemental October 25, 2021 report (together, "Report").[2] Ulzheimer's proffered opinions are irrelevant to this case; are unsubstantiated and based on untested data; and reflect principles and methods that conflict with Ulzheimer's professional work outside of this litigation. The Court should exclude the Report and any related testimony.

INTRODUCTION

Count I of the Complaint alleges that, from at least 2016 through the present, Defendants have violated the Telemarketing Sales Rule's (TSR's) advance fee restrictions for credit repair services.[3]

Defendant John C. Heath, PC, d/b/a Lexington Law (Heath), has moved for partial summary judgment on Count I, citing Ulzheimer's Report in its recitation of supposedly undisputed material facts.

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[1] Ex. 1.

[2] Ex. 2. Ulzheimer's October 25, 2021 amendment and substitution to his August 19, 2021 report presented new data on purported negative credit report item removal and declared that Ulzheimer was no longer relying on the data presented in the August 19, 2021 report. As discussed *infra*, the data presented in both documents are unreliable.

[3] 16 C.F.R. § 310.4(a)(2).

Defendants claim to have produced or identified the material Ulzheimer relied upon in developing the opinions expressed in the Report.[4] The Bureau deposed Ulzheimer on October 25.

None of Ulzheimer's proffered opinions meet the threshold requirements for admissibility, and all are unduly prejudicial and risk jury confusion. They should be excluded.

ARGUMENT

The party proffering expert testimony bears the burden of establishing its admissibility under FRE 702. *U.S. v. Nacchio*, 555 F.3d 1234, 1241 (10th Cir. 2009). The Court, as "gatekeeper," must first determine that the proposed expert is qualified and the testimony is "both reliable and relevant, in that it will assist the trier of fact, before permitting a jury to assess such testimony." *U.S. v. Rodriguez–Felix*, 450 F.3d 1117, 1122 (10th Cir. 2006).

The 2000 Advisory Committee Notes identify certain factors for assessing whether proffered expert testimony satisfies Rule 702, including whether the expert:

- is "proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or

[4] Related discovery disputes remain pending. ECF 197, 206.

whether they have developed their opinions expressly for purposes of testifying."

- has unjustifiably extrapolated from an accepted premise to an unfounded conclusion; and "is being as careful as he would be in his regular professional work outside his paid litigation consulting."[5]

Ulzheimer's Report offers opinions on four topics[6] that do not meet these criteria; are irrelevant to the claims or defenses in this case; and threaten to confuse, not assist, the jury.

I. Ulzheimer's testimony extolling the role and value of credit repair companies should be excluded.

Ulzheimer's testimony regarding the value of credit repair companies' services is unreliable because it contradicts his prior independent professional opinions regarding this subject without sufficient explanation as to the change.

In a May 2020 article posted on credit reporting agency Experian's website, before he was engaged by Defendants here, Ulzheimer explained "Why Paying for Credit Repair Isn't Worth it":

> Credit repair companies cannot do anything for you that you cannot do for free yourself. So what is the value of paying

[5] FRE 702 Advisory Comm. Notes (2000) ("2000 Notes") (citations omitted).
[6] Ex. 1 at 3-4.

> someone else to dispute credit information on your behalf? In many cases, there is none.[7]

[redacted].[8] But they directly contradict his Report, which characterizes credit repair companies as an "integral part of the credit repair ecosystem," that "have an important role in furthering consumer advocacy."[9]

In another article posted the same month on Experian's website, Ulzheimer wrote, under the heading "Does Credit Repair Work?": "While some credit repair companies claim to have deleted millions of negative credit entries, there are no reliable statistics available regarding the effectiveness of credit repair services,"[10] and "[t]here are also no statistics about credit repair's impact on their customers' average credit scores…."[11] These comments appear to be directed at Lexington Law—[redacted].[12]

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[7] Ex. 3, Ulzheimer Dep., Oct. 26, 2021, Ex. 421.
[8] Ex. 4, Ulzheimer Dep. 283:21-22.
[9] Ex. 1 at 10.
[10] Ex. 5, Ulzheimer Dep. Ex. 422.
[11] *Id*.
[12] Ex. 4, 286:12-18. As noted *infra*, [redacted].

Again, Ulzheimer's Report contradicts those published statements. The Report merely regurgitates Defendants' negative item deletion claims and concludes—[redacted]—that Defendants "effectively improve[] consumer credit."[13] This opinion lacks any foundation and facially contradicts Ulzheimer's prior published opinions.

Nothing in Ulzheimer's Report explains this 180-degree departure from his previously published warnings about the inefficacy of credit repair, the unreliability of credit repair company claims, and the illusory evidence that credit repair positively impacts consumers' credit scores. Ulzheimer's proffered testimony here thus does not grow "naturally and directly out of the research [he has] conducted independent of the litigation"; rather his opinions appear manufactured expressly for the purpose of testifying in this matter. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995) (cited in 2000 Notes).

Additionally, Ulzheimer's discussions about the role and value of credit repair have no bearing on any issue in the case. Credit repair companies' role in the credit reporting system and overall value (or lack thereof) is neither an element of

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[13] Ex. 1 at 19.

Plaintiff's Count I claim, nor a defense to it. The Court should exclude this testimony as irrelevant, unreliable, and unduly prejudicial.

II. Ulzheimer's statements regarding the impact of the removal of credit report items should be excluded.

The Report offers only generalities and speculation about the enhancements a consumer may expect from changes in their credit report. These opinions are irrelevant, likely to confuse or mislead the jury, and untethered to any reliable, reproduceable analysis.

The statements regarding the potential impact of negative item removals from a consumer's report have no bearing on the actual issues in the case: whether Defendants have (a) requested or received fees from consumers in violation of the TSR[14] and (b) participated in or assisted their marketing partners in deceiving consumers into purchasing their services. Therefore, testimony on this topic should be excluded because it will not "help the trier of fact to understand the evidence or to determine a fact in issue." FRE 702(a).

Moreover, the opinions and conclusions in the Report on this topic are purely hypothetical and offer no information that would *assist* in determining any

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[14] Heath admits that it provides credit repair services — that is, services represented to remove derogatory items from, or improve, consumers' credit histories, reports, and scores. ECF 66, Heath Answer, admitting Compl. ¶¶ 109-116.

aspect of this case. Instead, they would confuse and mislead the jury about the actual issues, and thus should also be excluded under FRE 403. For instance, the Report hypothesizes that "[t]he removal of neutral or negative tradelines or collection accounts from a credit report *can* enhance a consumer's credit reports and credit scores to his or her material benefit…."[15] (emphasis added). But the Report does not contain, [redacted], any analysis regarding the impact of removals on Lexington Law's and CreditRepair.com's actual customers,[16] or whether their customers in fact experienced improved credit scores.[17] Ulzheimer only makes vague, speculative statements about what improvement *could occur* to confuse the jury about what *did occur*.

Finally, the Report's additional conclusions related to this topic are inadmissible under FRE 702 because they lack any reliable analytical basis. The Report states that "CreditRepair.com and Lexington Law's services are effective overall for consumers in removing items from their credit reports that can negatively impact their credit scores—with real benefits to its clients."[18] [redacted]

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[15] Ex. 1 at 4.
[16] Ex. 4, 150:3-151:6.
[17] *Id.*, 231:10-18.
[18] Ex. 2 at 4.

[redacted].[19] [redacted].[20] [redacted].[21]

The Report includes no analysis of the actual impact of the removals purportedly experienced by Lexington Law and CreditRepair.com customers, [redacted].[22] [redacted]"[23] [redacted]

[19] Ex. 4, 225:23-228:9.
[20] *Id*. 226:15-227:20.
[21] *Id*. 227:21-229:24.
[22] *Id*. 150:3-151:3.
[23] *Id*. 150:10-151:3.

[redacted][24]

By forgoing any analysis, Ulzheimer's Report did not apply known, reliable principles and methods to the particular facts of this case. [redacted].[25] His unfounded conclusions and opinions on this topic are inadmissible.[26]

III. Ulzheimer's Customer Data Analyses Are Irrelevant and Unreliable

Ulzheimer presented figures drawn from Defendants' customer data purportedly reflecting the number and rate of removals from the credit reports of a minority subset of customers while enrolled in Defendants' credit repair services.[27] His proffered testimony on these data is irrelevant, unqualified, unreliable. It is the product of inadmissible hearsay and Ulzheimer is unqualified to offer it.

Ulzheimer's data analyses have no bearing on any issue in the case. Defendants' services' overall efficacy (or inefficacy) is neither an element of

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[24] Ex. 4, 229:17-230:8.
[25] *Id.* 229:17-230:18.
[26] FRE 702(c); 2000 Notes ("The amendment requires that the testimony must be the product of reliable principles and methods that are reliably applied to the facts of the case.").
[27] Ex. 2 at 2.

Plaintiff's Count I claim, nor a defense to it. The Court should exclude these analyses as irrelevant.

Additionally, Ulzheimer did not establish his qualification to offer opinions on the data presented in his Report. [redacted].[28] [redacted],[29] [redacted].[30] [redacted]"[31] [redacted].[32] [redacted].[33] [redacted]

[28] Ex. 4, 108:13-110:3.
[29] *Id*. 249:21-251:5.
[30] *Id*. 250:17-251-5.
[31] *Id*. 251:6-18.
[32] *Id*. 251:25-252:4.
[33] *Id*. 252:5-8.

[redacted].[34] The data presented in the Report plainly is not derived from the application of Ulzheimer's skills or knowledge, or even his own efforts. [redacted][35] [redacted],[36] [redacted]. The Report's opinions regarding Lexington Law and CreditRepair.com's "efficacy" are thus entirely unfounded, and lack any basis in reliable, verified, or validated evidence, and Ulzheimer is unqualified to opine about any of it.[37]

Finally, Ulzheimer's conclusions are unsound extrapolations. The data presented in the Report is restricted to a minority subset of Lexington Law and CreditRepair.com consumers, but the Report's conclusions and opinions misleadingly present the data as applying to all of their customers. Of Lexington Law's nearly 4 million customers in the relevant timeframe, the data presented in the Report pertain to a minority of only 1,662,089 consumers.[38] [redacted]

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[34] Ex. 4, 109:7-110:3.
[35] Ex. 2 at 3-4.
[36] Ulzheimer testified that "Berkeley Research" provided the data tables that appear in his report. Ex. 4, 108:13-21. Berkeley Research has not been disclosed as an expert in this matter.
[37] Ex. 4, 115:23-116:4.
[38] Ex. 2 at 2. The Report does not provide the total number of CreditRepair.com customers during the relevant period, only the subset Ulzheimer considered.

[redacted].[39] Even though the data came from this minority population, the Report uses it to make claims regarding *all* Lexington Law and CreditRepair.com customers.[40] But the Report provides no reason or justification why any of the outcomes included in the Report can be extrapolated beyond the cherrypicked minority population from which the data was drawn.[41] This biased analysis fails FRE 702's criteria and also will confuse and mislead the jury.

Finally, Lexington Law's and CreditRepair.com's unvalidated negative item removal tallies are inadmissible, untrustworthy hearsay, [redacted]. FRE 703, 802.

IV. Ulzheimer's testimony about the role of consumers and credit repair companies in credit reporting systems should be excluded.

The remaining 15 pages of Ulzheimer's August19 Report are devoted to "background" on the credit reporting system and its participants. That testimony is irrelevant to this case, which does not concern credit scoring models, debt collector

[39] Ex. 4, 245:20-246:18.
[40] Ex. 2 at 2-5.
[41] 2000 Notes.

complaints, the Fair Credit Reporting Act, or the other topics Ulzheimer addresses. Ulzheimer's proposed testimony sheds no light on the actual issues in the case. Therefore, testimony on this topic should be excluded because it will not "help the trier of fact to understand the evidence or to determine a fact in issue," FRE 702(a); instead, it will confuse and mislead the jury about the actual issues, and thus should also be excluded under FRE 403.

Background information on credit reporting and applicable laws, to the extent relevant, can be provided through a preliminary, neutral jury instruction. No "expert" testimony is needed.

CONCLUSION

For these reasons, the Ulzheimer Report and Ulzheimer's proffered opinions therein should be excluded.

Dated: November 15, 2021

Respectfully submitted,

/s/Jonathan Reischl
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CERTIFICATE OF COMPLIANCE WITH THE WORD-COUNT LIMIT

I certify that the above memorandum complies with the word-count limit of 2,500 words set by DUCivR 7-1(a)(3)(C). Using the Word Count function of Microsoft Word, I calculated the word-count of this memorandum as 2456 words, excluding the face sheet, signature block, certificate of service, and exhibits.

Dated: November 15, 2021

/s/ Jonathan Reischl

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Ex. 1

Ulzheimer Expert Report

Aug. 19, 2021

Expert Report of John Ulzheimer

In the Matter of Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc., et al.

2:19-cv-00298-DBP

United States District Court, District of Utah

August 19, 2021

I. Qualifications

A. Employment History

I have worked in the consumer credit industry since November of 1991. I spent six years with Equifax Credit Information Services and spent several of those years both performing the consumer dispute process1 and managing a team of consumer service agents that also performed the consumer dispute process, including disputes related to identity theft, fraud, and credit repair. My team and I also handled the process of generating the appropriate dispute forms, manual verification, credit report corrections, and disclosures to consumers. While at Equifax, I gained an intimate understanding of how credit reports and files are compiled, stored, retrieved, and delivered.

At FICO (formally known as Fair Isaac Corporation and best known for its FICO credit scores), I spent an additional seven years gaining an intimate understanding of credit scoring, including how credit scores are designed, developed, used by lenders, and impacted by the information in consumer credit files. From time to time, I was involved with the development of FICO credit bureau scorecards, which are the heart of credit scores.

At Credit.com, I spent six years teaching consumers and the media how the consumer credit system works, including topics such as credit reporting, credit scoring, credit repair, credit cards, and debt collection, to name but a few. I was also the developer of the Credit Report Card, a credit-scoring tool that interprets TransUnion credit data as a credit-scoring model would, and then gives the consumer an easy to understand summary of their credit risk. The tool won several awards in 2009 when it was released.

As a former employee of Equifax, Fair Isaac, and Credit.com, I have worked with, helped train, and supervised employees on processes and procedures involved in credit reporting, credit report dispute resolution, Fair Credit Reporting Act ("FCRA") compliance, credit score model design and development, and consumer credit risk management.

I am also familiar with general underwriting practices, including what prospective lenders consider when determining credit risk. This includes a general understanding of what lenders consider important and not so important when considering a consumer's credit report. I gained this knowledge from many years of working with various lenders during my employment with Equifax and Fair Isaac.

During the first four years of my time at Fair Isaac, I taught members of the mortgage industry how to properly implement credit scoring into their processes. At the time, Fannie Mae and Freddie Mac had just mandated the use of FICO scoring in their respective underwriting systems, Loan Prospector and Desktop Underwriter. My role, among other things, was to teach industry trade associations, large national mortgage lenders, Fannie Mae, and Freddie Mac how FICO scoring worked, how consumer risk changed as deal variables changed, and how to educate their home-buying customers on the importance of solid credit management.

B. Presentations and Academia

I have made hundreds of credit reporting and credit scoring presentations during my time working in the credit industry. These presentations were delivered to consumers, consumer groups, credit counselors, credit reporting agencies, nationally recognized lenders, members of the press, members of Congress, and banking authorities, and were of varying levels of complexity depending on the audience.

I frequently guest lecture about credit reporting and credit scoring at The University of Georgia in Athens, GA. I have also taught at Emory University's Center for Lifelong Learning, where I was rated by the students as the top instructor in the Personal Finance and Investments category during the 2005-06 term. In April 2016 I began guest lecturing to 2nd and 3rd year students at the Emory University School of Law. I also volunteer my time teaching credit reporting and credit scoring fundamentals to members of the Georgia Consortium on Personal Financial Literacy.

I received a Bachelor of Science in Criminal Justice from the University of West Georgia in June 1991. I am well qualified to interpret and discuss the issues at hand in this case.

C. Publications

I am a frequent contributor on consumer credit issues to USA Today, New York Times, Wall Street Journal, Yahoo! Finance, CNBC, Money, Forbes, Kiplinger, Consumer Reports, American Banker, US News and World Reports, Bankrate.com, and other regional business and consumer media outlets.

I have written the following books and training manual on the same topics, including *You're Nothing but a Number* (2007), *The GetCreditWise Tool Kit* (2007), *Surviving Identity Theft* (2007 w/ Emily Peters), and my most recent book, *The Smart Consumer's Guide to Good Credit: How to Earn Good Credit in a Bad Economy* (2012). In 2018 I contributed to the following article: *The Use of Compliance Condition Codes,* CO Bar Association Newsletter. In 2019 I authored *Current Trends in Credit-Related Lawsuits*, Conference on Consumer Finance Law, Quarterly Report, Vol.73, No.3.

I have been a full-time author since 2004 and my publications number in the several thousands. I currently write or have written articles on credit issues for newsletters, websites, and blogs. Examples include or included a monthly column, "Ask John," for Credit.com's monthly e-newsletter, for Boardroom, Inc.'s monthly newsletter, *BottomLine Personal*, and for CreditBloggers.com, Credit.com, Enloop.com, CNBC.com, IMS Expert Services Newsletter, Mint.com, SmartCredit.com, CreditSesame.com, the National Foundation for Credit Counseling, Credit Card Insider, Experian, The New York Times, JD Byrider, MagnifyMoney, The Simple Dollar, Zillow, CardRates, and VantageScore Solutions.

The most comprehensive list of my publications can be found using Google under the search terms "John Ulzheimer" and "John Ulzheimer Credit."

D. Certifications

Twice, I have been Fair Credit Reporting Act ("FCRA") certified by the credit reporting trade association, the Consumer Data Industry Association ("CDIA"), and its predecessor, the Associated Credit Bureaus ("ACB"). The FCRA Certificate Program was developed to prepare consumer reporting agencies and companies that furnish information to the consumer reporting agencies to meet the requirements set forth in the FCRA. The course covers how consumers, credit grantors, and those who use and furnish information to consumer reporting agencies are affected by the FCRA.

E. Previous Expert Witness Work and Testimony

I have served as an expert witness in more than 500 lawsuits concerning credit issues and have been qualified to testify as an expert in both Federal and state courts. I have served as an expert for both plaintiffs and defendants, and for creditors and consumers.

F. Present Engagement

Defendants have retained me in this matter to opine regarding the role of credit repair companies within the reporting ecosystem and John C. Heath, Attorney at Law, PLLC d/b/a Lexington Law's ("Lexington Law") efficacy in fulfilling consumers' need for accurate, verifiable, and fair credit reports. I am being paid $575 per hour for all work performed in this matter. I have no financial interest in the outcome of this matter.

I have attached to this Report a copy of my curriculum vitae (Exhibit A), a list of documents and other information which I have considered in forming my opinions herein (Exhibit B) and a list of all other cases in which, during the past four years, I have testified as an expert at trial or by deposition (Exhibit C).

II. Summary Of Opinions

Having reviewed the facts and materials in this case and based on my analyses presented in this Report, it is my opinion that:

1. Consumers, and credit repair companies on behalf of consumers, play a significant role in ensuring the accuracy, verifiability, and fairness of data reported to credit bureaus—especially with respect to data furnished by third party debt collectors, a leading source of consumer disputes, and other data furnishers.

2. Credit repair companies such as Lexington Law provide a valuable professional service as many consumers lack the time, ability, knowledge, or perseverance

required to navigate the matrix of laws and entities that comprise the credit reporting ecosystem.

3. The removal of neutral or negative tradelines or collection accounts from a credit report can enhance a consumer's credit reports and credit scores to his or her material benefit, helping to improve the consumer's ability to obtain a job, pass a security clearance, or qualify for a loan.

4. Lexington Law is effective in obtaining the removal of tradelines on behalf of its clients.

III. Overview of the Credit Ecosystem

A. Credit Reporting Agency Background

A credit report is a record of an individual's current and past financial liability experience. The report includes information about a consumer's personal identity, their employment, credit inquiries, collection agency accounts (if any), public records (liens, judgments,[1] and bankruptcies only), as well as their account history (also called "trade").

There are a number of companies that maintain consumer credit files and generate credit reports when requested by the consumer, a lender, an insurer, a debt collector, or another organization with a right to view such data. These companies are called credit reporting agencies, consumer reporting agencies, or credit bureaus.

These companies buy, sell, collect, normalize and store a consumer's personal, public and financial data. These companies then generate and deliver reports (more commonly referred to as credit reports) from said data in response, for example, to requests from lenders or insurance companies who have received an application for credit or to bind insurance.

There are three major, commonly recognized credit reporting agencies in the United States: Equifax, Experian, and TransUnion. Equifax, a public company, is headquartered in Atlanta, Georgia. Experian, a public company in the U.K., has its U.S. headquarters in Costa Mesa, California. TransUnion, a public company, is headquartered in Chicago, Illinois. Each of the three companies maintains over 200 million credit files. There are roughly 600-675 million consumer credit files in circulation.

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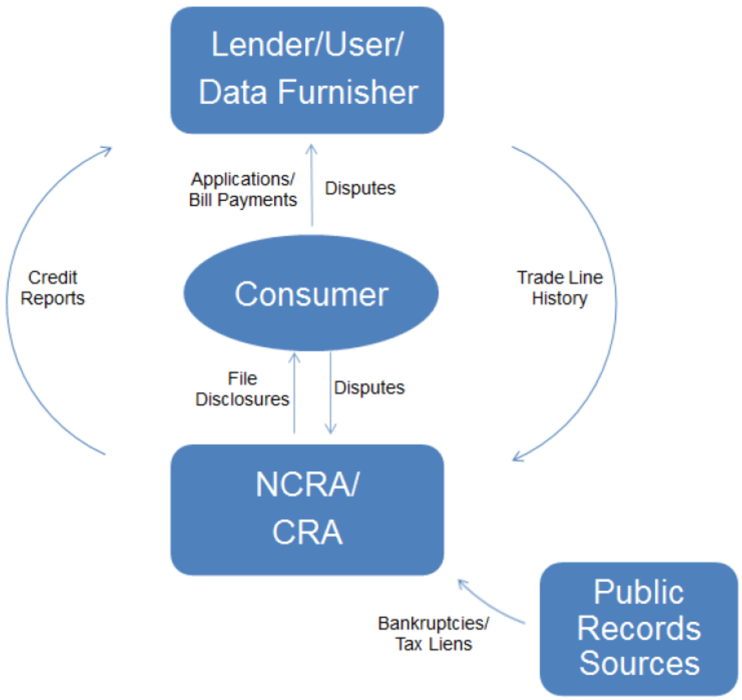
[1] In mid-2017, the credit reporting agencies removed tax liens and judgments from their credit file systems. *See* AnnaMaria Andriotis, *Credit Reports to Exclude Certain Negative Information, Boosting FICO Scores*, WALL ST. J. (Mar. 12, 2017 6:33 PM), https://www.wsj.com/articles/credit-reports-to-exclude-certain-negative-information-boosting-fico-scores-1489338002; Ismat Mangla*, Tax Liens Are No Longer a Part of Credit Reports*, EXPERIAN (July 5, 2018), https://www.experian.com/blogs/ask-experian/tax-liens-are-no-longer-a-part-of-credit-reports/

As I will explain in greater detail below, the below graphically represents the general flow of information within the credit reporting ecosystem:[2]



B. Preparation of Credit Reports

A credit report is normally delivered to the lender, insurance company, consumer service provider or other requesting party when a consumer submits an application for some sort of benefit, such as a home loan, auto loan, credit card, subscription service, or insurance. The requestor or lender, referred to by the credit bureaus as a subscriber or user, submits a request for the consumer credit file. Using proprietary search logic, the credit bureau compiles a credit report using its stored data and delivers the report in a format called Metro 2. This process is virtually instantaneous, giving lenders and other users the ability to make instant decisions.

Information that is sent to the credit reporting agencies, and thus appears on consumer credit reports, comes from companies generally referred to as "data furnishers." Banks, credit card issuers, credit unions, and debt collectors are common examples of data furnishers. Furnishers are almost always going to be some sort of financial institution,

[2] CFPB, KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM: A REVIEW OF HOW THE NATION'S LARGEST CREDIT BUREAUS MANAGE CONSUMER DATA 13 (Dec. 2012) ("2012 CFPB Report").

although there are some exceptions. There are some 10,000 data furnishers providing information to the national credit reporting agencies on a monthly basis.[3]

C. Where Consumers Fit in the Credit Reporting Ecosystem

While there are a variety of players within the credit reporting ecosystem—the credit bureaus, credit report resellers, users of credit reports, credit data furnishers, and credit scoring model developers—the consumer often has little visibility into the communications that take place between these players about the consumer's own financial information.

The most common transactions in consumer credit reporting involve the credit bureaus and the users and furnishers of credit information. According to the CFPB, over 1.3 billion accounts are furnished to the credit bureaus on a monthly basis.[4] The information on a consumer credit report is largely made up of information furnished by a consumer's current or former creditors, debt collectors attempting to collect a debt for a third party, or from public data sources. Other than commercial debt that has been personally guaranteed, the information on a consumer credit report is meant to represent personal liabilities of a consumer borrower/guarantor.[5] Accordingly, a credit report is comprised of detailed and often sensitive personal and financial information about a consumer, and its contents can have a determinative effect on a consumer's daily life.

Yet, consumers have little to no control over the credit reporting process except to place fraud alerts, security freezes, or consumer statements on their credit reports. Consumers cannot control whether or not inaccurate, misleading or unverifiable information is reported to the credit bureaus in their names. They can, only reactively, file disputes or inquiries in hopes of having their credit reports corrected or explained. This puts consumers at an informational disadvantage within the credit reporting ecosystem.

Consumers do have a variety of rights, including the right to see their credit reports at no cost once every 12 months, or more often under other circumstances.[6] Consumers can claim these free credit report disclosures either via www.annualcreditreport.com each week through at least April 2022, or from the credit bureaus directly.[7] In some cases the credit bureaus may be allowed to charge consumers a fee for copies of their credit report disclosures.[8] Disclosures do not include free credit scores and 3rd parties acting on behalf of

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[3] CFPB, KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM: A REVIEW OF HOW THE NATION'S LARGEST CREDIT BUREAUS MANAGE CONSUMER DATA 3 (Dec. 2012) ("2012 CFPB Report").

[4] *Id.* at 3.

[5] *Id.* at 6 ("Credit scoring models depend on the credit information contained in consumers' credit files to be accurate to effectively predict a consumer's relative risk of delinquency.").

[6] *Id.* at 27.

[7] *Id.*; *see also* AnnualCreditReport.com, https://www.annualcreditreport.com/index.action (last visited August 12, 2021).

[8] 2012 CFPB Report at 27.

consumers, such as Lexington Law, cannot obtain these disclosure credit reports for consumers. Consumers must, instead, claim their own free credit reports.

Even when consumers can access their credit reports, understanding the information contained in them can be a difficult process. Many consumers do not recognize the names of the entities reporting negative items on their credit reports—the original lenders that the consumer interacted with may have sold the consumers' debt to a third party debt collector/debt buyer.[9] Because of interest and fees that may have accrued, the consumer may also be unable to recognize the amounts owed or past due.[10] As such, even when the data on a credit report is accurate, the consumer may be understandably confused about items on their credit report.

As I have described, the credit reporting ecosystem is made up of a complex series of interactions between a variety of players whose roles are not always well-understood. This can be an intimidating system for the average consumer to navigate. Moreover, the laws governing credit bureaus, debt collectors, and data furnishers—including the Fair Credit Reporting Act ("FCRA") and Fair Debt Collection Practices Act ("FDCPA") and accompanying regulations—can be confusing to laypersons, and often overlap. As such, consumers are often unaware of their legal rights or unsure how to assert them.

Debt collectors and data furnishers often lack a meaningful incentive to educate consumers of their rights vis a vis their credit reports. It appears debt collectors would do better financially when consumers are unaware about their ability and right to challenge or seek more information about an item on their credit reports. And, because debt collectors—who are also data furnishers—can use the threat of reporting debts to credit bureaus against consumers to encourage payment, debt collectors are systematically discouraged from removing negative items from a consumer's credit report until after those debts have been paid or settled.

D. Credit Repair Companies

One way that consumers can assert their rights within the credit reporting ecosystem is to engage the services of a credit repair company. Consumers deserve and, frankly, have a need to understand how their data is being used by and exchanged between furnishers and credit reporting agencies. Credit repair companies can serve as a resource for the consumer to educate themselves about and then leverage the complex laws that govern these entities and their use of consumer data. A credit repair company, like Lexington Law, can offer services to address the many obstacles and frustrations that a consumer may face in attempting to deal with the credit reporting ecosystem—and furnishers—by themselves.

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[9] *Id.* at 29–30.

[10] Moreover, this information can also be inaccurate. *See id.* at 23 ("A credit file can inaccurately depict the terms and status of a valid account such as inaccurately depicting the date an account was closed, the credit limit for the account, or whether a trade line is delinquent. Similarly, a collection item on the report may inaccurately reflect the payment status of the debt or the amount of money owed.").

In doing so, credit repair companies can advocate for consumers, assisting them in actions that consumers are entitled to take under Federal law, such as asking for more information about, seeking verification of, or requesting an investigation into an item on their credit reports.

As such, credit repair companies can allow consumers to effectively raise their voice and take part in the ongoing conversation about their own financial data. For example, consumers may choose to engage the services of a credit repair company to file disputes or request verifications or information on their behalf and send them to either the credit bureaus ("indirect disputes") or the furnishers of the credit information ("direct disputes").

Credit repair companies can help fill an important role by asking furnishers to verify that the information presented on consumer's credit reports is fairly displayed, accurate, and verifiable. As the CFPB has stated, "[a]ll parties to the credit reporting system have a vital interest in achieving accuracy in credit reports."[11] Indeed, "[t]he accuracy of the data maintained by the [credit bureaus] is the backbone on which our credit-based economy relies."[12] Consumers depend on credit bureaus having accurate data "to obtain credit and to realize their financial goals."[13] Otherwise, a consumer's ability to take out a loan with favorable terms, obtain housing, or gain employment can be negatively affected.[14] Moreover, "[i]naccurate data reporting undermines the central purpose of consumer reports"—predicting the "potential creditworthiness of consumers."[15]

As noted above, as the custodians of the underlying data, the individual data furnishers (over 10,000 of whom voluntarily report to the credit bureaus each month) are better equipped than the credit bureaus to verify the vast quantities of information—over 1.3 billion entries a month—they provide.[16] That is why credit bureaus seek verification assistance from their data furnishers through the formal dispute process.

Debt collectors, for example, do not always have resources or incentive to proactively vet the issues that can arise from reporting debts incurred to a different creditor. For example, sometimes the underlying documents required for verification are not readily available to the data furnisher—especially in the case of third party debt collectors who purchase or are

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[11] 2012 CFPB Report at 23*; see also id.* at 6 ("Inaccurate credit information may cause credit scoring models to understate or overstate a consumer's credit risk to lenders. Accurate credit information helps decision makers predict certain risks effectively, while inaccurate credit information in credit reports has the potential to compromise the effectiveness and consistency of decisions that rely on them, and the potential to cause material harm to affected consumers.").

[12] CFPB, SUPERVISORY HIGHLIGHTS CONSUMER REPORTING SPECIAL EDITION, WINTER 2017, at 4 (Mar. 2017).

[13] *Id.*

[14] *Id.* at 12.

[15] *Id.*at 17.

[16] 2012 CFPB Report at 6.

consigned accounts from the original lenders—or the data furnisher is not aware of the consumer's particular circumstances that bear on the fairness of the collections effort, such as whether or not a debt has been legally incurred or is otherwise truly the consumer's liability.

The choice to engage the services of a credit repair company belongs to the consumer. Credit repair companies, such as Lexington Law, disclose to consumers that they have the right to dispute credit information on their own and at no cost (as required by Federal law). The decision to choose to hire a credit repair company is just that, a choice. Doing so can be an effective method for a consumer to raise his or her voice in the conversation taking place between the credit reporting agencies and their furnishers.

According to a 2012 study conducted by the Federal Trade Commission ("FTC"), some 35% of consumers abandoned disputes of credit report information they still believed to be inaccurate.[17] Many of these consumers who abandoned their disputes did so because they did not have enough time to continue the dispute.[18] Hiring a credit repair company can be a time-efficient method for consumers to pursue disputes or investigations into inaccurate credit report information.

Most credit repair companies offer variable pricing structures. Lexington Law charges its clients a monthly fee—dependent on the service level that clients choose—that determines the number of inquiries or disputes sent a month on that clients' behalf, as well as access to a number of credit monitoring tools.[19] Customers can choose to cancel Lexington Law's services at any time, and they are not charged by Lexington Law until the services it was hired to perform have been fully rendered.[20]

E. The Evolution of Credit Repair

I have been engaged with credit repair service providers, in one form or another, since 1991, several years before the passage of the Credit Repair Organizations Act or "CROA." At Equifax I performed and eventually helped to manage the consumer dispute resolution process. This included handling disputes submitted by credit repair companies.

At FICO we programmed our scoring models to bypass certain scored attributes when credit report entries were actively being investigated pursuant to a consumer dispute. This prevented the credit report entry from possibly lowering the consumer's FICO credit scores while the item was being investigated. This applied for disputes filed by consumers on their own and disputes filed by credit repair companies on behalf of their clients.

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[17] *See* FTC, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003, A1–A2 (Jan. 2015).

[18] *Id.* at iii.

[19] See LEX0000540 to LEX0000546, LEX0007413.

[20] See LEX0000540 to LEX0000556.

Since 2005 I have performed contract work for a variety of credit repair software providers and have attended and spoken at dozens of credit repair tradeshows. From my seat, I have seen the credit repair industry evolve from simple letter writing services that charged substantial up-front fees, to a more sophisticated and reputable industry. Today's dispute letters are more inclusive of language representing the various consumer protection statutes like the FCRA and FDCPA.

Some credit reporting agencies have formed subscriber relationships with credit repair companies, Lexington Law included. Credit repair companies thus over time have become a more accepted and integral part of the credit repair ecosystem and have an important role in furthering consumer advocacy.

IV. How Consumers' Data Is Used in the Credit Reporting Ecosystem

A. Risk Based Pricing

Risk-based pricing is a process used by creditors, insurance companies, landlords, retailers, and utility companies ("data users" or "subscribers"). Data users attempt to measure the downside financial risk of doing business with a particular consumer against upside gain if the product being offered to the consumer is priced appropriately. For example, if a consumer presents little risk, a lender can charge a consumer a lower interest rate because the consumer's credit score suggests that the consumer will pay on time.

If a consumer presents a higher risk, the lender may decline the application or charge a higher interest rate in order to subsidize the risk posed by extending a loan to that consumer. Credit reports and credit scores have become synonymous with credit risk and risk-based pricing.

By way of example, as of July 27, 2021 the lowest published average interest rate for a conventional 30-year fixed rate mortgage loan was 2.521%. This rate was available for consumers who had FICO scores of 760 or higher. The same type of mortgage loan for a consumer who had FICO scores between 620 and 639 was 4.11% as these consumers pose more risk to the borrower and, as such, their borrowing costs are higher.[21]

B. Metro 2 and Consumer Disclosure Style Credit Reports

There are two credit report formats available to either consumers or users. These two styles are either the consumer disclosure format or the Metro 2 format.

As previously addressed, Metro 2 is a credit reporting language that is designed to normalize credit reports for users, such as banks and credit card issuers. Metro 2 is a series of alphabetical, numeric, and alpha numeric coding which serves as the basis for credit

[21] https://www.myfico.com/credit-education/calculators/loan-savings-calculator/

reports. A credit report in Metro 2 format is indecipherable to consumers and is, instead, intended to be machine readable.

A consumer disclosure report, on the other hand, is designed for consumer consumption. The reports available to consumers via various websites, including the credit bureaus' websites, are in the disclosure format. While disclosures are certainly easier to read than Metro 2 credit reports, the data contained can still be difficult for consumers to understand, decipher, and recognize.

C. Credit Scoring

A credit score is a number that summarizes an individual's credit risk based on a snapshot of their credit report at some point in time. A credit score helps lenders evaluate an individual's entire credit report by estimating their likelihood of becoming 90 days late or worse on any credit obligation in the 24 months after the score is calculated.[22]

No one item on a consumer's credit report is the basis for their credit scores. Credit scoring models, instead, consider a wide ranging universe of credit report attributes including account information, credit inquiries, collections, debt related metrics, the presence or lack of credit experience, and public record information.

The most widely used credit scores are FICO branded scores, which are the credit scores created by FICO. Lenders can buy the various FICO scores from any of the three major credit reporting agencies. The first generation of FICO's credit scores was made available via Equifax in 1989.

FICO develops its scores based on information in the consumer credit files maintained by the credit reporting agencies. A credit score may influence the credit available to the consumer and the terms that lenders offer to the consumer (e.g., interest rates and credit limits). Credit scores can be calculated using different scoring models, although FICOs are the most common in the United States, Canada, and other countries that maintain sophisticated credit reporting systems.

Even under the FICO brand there are dozens of credit scores commercially available and in use in the United States. No consumer has one credit score but rather has hundreds of scores, most of which are credit bureau based scoring systems such as FICO and VantageScore, custom scoring models or pooled scoring models, which are developed by analytics companies for use by one company or a small group of companies.

A FICO credit score, and all other brands of credit scores, are not a permanent component of credit reports. Credit scores are, rather, an ancillary or optional product sold by the credit reporting agencies along with their credit reports for an additional cost. Accordingly,

[22] *See* 2012 CFPB Report at 10. This is referred to as a "performance definition," or a credit score's stated design objective.

a consumer's credit scores do not fluctuate over time, similarly to how the temperature reading on a thermometer is constantly changing, but instead is calculated anew each time a credit score is purchased or procured by a lender or a consumer.

Factors Affecting Credit Scoring

FICO's commonly used credit-risk scores take into account a number of credit report components. Those components that contribute to a FICO credit score and the relative weight of each (expressed as a percentage) are:

- 35% – **Payment History**: The presence or lack of negative information
- 30% – **Debt**: How much, what type, various debt related ratios
- 15% – **Length of Credit History**: How long an individual has had credit
- 10% – **Account Diversity**: The variety of credit experiences
- 10% – **Hard Inquiries**: A record of when an individual's credit report is accessed

Payment History (**35%** contribution on the FICO scale) – A record of negative information can potentially lower a consumer's credit rating or score. In general, risk scoring systems look for any of the following negative events: charge-offs; collections; late payments; repossessions; foreclosures; settlements; bankruptcies; liens; and judgments. Within this category, FICO considers the severity of the negative item (minor derogatory versus major derogatory), the age of the negative items, and the prevalence of multiple negative items.[23]

Debt (**30%** contribution on the FICO scale) – FICO considers the amount and type of debt carried by a consumer. There are three types of debt considered:

- **Revolving debt:** This is credit card, retail card, and some gas card debt. While home equity lines of credit have revolving terms, the bulk of debt considered in this category is unsecured revolving debt incurred on "plastic." The most important measurement from this category is called "Revolving Utilization," which is the relationship between the consumer's aggregate credit card balances and available credit card limits, also called "open to buy." This is expressed as a percentage and is calculated by dividing aggregate credit card balances by aggregate credit limits and multiplying the result by 100, yielding the Revolving Utilization percentage. The higher the percentage, the lower an individual's FICO score likely will be. This is why simply closing credit cards is generally not a good method for improving one's credit score. Closing one or more credit card accounts will reduce an individual's total available credit limit and, in turn, likely increase the individual's Revolving

[23] In the FICO and VantageScore scoring systems, a severe or major derogatory item includes anything that is currently past due, historically 90 days past due or worse, a public record, or any account status or narrative that indicates default or severe delinquency (e.g., repossession, foreclosure, settlement/short sale, collections, charge-offs). Historical 30 and 60 day delinquencies are considered to be minor derogatory events.

Utilization percentage, unless the cardholder also reduces their outstanding balances as well.

- **Installment debt:** This is debt where there is a fixed payment for a set period of time, such as an auto retail installment account requiring the same payment for 36, 48, or 60 months.

- **Open debt:** This is the least common type of debt. Open debt must be paid in full each month or upon demand. A certain variety of credit cards require a consumer to "pay in full" each month. The American Express Green card is a common example. Debts associated with third party debt collectors are also open debt. Collection agencies report "open" account types to the credit bureaus.

Length of Credit History (Credit File Age) (**15%** contribution on the FICO scale) – The older an individual's credit report, the more stable it likely is. The credit file "age" is determined by looking at (1) the date the oldest account was opened, and (2) the average age of the accounts in the credit file. The age of the credit file is measured from the oldest account's "date opened" field. The average age is calculated using the "date opened" field on all accounts, whether they are currently open or closed.

Account Diversity (**10%** contribution on the FICO scale) – An individual's credit score will benefit from having a diverse set of account types in his or her credit file. Having experience across multiple account types (revolving, auto, mortgage, etc.) benefits an individual's credit score because the individual is proving an ability to manage different types of debt.

Hard Inquiries (**10%** contribution on the FICO scale) – An inquiry is noted every time a company requests some information from a consumer's credit file. There are several kinds of inquiries that may or may not affect one's credit score. Inquiries that have no effect on the creditworthiness of a consumer (including so-called "soft inquiries") can stay on a credit report for as little as 6 months and are never visible to lenders or credit scoring models. There are several types of soft inquiries:

- Prescreening or promotional inquiries, where a credit bureau may sell contact information to credit card companies, lenders, or insurers for consumers who meet criteria set by the inquirer. Pre-approved credit card offers are mailed to consumers identified through a prescreening or promotional inquiry.
- Creditors check current customers' credit files on a periodic basis through an account management, account maintenance, or account review inquiry.
- When a consumer checks his or her own credit report it is referred to as a consumer disclosure inquiry.
- Employment screening inquiries.
- Insurance related inquiries.

- Utility related inquiries.

Other types of inquires (known as "hard inquiries") can have an impact on the creditworthiness of a consumer. These inquiries are visible to lenders and credit scoring models. These inquiries usually result from a lender requesting a consumer's credit report when the consumer applies for an extension of credit. Hard inquiries can, but do not always, affect the borrower's credit score. Limiting the number of credit inquiries can help a consumer's credit score.

D. Credit Scoring Models

Multivariate Systems

Credit scoring models are multivariate, meaning they evaluate a variety of information or combinations of information on a credit report to generate a final score. No single credit item determines an individual's credit score. In fact, the impact of any one item on an individual's credit score is dependent on all of the other items on their credit report, and may not have any impact at all.

Multi-Scorecard Systems

Credit scoring models are actually a consolidation of multiple credit scoring systems called scorecards. A scorecard is a credit scoring model designed to evaluate the risk of a group of consumers who have certain similarities in their credit file (homogenous populations). For example, a consumer with a bankruptcy on his credit report is scored using a model or scorecard designed specifically to evaluate the credit risk of consumers who have filed bankruptcy.

Similarly, a consumer with limited credit information (known as a "thin file") is scored using a model or scorecard designed to evaluate the credit risk of consumers with thin files. Most credit scoring systems have many scorecards, as there are many unique consumer profiles, each with different risk levels. The selection of the appropriate scorecard is made by the credit scoring system prior to calculating and rendering a final score.

Characteristics, Variables, and Weights

Each scorecard contains a series of characteristics, variables, and weights. A characteristic is a question asked of the credit report by the scoring system. For example, a common characteristic in most credit risk models asks, "how many accounts with a balance are present?"

Other examples[24] include:

[24] These are intended to illustrate the characteristic, variable and weighting process and is not meant to mimic the variable classing or weights of any particular credit scoring systems.

Does the consumer have any delinquencies on his or her credit report?
How long has it been since the consumer's most recent delinquency?
Does the consumer have a bankruptcy on his or her credit report?

While these examples are plain English questions, credit scoring systems answer the questions by reading the data embedded in the credit report. Scorecards regularly use at least 12 characteristics, and, in some cases, significantly more.

Each characteristic has what are referred to as variables. Variables are the series of available answers to the characteristics (or questions). The set of potential variables (or answers) to the sample[25] characteristics above might be:

- Does the consumer have any delinquencies on his or her credit report?
  (Yes or No)
- How long has it been since the consumer's most recent delinquency?
  (Less than 36 months ago or More than 36 months ago)
- Does the consumer have a bankruptcy on his or her credit report?
  (Yes or No)

While these examples are simplistic, most characteristics have a much larger set of available variables. Once the credit scoring system has completed the process of selecting the scorecard and determining the proper variable for each characteristic in that scorecard, the model assigns weights or points to each variable. For example, the model might assign points as follows:

- Does the consumer have any delinquencies on his or her credit report?
  If the answer is Yes, 0 points are awarded out of 100.
  If the answer is No, 100 points are awarded out of 100.
- How long has it been since the consumer's most recent delinquency?
  If the answer is Less than 36 months ago, 25 points are awarded out of 75.
  If the answer is More than 36 months ago, 75 points are awarded out of 75.
- Does the consumer have a bankruptcy on his or her credit report?
  If the answer is Yes, 0 points are awarded out of 50.
  If the answer is No, 50 points are awarded out of 50.

Once the model has assigned weights or points to each variable, the points are tabulated, resulting in a final credit score. The entire process is computerized and can be accomplished rather quickly. The credit score is usually appended to a credit report and delivered to the lender for use in risk management decisions.

[25] The preceding and following characteristic and variable breakdowns, as well as the weights assigned on this report are EXAMPLES and do not represent the reality of any credit scoring system. These examples are simply meant to illustrate how a credit-scoring model considers information on a credit report.

V. Debt Collector Complaints and Credit Report Accuracy

According to the CFPB there are over 10,000 companies that furnish data to the credit bureaus.[26] These data furnishers provide over 1.3 billion accounts or tradelines to the credit bureaus on a monthly basis.[27] In 2011, for example, the credit bureaus received ~8,000,000 disputes from consumers regarding their credit reports involving ~35,000,000 disputed credit report entries.[28]

According to a study by the FTC, some 20% of credit reports sampled contained errors that were eventually corrected by a credit bureau after a dispute was filed.[29] And, 80% of consumers who filed credit reporting disputes had their credit reports modified as a result.[30]

Of these disputes, data furnished by debt collectors had the highest dispute rates. Roughly 40% of the disputes handled by the credit bureaus are associated with collection accounts.[31] This volume is despite collections only accounting for ~13% of all reported accounts.[32] Collection accounts result in higher number of consumer disputes, 4x that of auto tradelines and 5x that of mortgages.[33] This high dispute rate is likely due to several factors: (1) the negative effect of collection accounts on consumer credit reports (giving consumers more incentive to pursue disputes); (2) the higher likelihood that consumers' information was compromised given that collection accounts are often bought and sold numerous times between third party collection entities; and (3) consumers not recognizing the reporting third party debt collector.[34]

The CFPB also found that an unidentified number of debt collector data furnishers had policies and procedures in place that did not differentiate between FCRA, FDCPA or debt validation requests.[35] And, the policies and procedures did not "contain any substantive instructions on how to conduct investigations of disputed accounts."[36] This is troubling

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[26] 2012 CFPB Report at 3.

[27] *Id.*

[28] *Id.* at 4.

[29] FTC, *In the FTC Study, Five Percent of Consumers Had Errors on Their Credit Reports That Could Result in Less Favorable Terms for Loans*. The study sampled approximately 1,000 consumers "selected the match the demographic and credit score information of the general public." *Id.*

[30] *Id.*

[31] 2012 CFPB Report at 4, 29.

[32] *Id.* at 14.

[33] *Id.* at 29. Auto tradelines are disputed at a rate of .27% and mortgage tradelines at a rate of .21%, as compared to collection tradelines, which are disputed at a rate of 1.06%. *Id.*

[34] *Id.* at 29–30.

[35] CFPB, SUPERVISORY HIGHLIGHTS CONSUMER REPORTING SPECIAL EDITION, FALL 2019, at 6 (Dec. 2019).

[36] *Id.*

considering the commonly known and longstanding statutory obligations for data furnishers to conduct reasonable investigations of disputed accounts.

In fact, the CFPB has consistently found evidence about which to be critical with respect to data furnished to the credit bureaus by debt collectors. As referenced above, in 2011 the CFPB identified that 40% of credit disputes are of collection accounts.[37] In 2015 the CFPB identified that their examination of "one or more" debt collectors identified weaknesses in compliance management systems and a failure to have "reasonable written policies and procedures" with respect to information furnished to the credit bureaus.[38] In 2019 the CFPB identified that "one or more" debt collectors examined collected unauthorized interest from debtors and falsely represented the amount or balance due as a result.[39]

The CFPB recently released statistics from calendar year 2020 indicating they received 542,300 complaints in 2020, which was a 54% increase over the number of complaints received by the CFPB in 2019. Further, according to the CFPB 58% of the complaints they received in 2020 were the result of "credit and consumer reporting."[40] Calendar year 2020 was also a record year for Fair Credit Reporting Act lawsuit filings[41], indicating consumers were more active than ever in leveraging their legal rights to address credit reporting issues, even during a global pandemic.

These troubling occurrences of consumer disputes, lawsuits, complaints and high error rates further demonstrate that consumers, including credit repair companies acting on behalf of consumers, have an active role to play in the credit reporting ecosystem by exercising consumer rights to seek verification of items on credit reports.

VI. The Fair Credit Reporting Act and Dispute Resolution

The FCRA is the federal statute that defines, among other things, when credit reports can be accessed, consumer's rights, obligations of the credit bureaus and their data furnishers to perform reasonable investigations, and various notice requirements.

A. The Dispute Resolution Process

A consumer can dispute information on a credit report by contacting the credit reporting agencies or furnishing party, although the consumer's rights may be different depending on what party they contact. A consumer can file a dispute with the credit reporting agencies on

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[37] 2012 CFPB Report at 4, 29.

[38] CFPB, SUPERVISORY HIGHLIGHTS CONSUMER REPORTING SPECIAL EDITION, SUMMER 2015, at 9 (2015).

[39] CFPB, SUPERVISORY HIGHLIGHTS CONSUMER REPORTING SPECIAL EDITION, SUMMER 2019, at 7 (Sept. 2019).

[40] CFPB, Press Release 2020 Complaint Report (Mar 2021). https://www.consumerfinance.gov/about-us/newsroom/cfpb-annual-complaint-report-highlights-more-than-a-half-million-complaints-received-in-2020/

[41] https://webrecon.com/webrecon-stats-for-dec-2020-and-year-in-review/

their websites, by U.S. mail, via telephone, or in person. Consumers can also hire companies or attorneys, such as Lexington Law, to prepare correspondence or address credit report issues on their behalf.

When a dispute is filed with a credit bureau, several things happen. First the credit bureaus, sometimes with the assistance of trained vendors, review the relevant information sent by the consumer regarding the dispute. This allows the credit bureau to determine the nature of the dispute, such as whether it is fraud related, a mixed credit report issue, or some other type of dispute.

Once the nature of the dispute is identified, the credit bureau will either direct it to the appropriate internal group for handling, or communicate the consumer's dispute to the furnishing party. Further, consumers may provide supporting documents with their dispute. When the credit reporting agencies receive such supporting documents, they generally provides copies to the data furnisher as part of its reinvestigation process.

The item in dispute may, in certain circumstances, be marked on the credit report as being "Consumer disputes – reinvestigation in process" by appending a specific code to the disputed item. This Compliance Condition Code[42] is represented by the letters "XB."

When an XB code is associated with a credit report entry, that particular item is excluded from any credit score characteristics that measure payment history or debt, until the dispute is resolved or closed and the XB code is removed. This allows the credit reporting agency and data furnisher to conduct the requested investigations without the disputed item impacting the consumer's credit score while the investigation is open and ongoing.

B. Dispute Codes

When a consumer's dispute is received by the credit reporting agency, they distill the dispute into a three-digit dispute code. These dispute codes assist the credit bureaus in communicating the type and nature of the dispute to the furnisher and guide (or limit) the investigative actions of the furnisher. For example, dispute code "001" refers to the situation where the "Consumer says [the account is] not his or hers, Provide or confirm complete ID."

These dispute codes and other consumer information are then pre-populated on a form called an Automated Consumer Dispute Verification ("ACDV") and sent to the furnisher via a web-based system called Online Solution for Complete and Accurate Reporting or "e-OSCAR."

[42] A Compliance Condition Code ("CCC") is one of the variety of codes in the Metro-2 credit reporting language. According to the Credit Reporting Resource Guide, a CCC "allows the reporting of a condition that is required for legal compliance according to the Fair Credit Reporting Act or the Fair Credit Billing Act." CDIA, 2020 Credit Reporting Resource Guide, Ex. 8: *Compliance Condition Codes* (2020).

e-OSCAR allows documents sent by the consumer to the credit reporting agencies to be attached to the ACDV communication and sent to the furnisher of the information. Once the data furnisher receives the ACDV via the e-OSCAR system, they can see the name and identification of the consumer, as well as the nature of the dispute and any attachments.

The data furnisher usually has 30 days to determine if the consumer's dispute requires a modification to their credit report, or if the disputed item is already reported accurately. Either way, the data furnisher will fill out the "response" portion of the ACDV form with directions to modify the item, delete the item, delete the item due to fraud, or leave the item unchanged.

The data furnisher's response is sent back the credit bureaus via e-OSCAR. Once the credit bureaus receive the data furnisher's response, they will modify, delete, or leave the entry as previously reported.

The credit bureau then sends, or causes to be sent, correspondence, usually by mail, to the consumer with the results of the investigation. Under the FCRA, this entire process must be completed within 30 days,[43] although the CDIA and credit bureaus indicate the process generally takes less time thanks to automation.

VII. Lexington Law Effectively Improves Consumer Credit

A. Lexington Law's Services

As previously discussed, consumers can find navigating the credit reporting system on their own can be aptly described as being both frustrating and ineffective.[44] Lexington Law provides services meant to lighten this burden on the consumer.

As background, I have the following understanding of Lexington Law's processes:

Once a consumer has become a Lexington Law client, their credit reports from the three major credit bureaus—Equifax, TransUnion, and Experian—are pulled and loaded into a client facing portal called Case Valet.[45] From this first pull of a client's credit reports, Lexington Law begins identifying and tracking negative items that may damage a consumer's credit score. Negative items that appear on a client's credit reports when he or she initially signs up with Lexington Law are termed "presenting negatives."

Lexington Law clients use Case Valet, sometimes with the added assistance of a Lexington Law Paralegal, to identify which presenting negatives on their credit reports they'd first like to either dispute or seek additional information regarding, and under what conditions. For

[43] The 30-day period may be extended an additional 15 days if the consumer provides supplemental information during the initial 30 day reinvestigation period.

[44] *See, e.g.* CFPB's Response to Defendants' First Set of Requests for Admission, Request No. 52.

[45] *See* PGX0000865; Lexington Stage III Submission, Response to Interrogatory No. 18.

each item on their credit report, Lexington Law clients select an action type corresponding to their particular situation, including: "this isn't mine"; "I never paid late"; "unrecognized collection"; "not mine due to court decision"; "military service"; or "student loan error."[46] A client can also choose "none of these apply," or alternatively, clients can direct Lexington Law to ignore—and thus take no actions for—an item on their credit report.[47]

Clients can continue to access and use Case Valet to direct Lexington Law to dispute or request information regarding negative items on their credit reports throughout the tenure of their engagement with Lexington Law.

Lexington Law also allows clients to select one or more "focus tracks" that may be appropriate to that individual client's situation, such as: divorce, student loans, medical bills, identity theft, or military service.[48] Each of these focus tracks represents a situation in which specific credit reporting laws might apply to that consumers' advantage. For example, a consumer might not be legally responsible for a debt incurred by a former spouse. By offering focus tracks, Lexington Law can better leverage these laws to the consumer's advantage.

Additionally, Lexington Law clients can chose up to three negative items to receive "priority attention," directing Lexington Law towards which items to focus on first so consumers can achieve their financial goals faster.[49]

Once the Lexington Law client chooses their items, an action type, any focus track(s), and the priority level applicable to each item—Lexington Law generates the appropriate letter correspondence to send to the relevant data furnisher(s). Lexington Law refers to any correspondence sent directly to a data furnisher as an "intervention."[50] Lexington Law also directly corresponds with the three credit bureaus on behalf of consumers via electronic transmissions—termed "challenges."[51] Often, Lexington Law will use both challenges and interventions simultaneously for the same negative item on a client's credit report.

Lexington Law's portal allows the consumer to answer appropriate questions regarding their particular life circumstances and understanding of negative items on their credit report. This input helps determine the correspondence that is sent by Lexington Law on the client's behalf. Correspondence categories include: requests for goodwill modifications; account information requests; validation of debt; cease and desist requests; requests for

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[46] *See* PGX0000865; PGX0002334; ECF No. 103-3, Declaration of John C. Heath ¶¶ 8-9, dated November 4, 2020; ECF No. 106, Declaration of John C. Heath ¶ 10, dated November 5, 2020.

[47] PGX0000865; PGX0002334.

[48] *See* LEX0004313 ; Breakdown of Clients, Clients by Focus Track.

[49] *See* Deposition of Eric Kamerath, June 4, 2015, at 353:10-14.

[50] *See* Legal Memorandum Concerning the Consumer Financial Protection Bureau's Enforcement Jurisdiction Over Lexington Law Firm and Public Policy Considerations at 4, Sep. 17, 2015.

[51] *See id.*

repeat investigation with accompanying documents, notarized challenges, and responses to credit bureau stall letters.[52]

Lexington Law provides additional services that may help a client repair their credit and achieve their financial goals. For example, Case Valet offers educational resources for a client to obtain information on credit repair, credit scores, debt consolidation, identity theft, and building credit.[53] Case Valet also contains a Credit Score Improvement Analysis that gives clients personalized score improvement tips detailed to each factor of their credit score.[54] Clients can also use Lexington Law's other credit protection features, such as its Personal Finance Manager, Identity Theft Alerts, TransUnion Credit Monitoring, Wallet Shield, and Junk Mail Reducer.[55] Moreover, Lexington Law has a feature that allows clients to flag a specific creditor as abusive, requesting that the creditor communicate with the client only through the mail rather than over the phone.[56] These features allow the client consumer to take a more active role in monitoring their own credit and intervening in the credit reporting ecosystem when problems arise.

B. Lexington Law's Results in Improving Consumer Credit

Summary of Removal Data

Since March 2016 Lexington Law has represented approximately 3,961,598 consumers as clients.[57] During this time, Lexington Law's 1,659,483 clients who had 1 month or more between TU FICO Score Dates experienced the removal of over 16,683,569 negative credit report entries.[58] Over 87.80% of clients experienced at least one removal of a negative item from a credit report, and over 58.40% of all clients obtained 5 or more removals.[59] Lexington Law's data demonstrates that the longer a client engages its services, the more removals that client is likely to obtain. Additionally, Lexington Law clients rarely see removed items reinserted onto their credit reports.

Clients' Presenting Negatives

A significant percentage of Lexington Law clients—over 59%—had 15 or more presenting

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[52] *See id.* at 4-5, 8-9.

[53] See *id.* at 7; Legal Memorandum in Support of Lexington Law's Compliance with Federal Consumer Protection Laws and Commitment to Compliance at 5, June 17, 2016.

[54] *id.*; LEX0007413.

[55] *See id*.

[56] *See* Lexington Law 129.

[57] LEX0032612-- LEX0032616

[58] *Id.*

[59] *Id.*

negatives when first signing up with Lexington Law.[60] As shown below, 41% of Lexington Law clients had fewer than 15 presenting negatives, approximately 39% of clients had between 15 to 35 presenting negatives, and the remaining 20% of clients had over 35 presenting negatives.[61]

Total Negatives	Total Customers	Percentage
0 to 14	1,610,986	41%
15 to 35	1,548,578	39%
36 +	802,034	20%
Grand Total	**3,961,598**	100%

Some clients sign up with Lexington Law with zero presenting negatives on their credit reports. In advance of a triggering event such as identity theft or a late payment, these clients may engage the services of Lexington Law to monitor their credit reports and assist them in removing negative items as they arise.[62]

Removals for Lexington Law Clients

The vast majority of Lexington Law clients obtain removals of negative items from their credit reports. As shown below, over 79% of Lexington Law clients have had at least one negative item removed from a credit report during their engagement with Lexington Law.[63]

Total Removals	Total Customers	Percentage
0	847,617	21%
1 to 4	1,253,561	32%
5 to 8	698,923	18%
9 +	1,161,497	29%
Grand Total	**3,961,598**	100%

In particular, 32% of Lexington Law clients obtained removals of between one and four negative items, 18% of clients obtained between five and eight removals, and 29% of clients—representing approximately 1,161,497 consumers—obtained over eight removals.[64]

Moreover, the removals obtained by Lexington Law clients are by and large permanent.

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60 *Id.*

61 *Id.*

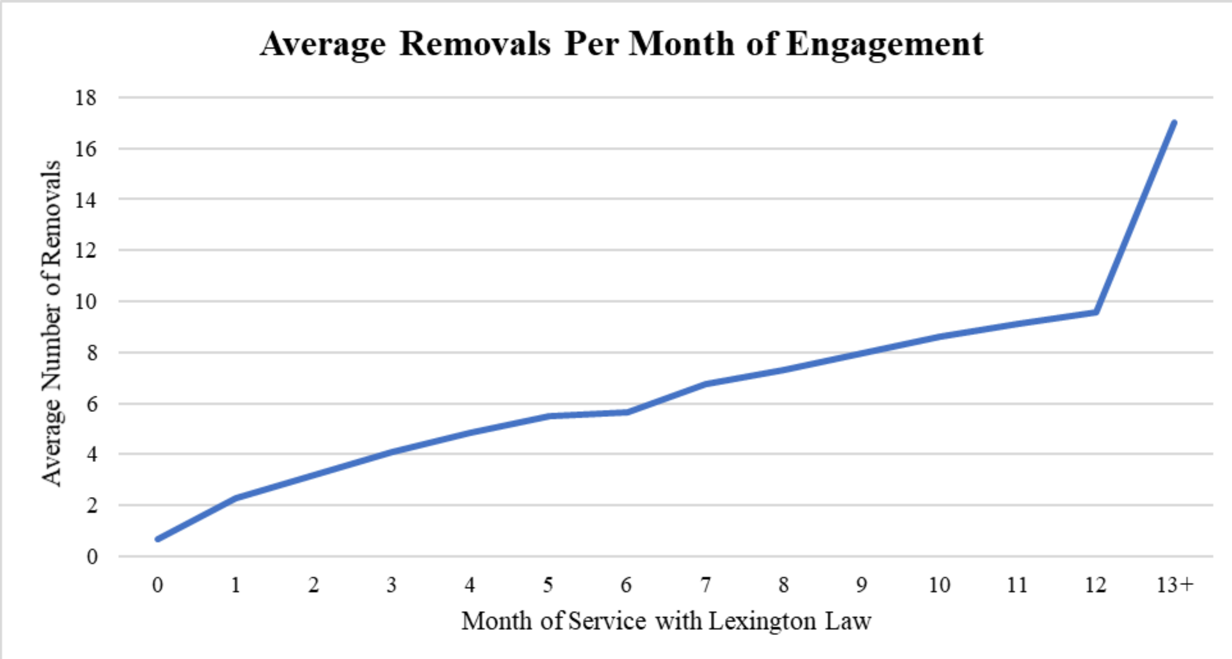
62 *Id.*

63 *Id.*

64 *Id.*

Removals by Client Tenure

The efficacy of Lexington Law in assisting consumers over time can be seen in its tenure data, which tracks the average number of removals a client obtained per month of engagement.[65]



As shown below, the average number of removals Lexington Law clients obtained during a monthly period increased steadily over time.[66]

Calculated Tenure (months) [1]	TOTAL CUSTOMERS [2]	TOTAL NEGATIVE ITEMS REMOVED [3]	AVG NEGATIVE ITEMS REMOVED PER CUSTOMER
0 or less	430,521	512,530	1.19
1	956,907	3,481,214	3.64
2	599,961	3,285,852	5.48
3	392,900	2,744,512	6.99
4	258,622	2,151,101	8.32
5	193,924	1,821,508	9.39
6	191,821	1,891,015	9.86
7	109,665	1,250,913	11.41
8	89,048	1,083,261	12.16
9	73,613	949,500	12.90
10	61,041	832,976	13.65
11	55,014	767,318	13.95

65 *Id.*

66 *Id.*

12	55,034	790,554	14.36
13+	307,470	6,013,543	19.56
Grand Total	**3,775,541**	**27,575,797**	**7.30**

In particular, clients within their first month of service with Lexington Law obtained an average of 3.64 removals.[67] In their second month of service with Lexington Law, clients obtained an average of 5.48 removals.[68] By the third and fourth months, clients obtained an average of approximately 6.99 and 8.32 removals.[69] At six months, the average number of removals increased to 9.86.[70] Finally, after a year of engaging Lexington Law on their behalf, clients had obtained an average of 14.36 removals.[71]

The below chart shows average removals for Lexington Law clients broken down by periods of sixty days or less, sixty-one to one-hundred eighty days, and over 180 days.[72]

Calculated Tenure (months) [1]	TOTAL CUSTOMERS [2]	TOTAL NEGATIVE ITEMS REMOVED [3]	AVG NEGATIVE ITEMS REMOVED PER CUSTOMER
0-60	1,987,389	7,279,596	3.66
61 - 180 days	1,037,267	8,608,136	8.30
181 + days	750,885	11,688,065	15.57
Grand Total	**3,775,541**	**27,575,797**	**7.30**

This data shows that, although results varied by individual, clients who stayed with Lexington Law longer obtained more removals over time.

C. Effect of Removals For Lexington Law Clients as Consumers

As shown above, Lexington Law clients experienced a significant number of removals of negative items from their credit reports over the course of their engagement with Lexington Law. These removals are overwhelmingly of items that can negatively impact consumer credit scores, such as collection accounts, late payments, and charged off accounts. Unless removed, negative items such as these on a consumer's credit report could cause a potential lender to outright deny credit to the consumer, or offer loans with

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[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

unfavorable terms or rates, potentially costing the consumer thousands of dollars interest.[73]

Point being, Lexington Law's services are effective overall for consumers in removing items from their credit reports that can negatively impact their credit scores—with real benefits to its clients. The removal of these negative items can lead to the improvement of Lexington law client's credit scores.

Consumers with better credit reports and credit scores are considered to be a lower credit risk than consumers with poor credit reports and lower credit scores. This could mean qualifying for credit they otherwise would not have or from more mainstream lenders. And it could mean access to loans with more advantageous terms, potentially saving clients' money on interest and fees.[74] Accordingly, Lexington Law clients may experience concrete and tangible financial benefits as a result of these negative item removals. It can also boost employment applications and security clearances.

Lexington Law is thus an effective service for consumers wishing to obtain the removal of negative items from their credit reports—whether the items are inaccurate, unfairly displayed, or unverified—and potentially see a favorable increase in his or her credit score.

* * * * *

This expert report is based on my 29+ years of experience and knowledge gained as a professional in the consumer credit industry, specifically as an employee or contractor of Equifax Credit Information Services, Fair Isaac Corporation, and Credit.com, on my review of relevant documents produced in this matter, and as a result of my previous expert witness work, which includes more than 500 cases. All of my comments are accurate to the best of my knowledge as of the time I prepared this report. All of the opinions and comments stated in this report are expressed to a reasonable degree of professional certainty.

I reserve the right to supplement or amend my opinions, especially as I understand discovery is ongoing. I declare that the foregoing is true and accurate to the best of my ability based on the documents I have reviewed, my education, my experience, my training, and my expertise.

Executed this 19th day of August 2021,
in Atlanta, Georgia

[73] *See* 2012 CFPB Report at 11.

[74] *See id.* at 10 ("Consumers with very high scores thus are likely to get more favorable interest rates and other more favorable loan terms. In contrast, consumers with lower numerical scores present higher risks of default and may only be able to get loans at higher interest rates or other less favorable terms, if lenders are willing to lend to them at all.").

John Ulzheimer

EXHIBIT A

John Ulzheimer Bio and CV

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John Ulzheimer, President of The Ulzheimer Group, LLC and Founder of www.creditexpertwitness.com, is a nationally recognized expert on credit reporting, credit scoring and identity theft. In addition, his expertise includes **FCRA, FDCPA, CROA**, **CARES Act** credit reporting obligations, and credit report and credit score damages. John has been retained as an expert witness/legal consultant in credit related litigation over 500 times for both Plaintiffs and Defendants, has written hundreds of opinion reports, has provided sworn deposition, trial and arbitration testimony over 100 times, and has been qualified and admitted as an expert in Federal and State courts.

John is twice FCRA certified by the Consumer Data Industry Association (the trade association of the credit reporting agencies) and has 29+ years of experience in the consumer credit industry including positions with Equifax Information Services, Fair Isaac (the inventor of the FICO® credit scoring system), Credit.com, and years of concurrent work with numerous consumer credit related companies.

John currently is or was the credit blogger for Zillow, Experian, Mint, CreditSesame, Card Rates, Credit Card Insider, JD Byrider Systems, The New York Times, Credit.com, SmartCredit, The Simple Dollar, VantageScore Solutions, and the National Foundation for Credit Counseling. John has been published and quoted thousands of times over the past 18 years on the topic of consumer credit[1]. He has authored numerous educational materials on the subject including:

- The book*, The Smart Consumer's Guide to Good Credit*
- The book, *You're Nothing but a Number*
- The consumer handbook, *Surviving Identity Theft*
- The consumer handbook, *The Get Credit Wise ToolKit*
- *The Use of Compliance Condition Codes,* CO Bar Assn. Newsletter
- *Trends in Credit-Related Lawsuits*, CCFL, Quarterly Report, Vol.73, No.3

Relevant Experience at Equifax – Managed consumer dispute process including consumer interview, logging consumer dispute, generating dispute forms, communicating with data furnishers, modifying consumer credit report according to results of investigation, and communicating dispute resolution results to consumers. Fluent in ACDV/CDV, AUD/UDF and Metro-2.

Managed relationship between Equifax and thousands of small customers, such as credit unions, car dealerships, banks, and collection agencies. Role included pricing negotiations, cross selling credit products including Credit Marketing Services, credit scores, fraud detection services and data access software.

[1] My articles are periodically subjected to publisher edits. Accordingly, I cannot affirm that my published articles will contain soley my originally drafted content, or now contain content with which I fully agree.

Managed relationship between Equifax and large strategic clients based in Northeast Florida including large regional bank and national credit card issuer. Role included pricing negotiations, cross selling credit products including Credit Marketing Services, and credit scores.

Relevant Experience at Fair Isaac (FICO) – Supported all of FICO’s credit bureau based scores sold by the North American credit reporting agencies; Equifax, Equifax Canada, TransUnion, TransUnion Canada, and Experian. Managed credit score pricing for several years. Well versed in credit score validations, impact analyses, score migration studies, and credit scorecard development. Has performed hundreds of credit score trainings to audiences of all levels of sophistication including lenders, credit bureaus, members of Congress, consumer groups and consumers.

John has contributed content for CNBC’s “On The Money”, Freddie Mac’s "Know Your Score" campaign, Oprah’s “Debt Diet” series and Carbonite’s “Breach” podcast. He is a frequent commentator on credit-related issues in various outlets including USA TODAY, FOX Business, Associated Press, CNN, CNBC.com, Los Angeles Times, FOX News, Washington Post, Money Magazine, Bloomberg, American Banker, Wall Street Journal, SmartMoney, MarketWatch, MSNBC.com, Chicago Tribune, Bankrate.com, and other regional business and consumer media.

For the past 15 years John has been a regular guest lecturer at The University of Georgia and the Georgia Consortium for Personal Financial Literacy. Between 2004 and 2007 John taught a course on credit reporting and credit scoring at The Emory University Center for Lifelong Learning and was named by the students the Top Personal Finance and Investments Instructor for the 2005/2006 term. Since 2016 John has been a guest lecturer Emory University’s School of Law. John graduated in 1991 from The University of West Georgia with a B.S. in Criminal Justice.

Certifications and Awards:

FCRA Certified – Consumer Data Industry Association - 2011. Perfect score on certification exam.

Associate Credit Executive – International Credit Association. 1997.

FCRA Certified – Associated Credit Bureaus - 1992.

Consumer Credit Interviewer – Designation Conferred by Equifax as part of their employee training program.

Graduate – American Bankers Association School of Bankcard Management, University of Delaware – 2000

2014 Consumer Advocate Award – National Foundation for Credit Counseling.

Expert and Consulting Experience: Bold = Testimony

- **Miley v Credit Bureau of Baton Rouge – Expert for defense**
- **Celestial v GreenPoint Mortgage – Expert for defense**
- **White v Experian, et al – Expert for plaintiff**
- Webb v Headland Mortgage – Expert for defense
- **Equifax/Fair Isaac – Arbitration, Fact Witness**
- **Chi/Bickerstaff v Chase Mortgage Corp – Expert for plaintiffs**
- **Harris v TransUnion, et al – Expert for plaintiffs**
- Fair Isaac v TransUnion, Experian, Equifax – Expert for plaintiff
- Patel & Matei v Mercury Insurance – Expert for plaintiffs
- Alwardt v AIG Preferred – Expert for plaintiffs
- Gros v Midland Credit Management and Ford Motor Credit – Expert for defense
- Kaiser Foundation Health Plan v Prime Healthcare Services – Expert for plaintiffs
- **Ellis v Pennsylvania Higher Education Assistance Agency – Expert for defense**
- Richard Selah v TXU Energy Retail Company – Expert for defense
- 1st Advantage Mortgage v AAA Worldwide Financial Co – Expert for defense
- Lossley v Experian and CBC Innovis – Expert for defense
- **Unifund v Emmett Salers – Expert for plaintiff in countersuit**
- Robert Half International v Media Rights Technologies – Expert for plaintiff
- Witt v Experian and Real Time Resolutions – Expert for defense
- Roth v Zurich American Insurance – Expert for defense
- **Gamby v First National Bank of Omaha – Expert for defense**
- Emmanuele v Lawford Howell and ATS – Expert for plaintiff
- **Miller v Kenny and Safeco Insurance – Expert for plaintiff**
- Kelly v Pennsylvania Higher Education Assistance Agency – Expert for defense
- Porch v Case Credit Corp – Expert for defense
- Massey v Ly, Vu, Johnson and Benchmark Mortgage – Expert for plaintiff
- **Cooper v Wells Fargo – Expert for defense**
- **Cartwright v Experian & Credit Management Inc – Expert for defense**
- Combs v Robert Long and Associates – Expert for defense

- Campbell v Midland Credit Management – Expert for defense
- USA v Heather Marvin – Consultant for defense
- Rodriguez v Harold Zeigler Chrysler – Expert for defense
- Severino v Chase – Expert for plaintiff
- RBS Citizens v Foistner – Expert for plaintiff
- Jackson v Wells Fargo – Expert for defense
- Reed v American Standard Insurance et al – Expert for defense
- Avis Doctor v North American Title Co et al – Expert for defense
- **First Union National Bank v Indian River Enterprises – Expert for plaintiff**
- **Pennington v AFNI, Inc – Expert for plaintiff**
- Johnson v Saxon Mortgage Services – Expert for defense
- Evon v Mickell – Expert for defense
- **Nash v Sadek, Inc – Expert for defense**
- Soley v American Express – Expert for plaintiff
- Johnson v Allstate Insurance – Expert for plaintiff
- **Peck v Dua – Expert for defense**
- Villaflor, Brice et al v Equifax – Expert for plaintiff
- Weakley v Redine Recovery – Expert for defense
- **DeWitt v Monterey Insurance Co – Expert for defense**
- Murry v Countrywide – Expert for plaintiff
- **Beachley v PNC Bank – Expert for defense**
- Zey v Dyck-O'Neal – Expert for defense
- Anderson v The Report Card Group – Expert for plaintiff
- Reisinger v A&H Trucking – Expert for plaintiff
- Ferrito v Saxon Mortgage Services – Expert for plaintiff
- **Ortiliza v Mathey – Expert for plaintiff**
- Hearst v Capital One and HSBC Card Svcs – Expert for defense
- Kates v American Suzuki Motors Corp – Expert for defense
- Swaggard v Chase – Expert for defense
- Baker v Professional Finance Company – Expert for defense
- **Henderson v Chase Home Finance – Expert for plaintiff**

- Skerrett v Rey Enterprises – Expert for plaintiff
- Soler v JPMorgan Chase – Expert for defense
- Soto v Capital One – Expert for defense
- Anderson v American Suzuki Motors Corp – Expert for defense
- Smith v AHMSI – Expert for defense
- Kintzing v AHMSI – Expert for defense
- **Scott v GMAC Mortgage – Expert for defense**
- Hastings v Safe-Guard Products – Expert for plaintiff
- Nafarrete v Bank of America – Expert for plaintiff
- **LeBourgeois v Allied Home Mortgage – Expert for plaintiff**
- **Failla v BB&T – Expert for plaintiff**
- Pownall v PNC Bank – Expert for plaintiff
- **Uplinger v Rees Broome – Expert for plaintiff**
- Stich v BAC Home Loans – Expert for plaintiff
- Morris v Sudweeks – Expert for defense
- Ellis v Chase Home Mortgage – Expert for plaintiff
- Carolina 1st Bank v Charles McCue – Expert for plaintiff
- Storms v Saxon Mortgage Services – Expert for defendant
- Bies v Huntington Bank – Expert for plaintiff
- Christou v MERS and BAC Home Loans – Expert for plaintiff
- **Cruz v Covert – Expert for Plaintiff**
- **Pieri v SunTrust Mortgage – Expert for Plaintiff**
- Sullivan v Clark, Hogan and Gregory, Clark P.A – Expert for plaintiff
- Breddan v CitiMortgage – Expert for defendant
- **Levy v Washington Mutual – Expert for plaintiff**
- Yegparian v Kantar – Expert for plaintiff
- Reeder v AHMSI – Expert for defense
- Patterson v Wells Fargo – Expert for defense
- **Jones v GMAC – Expert for defense**
- Cousineau v UniFund – Expert for defense
- **Panitz v Central Mortgage – Expert for plaintiff**

- Forte v GMAC Mortgage – Expert for defense
- Pundt v Select Portfolio Servicing – Expert for defense
- Gauci v CitiMortgage – Expert for defense
- **Spain v GEMB – Expert for plaintiff**
- Ferguson v Wells Fargo – Expert for defense
- White v PHEAA – Expert for defense
- Siderius v Bank of America – Expert for defense
- Guillen v Bank of America – Expert for defense
- **Carlson v Preciado – Expert for plaintiff**
- Ray v Wells Fargo – Expert for defense
- Acquafredda v TJ Services – Expert for defense
- **Chang v Everhome Mortgage – Expert for defense**
- Vinson v Western Control Services – Expert for defense,
- Jolley v AAA Insurance – Expert for plaintiff
- Modica v American Suzuki – Expert for Defense
- O'Neill v Herrington – Former expert for Plaintiff
- Braswell v Scottsdale Insurance – Expert for Plaintiff
- Miller v The CMI Group, LLC – Expert for Defense
- **Bibolotti v AHMSI – Expert for Defense**
- Drees v Confidential Research Associates – Expert for Defense
- Pool v Santander Consumer – Expert for Defense
- Toler v PHH Mortgage, et al – Expert for Defense
- Zimmerman v McGrew – Expert for Plaintiff
- Boykin v TitleMax – Expert for Defense
- Lindsay v Saxon Mortgage – Expert for Defense
- McLaughlin v Wells Fargo – Expert for Defense
- Rocci v Lowe Toyota – Expert for Defense
- **Purscell v TICO Insurance – Expert for Plaintiff**
- Williams v Enterprise Rent-A-Car – Expert for Plaintiff
- Mann v Wells Fargo – Expert for Defense
- Jensen v US Bank – Expert for Defense

- Panah v OneWest Bank – Expert for Defense
- Marchisio v Carrington Mortgage 1 – Expert for Defense
- Ilodianya v Capital One – Expert for Defense
- Barton v Ocwen – Expert for Defense
- Patriot General v McReynolds – Expert for Defense
- CitiMortgage v Neidhart – Expert for Plaintiff
- Turner v City National Bank – Expert for Plaintiff
- **Moriarty v Moriarty – Expert for Plaintiff**
- Boyd v RJM Acquisitions – Expert for Defense
- Wells Fargo v Majeau – Expert for Plaintiff
- Toliver v TransUnion – Expert for Defense
- Barton v Ocwen Loan Servicing – Expert for Defense
- Schraner v Wells Fargo – Expert for Defense
- **Thompson v Forcht Bank, et al 2013 – Expert for Defense**
- **Thompson v Forcht Bank, et al (re-trial 2017) – Expert for Defense**
- McCain v Aurora Loan Services – Expert for Defense
- Cole v Wells Fargo Home Mortgage – Expert for Defense
- **Gardner v Gardner – Expert for Plaintiff**
- Hnilica v GMAC – Expert for Defense
- Moeller v Bank of America – Expert for Defense
- **Sokiranksi v Reliant Support Services, et al – Expert for Plaintiff**
- United States v Flemings – Expert for Defense
- **Edmondson v Flagstar Bank – Expert for Defense**
- Thomasian v Wells Fargo – Expert for Defense
- **Marchman v Wells Fargo – Expert for Defense**
- Lao v GreenTree – Expert for Defense
- Ackerman v Ally Financial – Expert for Defense
- Pope v Ally Financial – Expert for Defense
- Rezmer v BlueGreen Corp – Expert for Defense
- Sayas v Wells Fargo – Expert for Defense
- Reynolds v OneWest Bank – Expert for Defense

- Fishback v HSBC Bank – Expert for Defense
- Schinabeck v Wells Fargo – Expert for Defense
- Tantillo v Citibank – Expert for Defense
- **Welch v Fireman's Fund – Expert for Plaintiff**
- Cocek v Chase – Expert for Defense
- Robinson v Chase – Expert for Defense
- Dastagirzada v Chase – Expert for Defense
- Sheridan v Chase – Expert for Defense
- **Russo v Bank of America – Expert for Defense**
- Sterling v Ourisman Chevrolet – Expert for Defense
- **Pettway v Wells Fargo – Expert for Defense**
- Haynes v Chase – Expert for Defense
- Berry v Old Republic Title – Expert for Defense
- Ott v Quicken Loans – Expert for Defense
- Gadsden v Ford Motor Credit – Expert for Defense
- Lee v Green Tree Servicing – Expert for Defense
- Zacarias v Homeward Residential – Expert for Defense
- Bell v TransUnion, et al – Expert for Defense
- **Boydston v US Bank – Expert for Defense**
- Wilson v CitiMortgage – Expert for Defense
- **Pele v PHEAA – Expert for Defense**
- DiPaolo v Equifax, et al – Expert for Defense
- Jackson v Seterus – Expert for Defense
- Sevi v Nationstar – Expert for Defense
- Izsak v Wells Fargo – Expert for Defense
- **Davidson v Capital One – Expert for Defense**
- Rogers v Chase – Expert for Defense
- **Skagerberg v Wells Fargo – Expert for Defense**
- Holloway v Alliance Environmental Group – Expert for Defense
- Schureck v Ocwen Financial Corp – Expert for Defense
- Knowles v Capital One – Expert for Defense

- Alvestad v Chicago Title – Expert for Defense
- Burgood v Chicago Title – Expert for Defense
- Nolin v Chicago Title – Expert for Defense
- Peters v Chicago Title – Expert for Defense
- Kircher v Chicago Title – Expert for Defense
- Dorminey v Chicago Title – Expert for Defense
- Reynolds v Chicago Title – Expert for Defense
- Pianelli v Allstate Insurance – Expert for Defense
- Modica v American Suzuki – Expert for Defense (Second Time)
- Christensen v Student Assistance Foundation of Montana – Expert for Defense
- Anderson v GEICO – Expert for Plaintiff
- Watson v Navigator Credit Union – Expert for Defense
- **Callaly v Lieberman Management – Expert for Plaintiff**
- **Best v Bluegreen – Expert for Defense**
- Shaw v Wells Fargo – Expert for Defense
- Shaw v CitiMortgage – Expert for Defense
- **Daugherty v Ocwen Loan Servicing – Expert for Defense**
- MacLean v Columbia Recovery Group – Expert for Plaintiff
- Krogman v Goodall – Expert for Plaintiff
- Nichols v Ally Financial – Expert for Defense
- Larimer v Ocwen Loan Servicing – Expert for Defense
- Grenander v Capital One – Expert for Defense
- Arrazola v Franklin Credit Management – Expert for Defense
- Savage v Premier Members Federal Credit Union – Expert for Defense
- Echevarria v Bank of America – Expert for Defense
- The Farmers Bank v Alley – Expert for Plaintiff
- Howard v CitiMortgage – Expert for Defense
- Goria v San Diego Gas and Electric – Expert for Defense
- Ritchie v Northern Leasing – Expert for Defense
- GreenTree v Nichols – Expert for Plaintiff
- Bonelli v Asset Acceptance – Expert for Defense

- **NCUA v RBS Securities – Expert for Defense**
- **Marchisio v Carrington Mortgage 2 – Expert for Defense**
- Chartier v Green Tree Servicing – Expert for Defense
- Prater v Wells Fargo – Expert for Defense
- Warwick v Bank of America – Expert for Defense
- **Vazquez-Estrada v Collecto, Inc – Expert for Defense**
- Smith v Navy Federal Credit Union – Expert for Defense
- **Noori v Bank of America – Expert for Defense**
- Smithwick v USAA FSB – Expert for Defense
- **Kealy v Ford Motor Credit – Expert for Defense**
- Singleton v US Bank – Expert for Defense
- Ducote v Whitney Bank – Expert for Defense
- Fisher v Bank of the West – Expert for Defense
- Jennings v Ocwen – Expert for Defense
- Rizk v Residential Credit Solutions – Expert for Defense
- Manufacturers and Traders Trust Company v Client Server Direct – Expert for Plaintiff
- Blasi v United Debt Services – Expert for Defense
- Bultemeyer v CenturyLink – Expert for Defense
- Honarvar v Bank of the West – Expert for Defense
- Waletzko v Capital One – Expert for Defense
- Strong v Ocwen – Expert for Defense
- Rice v Ocwen – Expert for Defense
- Donovan v Bank of New York – Expert for Defense
- Tristar Acceptance v Aqua Finance – Expert for Defense
- **Duell v First National Bank of Omaha – Expert for Defense**
- Nasseri v Wells Fargo – Expert for Defense
- Durham v Portfolio Recovery Associates – Expert for Defense
- Thompson v Portfolio Recovery Associates – Expert for Defense
- **Neal v Ford Motor Credit – Expert for Defense**
- Peckey v Bank of America – Expert for Defense
- Free v Deutsche Bank – Expert for Defense

- **Harrah v Specialized Loan Servicing – Expert for Defense**
- Knight Adjustment Bureau v Alqaaydeh – Expert for Defense
- Cosentino v Fairway Buick – Expert for Defense
- Viecelli v Seacoast Bank – Expert for Defense
- **Barakat v Capital One – Expert for Defense**
- Alderink v Capital One – Expert for Defense
- O'Neal v Capital One – Expert for Defense
- Watts v Capital One – Expert for Defense
- Bishop v Portfolio Recovery Associates – Expert for Defense
- Snyder v Nationstar – Expert for Defense
- Crandell v Synchrony Bank – Expert for Defense
- Crandell v Chase – Expert for Defense
- Portner v Specialized Loan Servicing – Expert for Defense
- Graham v Capital One Auto Finance – Expert for Defense
- Letren v Wells Fargo Bank – Expert for Defense
- Belsanti v Capital One – Expert for Defense
- Belsanti v Chase – Expert for Defense
- Berman v Asset Acceptance – Expert for Defense
- Gissler v PHEAA – Expert for Defense
- Salzman v Waldner – Expert for Defense
- Northern Leasing v Amedeo – Expert for Plaintiff
- **Robinson v Wells Fargo – Expert for Defense**
- M&T Bank v Client Server Direct – Expert for Plaintiff
- Marsh v Bank of America – Expert for Defense
- Stachowski v Bank of America – Expert for Defense
- Gomez v Nationstar – Expert for Defense
- Joseph v Ent Federal Credit Union – Expert for Defense
- Ostiguy v Chase – Expert for Defense
- Rellihan v Ocwen – Expert for Defense
- Schwab v Rushmore Loan Mngt Services – Expert for Defense
- **Signature Associates v International Paper – Expert for Plaintiff**

- **Jones v PHEAA – Expert for Defense**
- Miles v HomeQ – Expert for Defense
- **Bastek v Comenity Bank – Expert for Defense**
- Nissou-Rabban v Capital One – Expert for Defense
- Balen v Bank of America – Expert for Defense
- Todd v NCTUE – Expert for Defense
- Ritter v NMAC – Expert for Defense
- Phibbs v Revenue Recovery Corporation – Expert for Defense
- Indich v Equifax – Expert for Defense
- Kohandani v Navient – Expert for Defense
- Flaharty and Miller v Ditech Financial – Expert for Defense
- Flaharty and Miller v Bank of America – Expert for Defense
- Meyer v Healthcare Revenue Recovery – Expert for Defense
- Guthmiller v Ocwen – Expert for Defense
- **Filion v Wells Fargo – Expert for Defense**
- Drummond v Equifax – Expert for Defense
- Coles v StateServ – Expert for Defense
- **Robbins v CitiMortgage – Expert for Defense**
- Brady v Bank of America – Expert for Defense
- Ruvalcaba v Ocwen – Expert for Defense
- Dilts v Wells Fargo – Expert for Defense
- Gallegos v Ocwen – Expert for Defense
- MBF v Goodwin – Expert for Plaintiff
- O’Neal v MetLife Home Loans – Expert for Defense
- Aslamy v Navient – Expert for Defense
- **Williams v Goodman – Expert for Defense**
- Tulowetzke v Equifax – Expert for Defense
- **Kim v PHEAA – Expert for Defense**
- Tin v Medicredit – Expert for Defense
- Jay v Navient – Expert for Defense
- White v Experian – Expert for Plaintiff, re-retention

- **Kamimura v Ditech – Expert for Defense**
- Christian v Fidelity Title – Expert for Defense
- Russell v Sallie Mae – Expert for Defense
- Dandridge v Ocwen – Expert for Defense
- St Paul Teachers' Retirement Fund v Conn's – Expert for Plaintiffs
- **Overbeck v Chase – Expert for Defense**
- Anderson v Wells Fargo – Expert for Defense
- Poole v PHEAA – Expert for Defense
- Barron v Citibank Card Services – Expert for Defense
- Trevasani v Ocwen Loan Servicing – Expert for Defense
- Swontek v Hughes Federal Credit Union – Expert for Defense
- Crews v Account Control Bureau – Expert for Defense
- Ruk v Crown Asset Management – Expert for Defense
- Shepard v Equifax – Expert for Defense
- Wilson v Equifax – Expert for Defense
- Magno v Verizon Wireless – Expert for Defense
- Corjon v Ocwen – Expert for Defense
- Sadiq v Recovery One – Expert for Defense
- **Barnum v Equifax – Expert for Defense**
- Kent v Seterus – Expert for Defense
- Perkins v South Carolina Community Bank – Expert for Defense
- **Bryant v Viking Insurance – Expert for Defense**
- Weber v Seterus – Expert for Defense
- Bruno v Equifax – Expert for Defense
- Hallmark Insurance v Andrew Fannin – Expert for counterclaimant
- **Rennick v Equifax – Expert for Defense**
- Fisher v Nationstar – Expert for Defense
- Henderson v Memphis Light Gas & Water – Expert for Defense
- Cowart v Columna – Expert for Defense
- Escobar v PHEAA – Expert for Defense
- **Neal v Westlake Financial Services – Expert for Defense**

- Berg v BMW Financial Services – Expert for Defense
- CFPB v Fair Collections and Outsourcing – Expert for Defense
- Cook v Mountain America CU – Expert for Defense
- Barnes v NCC Business Services – Expert for Defense
- Mejia v Arrowhead Central CU – Expert for Defense
- Sandigo v Ocwen Loan Servicing – Expert for Defense
- Rohleder v Nationstar – Expert for Defense
- Garfield v Capital One – Expert for Defense
- Paula Williams v Midland Credit Management – Expert for Defense
- Grider v Midland Credit Management – Expert for Defense
- **Morris v Carrington Mortgage – Expert for Defense**
- **Liera v U.S. Bank – Expert for Defense**
- Kolaventy v Choice Recovery – Expert for Defense
- **McCullough v U.S. Bank – Expert for Defense**
- Cailon Williams v Midland Credit Management – Expert for Defense
- **Littlejohn v Vivint Solar – Expert for Defense**
- Bernard v Cavalry Portfolio Services – Expert for Defense
- Bentley v Wells Fargo – Expert for Defense
- Gonzalez v Cavalry Portfolio Services – Expert for Defense
- Caccamise v Credit One Bank – Expert for Defense
- Cooling v Ocwen Loan Servicing – Expert for Defense
- Crenshaw v Midland Credit Management – Expert for Defense
- Crenshaw v Portfolio Recovery Associates – Expert for Defense
- **Coulter v Chase** – Expert for Defense
- Thew v Numerica Credit Union – Expert for Defense
- **Berry v Equifax – Expert for Defense**
- **Cramer v Bay Area Credit – Expert for Defense**
- **Perez v Wells Fargo – Expert for Defense**
- Walters v Chase – Expert for Defense
- **Willett v Equifax – Expert for Defense**
- Doffermyre v Equifax – Expert for Defense

- Sanders v Chase – Expert for Defense
- Isler v GE Employees FCU – Expert for Defense
- Christy v Nationstar – Expert for Defense
- Hoback v Synchrony Bank – Expert for Defense
- Brown v Vivint Solar – Expert for Defense
- Cardona v Vivint Solar – Expert for Defense
- Murchison v Equifax – Expert for Defense
- Kirkendall v Mid-Century Insurance et al. – Expert for Plaintiff
- Droney v Vivint Solar – Expert for Defense
- Reilly v Vivint Solar – Expert for Defense
- **Toland v Nationstar – Expert for Defense**
- Gross v Citibank – Expert for Defense
- Shackleford v Vivint Solar – Expert for Defense
- Edgerton v Nationstar Mortgage – Expert for Defense
- Yee v Verizon Wireless – Expert for Defense
- Pandelisev v Bank of America – Expert for Defense
- **Musial v Nationstar Mortgage – Expert for Defense**
- Washington v PHEAA – Expert for Defense
- Maley v Wells Fargo – Expert for Defense
- Eslaquit v Nationstar – Expert for Defense
- Hall v Wells Fargo Mortgage – Expert for Defense
- Havassy v Mercedes Benz Financial Services – Expert for Defense
- Ellis v PHEAA – Expert for Defense
- Settles v PHEAA – Expert for Defense
- **Champagne v CENLAR – Expert for Plaintiff**
- **Shiferaw v Nationwide Insurance – Expert for Plaintiff**
- Ad Astra v Lexington Law – Expert for Defense
- Forbes v Servis One – Expert for Defense
- Lester v Shelter Mutual – Expert for Defense
- Acosta v Account Resolution Services – Expert for Defense
- Alvardo v Account Resolution Services – Expert for Defense

- Fikes v Account Resolution Services – Expert for Defense
- Fuentes v Account Resolution Services – Expert for Defense
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- I. Lopez v Account Resolution Services – Expert for Defense
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- Ensminger v Credit Law Center – Expert for Defense
- Milgram v Chase – Expert for Defense
- **Pulipati v Vivint Solar – Expert for Defense**
- Mees v Vivint Solar – Expert for Defense
- August v Vivint Solar – Expert for Defense
- Cormier v Vivint Solar – Expert for Defense
- Econ-o-check v Suncoast Credit Union – Expert for Defense
- Reyes-Torres v Carter-Young – Expert for Defense
- Settles v Ocwen Loan Servicing – Expert for Defense
- Rogue v Corelogic Credco – Expert for Defense
- Stelzer v Citibank – Expert for Defense
- **Melton v Select Portfolio Servicing – Expert for Defense**
- Guthmiller v Ocwen Loan Servicing – Expert for Defense
- Luke v PHH Mortgage Corporation – Expert for Defense
- **Cagle v Westfield Insurance – Expert for Defense**
- Fisher v Vivint Solar – Expert for Defense

- Denenberg v Citibank – Expert for Defense
- Altius Construction v Maggard – Expert for Plaintiff
- Vargas v Comenity Bank – Expert for Defense
- Lloyd v FedLoan Servicing – Expert for Defense
- Abu-Eid v Portfolio Recovery Associates – Expert for Defense
- **Pongsai v American Express – Expert for Defense**
- Fremeau v Credit One Bank – Expert for Defense
- McGuire v AlaTrust Credit Union – Expert for Defense
- Sofiev v Chase – Expert for Defense
- Brooks v TD Auto Finance – Expert for Defense
- Jones v Portfolio Recovery Associates – Expert for Defense
- **Murphy v Oak Motors – Expert for Defense**
- Willoughby v First Citizens Bank – Expert for Defense
- Fernandez v Great Lakes Educational Loan Services – Expert for Defense
- Kennedy v San Diego Credit Union – Expert for Defense
- Kincaid v U.S. Bank – Expert for Defense
- **Santos and Clements v Account Resolution Services – Expert for Defense**
- Harris v Nelnet Servicing – Expert for Defense
- Ferrucci v Bank of America – Expert for Defense
- Lyttle v Trulieve – Expert for Defense
- Reyes v IC System – Expert for Defense
- Johnson v Chase – Expert for Defense
- Garcia v El Paso Area Teachers FCU – Expert for Defense
- Perez v El Paso Area Teachers FCU – Expert for Defense
- **Abu-Eid v Discover Bank – Expert for Defense**
- **In Re: Capital One Consumer Data Security Breach Litigation – Expert for Defense**
- 114 cases brought by Victory Law Group v Barrington Pacific – Expert for Defense
- **Petras v Chase – Expert for Defense**
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- Sarkissian v Select Portfolio Servicing – Expert for Defense
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- **Remaly v Wyndham Resort Development – Expert for Defense**
- Gross v Chase – Expert for Defense
- Norman v TransUnion – Expert for Defense
- Scharf v Vivint Solar – Expert for Defense
- Maldonado v Columbia Valley Emergency Physicians – Expert for Defense
- **King v Westlake Services – Expert for Defense**
- Robinson-Agles v Wells Fargo – Expert for Defense
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Exhibit B: Documents Reviewed

A list of documents and other information upon which I have considered and relied in forming my opinions set forth in this Report are as follows:

- Complaint
- Lexington Law Breakdown of Clients Spreadsheet LEX0032612-- LEX0032616; LEX0032617; LEX0032620
- Lexington Law Gross Average Data Spreadsheet LEX0032612-- LEX0032616; LEX0032617; LEX0032620
- Lexington Law Initial Negative Removal Rate Spreadsheet LEX0032612-- LEX0032616; LEX0032617; LEX0032620
- Lexington Law Reinsert Rate Spreadsheet [LEX0032612-- LEX0032616; LEX0032617; LEX0032620
- Lexington Law Number and Percentage of Removals by Group Spreadsheet LEX0032612-- LEX0032616; LEX0032617; LEX0032620[75]
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[75] I understand that some of the client-level financial data contained within client data files that I relied upon for my report (LEX0032612-LEX0032616) will be supplemented with a production of additional data. However, I did not rely on any of the client-level financial data within those files in conducting my analysis. Instead, the data in the files that I relied upon came from a separate database, so any supplementation will not impact any of the calculations or analyses made in my report.

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- PGX0000865; PGX0002334; ECF No. 103-3, Declaration of John C. Heath ¶¶ 8-9, dated November 4, 2020; ECF No. 106, Declaration of John C. Heath ¶ 10, dated November 5, 2020
- PGX0000865; Lexington Stage III Submission, Response to Interrogatory No. 18
- CFPB's Response to Defendants' First Set of Requests for Admission, Request No. 52.
- https://www.myfico.com/credit-education/calculators/loan-savings-calculator/
- LEX540-563, 4303-4331, 7413-7414
- PGX0000865, 2334
- Lexington Law 129
- Legal Memorandum Concerning the Consumer Financial Protection Bureau's Enforcement Jurisdiction Over Lexington Law Firm and Public Policy Considerations at 4, Sep. 17, 2015

Exhibit C: Expert Testimony in the Last Four Years

Filion v Wells Fargo – Deposition, Trial (Sup Ct of CA, Ventura Co, 56-2013-00424511)
Robbins v CitiMortgage – Deposition (USDC Northern Dist of CA, 16-cv-4732)
Kamimura v Ditech – Deposition (USDC Dist of NV, 2:16-cv-00783)
Kim v PHEAA – Deposition (USDC So Dist of CA, 3:17-cv-00528)
Anderson v Wells Fargo – Deposition (USDC No Dist of TX 3:16-cv-2514)
Williams v Goodman – Deposition, Trial (3rd Judicial Circuit, Columbia Co, FL 14-158-CA)
Barnum v Equifax – Deposition (USDC Dist of NV 2:16-cv-02866)
Bryant v Anderson – Deposition (Circuit Ct of Jasper Co, MO, No. 16AO-CC00238)
Neal v Westlake Financial – Deposition, Arbitration (JAMS Ref. No. 11100198687)
Rennick v Equifax – Deposition (USDC Middle Dist of Fl., 8:17-cv-01617)
Liera v US Bank – Deposition (USDC Cent Dist of CA., CV17-603 CJC)
Morris v Carrington Mortgage – Deposition (USDC Dist of NV., 2:18-cv-01829)
McCullough v US Bank – Trial (Sup Ct of CA, Marin Co., CIV1702928)
Littlejohn v Vivint Solar – Deposition (USDC Dist of NJ., 1:16-cv-09446)
Cramer v Bay Area Credit – Deposition (USDC Eastern Dist of MO., 4:18-cv-1078)
Berry v Equifax – Deposition (USDC Northern Dist of AL., 4:18-cv-00356)
Willett v Equifax – Deposition (USDC Eastern Dist of VA., 1:19-cv-00323)
Coulter v Chase – Deposition (USDC Eastern Dist of PA., 5:18-cv-1538)
Perez v Wells Fargo – Deposition (USDC Northern Dist of CA., 17-cv-454)
Toland v Nationstar – Deposition (USDC Northern Dist of CA., 3:17-cv-02575)
Musial v Nationstar – Trial (Superior Court, Riverside CA., MCC1900057)
Melton v Specialized Portfolio Servicing – Deposition (USDC Dist of MD., 8:19-cv-209)
Cagle v Westfield – Deposition (Jackson Co Circuit Court, MO., 1816-cv22073)
Pongsai v American Express – Deposition (USDC Central Dist of CA, CV19-1628)
Pulipati v Vivint Solar – Deposition (Superior CT, State of CA, Alameda Co., RG18891702)
Murphy v Indiana Finance Company – Deposition (USDC, No Dist of IN., 3:19-cv-00270)
Champagne v CENLAR – Trial (58th District Court of Jefferson Co., Texas A-202999)
Santos v Account Resolution Services – Deposition (USDC, So Dist of FL., 1:19-cv-23084)
Abu-Eid v Discover – Deposition (USDC, EDVA, Alexandria Division 1:20-cv-01450)
Petras v Chase – Deposition (USDC, Central Dist of CA 20-cv-874-RFB-BNW)
In Re: Capital One Consumer Data Security Breach Litigation – Deposition (USDC, EDVA, Alexandria Division, MDL No. 1:19md2915-AJT/JFA)
King v Westlake Services – Deposition (USDC, Central Dist of CA 20-cv-530-JLS-JDE)
Shipley v Hunter Warfield – Deposition (USDC, Middle Dist of FL, Tampa 8:20-CV-02285)

Ex. 2

Ulzheimer Expert Report
Oct. 25, 2021

Expert Report of John Ulzheimer

In the Matter of Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc., et al.

2:19-cv-00298-DBP

United States District Court, District of Utah

October 25, 2021

Pursuant to Fed. R. Civ. P. 26(e)(2), below are is an amendment and substitution to my expert report in this matter, dated August 13, 2021:

I am amending my report to rely on this data and I am not relying on the data set forth in Section B. None of these changes alter my opinions and conclusions from my Expert Report dated August 13, 2021.

A. Lexington Law's Results in Improving Consumer Credit

Summary of Removal Data

Since March 2016 Lexington Law has represented approximately 3,961,598 consumers as clients.[1] Of those almost 4 million, 1,662,089 clients had at least two TransUnion FICO scores that were used as a reasonable proxy to indicate that sufficient time had passed for a removal to appear in the data.[2] For CreditRepair.com, there were 184,078 customers with the same criteria. Of those, over 87% of Lexington Law clients and over 91% of CreditRepair.com customers experienced at least one removal of a negative item from a credit report.[3] Some clients sign up with Lexington Law or CreditRepair.com with zero presenting negatives on their credit reports.[4] In advance of a triggering event such as identity theft or a late payment, these clients may engage the services of Lexington Law or CreditRepair.com to monitor their credit reports and assist them in removing negative items as they arise.[5]

Removals for Lexington Law Clients and CreditRepair.com Customers

The vast majority of Lexington Law clients and CreditRepair.com customers obtain removals of negative items from their credit reports. As shown below, over 88.12% of Lexington Law clients and CreditRepair.com customers have had at least one negative item removed from a credit report during their engagement them, with CreditRepair.com customers overwhelmingly having at least one negative item removed (over 91%).

---

[1] LEX0032612 -- LEX0032616

[2] Source for Table A:
Lexington Law:
LEX0032612
LEX0032613
LEX0032614
LEX0032615
LEX0032616
CreditRepair.com:
PGX0078754
PGX0078755

[3] *Id.*

[4] *Id.*

[5] PGX00447444 at 448-50; LEX0000327 at 330-31

Table A

Customers with different TransUnion FICO Score Dates (have had more than one TU score pulled)			
Brand	**Count of Customers**	**Count of Customers with at least 1 removal**	**Percentage of Customers with at least 1 removal**
CreditRepair.com	184,078	167,755	91.13%
Lexington Law	1,662,089	445,282	87.79%
Total	**1,846,167**	**1,626,913**	**88.12%**

In absolute numbers, 29% of Lexington Law clients obtained removals of between one and four negative items, 20% of clients obtained between five and eight removals, and 39% of clients—representing approximately 642,930 consumers—obtained over nine removals. *See* Table B.[6] Similarly, 23% of CreditRepair.com customers obtained removals of between one and four negative items, 20% of CreditRepair.com customers obtained between five and eight removals, and 49% of CreditRepair.com customers—representing approximately 89,458 consumers—obtained over nine removals. *Id.* Moreover, the removals obtained by Lexington Law clients and CreditRepair.com customers are by and large permanent.

Table B

Customers with different TransUnion FICO Score Dates (have had more than one TU FICO Score pulled)				
Total Negative Items Removed	**Lexington Law**	**CreditRepair.com**	**Lexington Law**	**CreditRepair.com**
0	202,931	16,323	12%	8%
1 to 4	489,598	41,986	29%	23%
5 to 8	326,630	36,311	20%	20%
9+	642,930	89,458	39%	49%
TOTAL:	**1,662,089**	**184,078**	**100%**	**100%**

[6] Source for Table B:
Lexington Law:
LEX0032612
LEX0032613
LEX0032614
LEX0032615
LEX0032616
CreditRepair.com:
PGX0078754
PGX0078755

Removals by Client Tenure

The efficacy of Lexington Law and CreditRepair.com in assisting consumers over time can be seen in its tenure data, which tracks the average number of removals a client obtained per month of engagement. This data shows that, although results varied by individual, clients who stayed with Lexington Law and Credit.Repair.com longer obtained more removals over time. *Compare* Tables B and D.

As time passes Lexington Law and CreditRepair.com services have time to take effect. At 7 months there is a chance for the company to send additional letters. As expected, the removal numbers continue to improve as tenure increases.[7]

Those with at least one removal go from an average of 88% (combining both companies) to over 95%. *See* Tables A and C.[8] Similarly, Lexington Law and CreditRepair.com removals over longer periods of tenure increase, going from 39% of customers at Lexington Law having over 9 removals to 64% at month seven and beyond. The improvement in removal numbers for CreditRepair.com are almost identical *See* Table D.[9]

Table C

Customers with 7 or more months between TransUnion FICO Score Dates			
Brand	**Count of Customers**	**Count of Customers with at least 1 removal**	**Percentage of Customers with at least 1 removal**
CreditRepair.com	72,462	69,237	95.55%
Lexington Law	465,945	445,282	95.57%
Total	**538,407**	**514,519**	**95.56% (Average Total)**

Table D

Customers with 7 or more months between TransUnion FICO Score Dates				
Total Negative Items Removed	**Lexington Law**	**CreditRepair.com**	**Lexington Law**	**CreditRepair.com**
0	20,663	3,225	4%	4%
1 to 4	68,055	10,372	15%	14%
5 to 8	77,268	12,059	17%	17%
9+	299,959	46,806	64%	65%
TOTAL:	**465,945**	**72,462**	**100%**	**100%**

[7] *Id.*

[8] *Id.*

[9] *Id.*

This data shows that, although results varied by individual, clients who stayed with Lexington Law longer obtained more removals over time.

B. Effect of Removals For Lexington Law and CreditRepair.com Clients as Consumers

As shown above, Lexington Law and CreditRepair.com clients experienced a significant number of removals of negative items from their credit reports over the course of their engagement with the two. These removals are overwhelmingly of items that can negatively impact consumer credit scores, such as collection accounts, late payments, and charged off accounts. Unless removed, negative items such as these on a consumer's credit report could cause a potential lender to outright deny credit to the consumer, or offer loans with unfavorable terms or rates, potentially costing the consumer thousands of dollars interest.[10]

Point being, CreditRepair.com and Lexington Law's services are effective overall for consumers in removing items from their credit reports that can negatively impact their credit scores—with real benefits to its clients. The removal of these negative items can lead to the improvement their client's credit scores.

Consumers with better credit reports and credit scores are considered to be a lower credit risk than consumers with poor credit reports and lower credit scores. This could mean qualifying for credit they otherwise would not have, or from more mainstream lenders. And it could mean access to loans with more advantageous terms, potentially saving clients' money on interest and fees.[11] Accordingly, Lexington Law and CreditRepair.com clients may experience concrete and tangible financial benefits as a result of these negative item removals. It can also boost employment applications and security clearances.

Lexington Law and CreditRepair.com is thus an effective service for consumers wishing to obtain the removal of negative items from their credit reports—whether the items are inaccurate, unfairly displayed, or unverified—and potentially see a favorable increase in his or her credit score.

*   *   *   *   *

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[10] *See* 2012 CFPB Report at 11.

[11] *See id.* at 10 ("Consumers with very high scores thus are likely to get more favorable interest rates and other more favorable loan terms. In contrast, consumers with lower numerical scores present higher risks of default and may only be able to get loans at higher interest rates or other less favorable terms, if lenders are willing to lend to them at all.").

This expert report is based on my almost 30 years of experience and knowledge gained as a professional in the consumer credit industry, specifically as an employee or contractor of Equifax Credit Information Services, Fair Isaac Corporation, and Credit.com, on my review of relevant documents produced in this matter, and as a result of my previous expert witness work, which includes more than 600 cases. All of my comments are accurate to the best of my knowledge as of the time I prepared this report. All of the opinions and comments stated in this report are expressed to a reasonable degree of professional certainty.

I reserve the right to supplement or amend my opinions, especially as I understand discovery is ongoing. I declare that the foregoing is true and accurate to the best of my ability based on the documents I have reviewed, my education, my experience, my training, and my expertise.

Executed this 25th day of October 2021,
in Atlanta, Georgia

John Ulzheimer

Additional Documents Reviewed

In addition to those listed in my Report dated August 13, 2021, a list of documents and other information upon which I have considered and relied in forming my opinions set forth in this Report are as follows:

- PGX00447444
- LEX0000327

Ex. 3

Ulzheimer Dep. Ex. 421

Credit Repair

How Much Does Credit Repair Cost?

May 28, 2020 • 2 min read

By John Ulzheimer

In this article:

Negative information that appears on your credit report, such as a late payment or collection account, will typically remain on your report for seven to 10 years. That may seem like a long time, especially when negative information can hurt your chances of qualifying for a loan or credit card. But paying a third-party credit repair company to remove negative information earlier can cost hundreds or even thousands of dollars —and won't take anything off of your report that is accurate.

On top of that, credit repair companies have no more power than you do to remove information from your credit file—and doing it yourself will cost nothing. Learn how to do credit repair yourself, and for free.

Can You Pay to Have Your Credit Fixed?

Consumers have the right to challenge credit information they believe is inaccurate. This process is, and has always been, completely free.

Credit repair, alternatively, is where someone pays a third-party company to attempt to get negative information removed from credit reports. And while it is legal to hire a credit repair company to dispute credit information, paying for this service doesn't mean the information will be removed. In fact, paying a fee will never lead to negative information being removed from your credit reports if it is accurate.

How Much Do Credit Repair Companies Charge?

A credit repair organization is any for-profit company that sells you a service designed to improve your credit reports or credit scores, according to the Credit Repair Organizations Act (CROA). How these companies get payment for their services varies.

Credit repair companies generally receive payment for their services by charging a monthly subscription fee or charging a fee each time they are able to get an item removed from your credit report. And if a company is able to get an item deleted from all three of your credit reports, you'll be charged the fee times three.

With the subscription model, a credit repair customer is charged for the services rendered by the credit repair company during the prior 30 days. Normally those charges are made to the credit card on file with the company.

Credit repair costs can reach hundreds or even thousands of dollars—and there is no guarantee the company will be successful getting credit entries deleted from your credit reports. In fact, it is a violation of CROA for a credit repair company to guarantee that they can get negative items removed from your credit reports.

Why Paying for Credit Repair Isn't Worth It

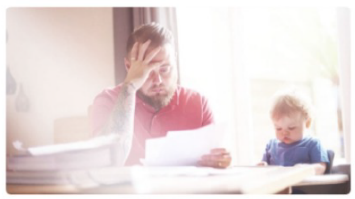
Credit repair companies cannot do anything for you that you cannot do for free yourself. So what is the value of paying someone else to dispute credit information on your behalf? In many cases, there is none.

Rather than paying for credit repair services, you'll likely be better off redirecting your efforts toward more proven methods of improving your credit reports and scores. Instead of paying a company to send dispute letters to the credit bureaus, which you can do online yourself at no cost, you can use that money to pay off any delinquent obligations, outstanding collections or credit card debt.

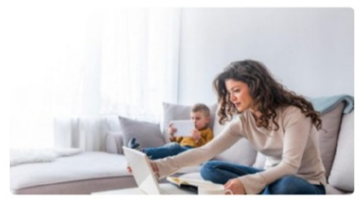
Going forward, employ time-tested strategies for improving credit. Paying all your bills on time and paying down credit card debt are solid methods for building your credit—and you can do it yourself, for free, to improve your financial health.

Related Articles:

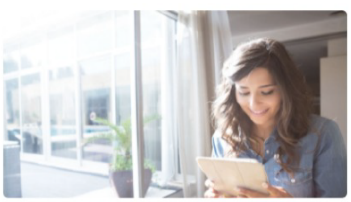
Are Credit Disputes Free?



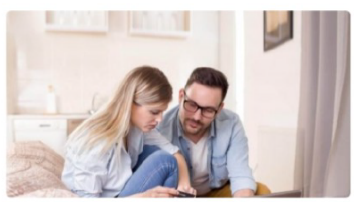
How Long Does It Take to Repair Your Credit?



Is It Wise to Hire a Credit Repair Company?



Can You Pay to Have Your Credit Fixed?



How Do Credit Repair Companies Work?

Can Credit Repair Companies Remove Late Payments?

Have a Question?

Please do not include any personally identifying information with your question, such as your email address, phone number, or Social Security number.

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The purpose of this question submission tool is to provide general education on credit reporting. The Ask Experian team cannot respond to each question individually. However, if your question is of interest to a wide audience of consumers, the Experian team may include it in a future post and may also share responses in its social media outreach. If you have a question, others likely have the same question, too. By sharing your questions and our answers, we can help others as well.

Personal credit report disputes cannot be submitted through Ask Experian. To dispute information in your personal credit report, simply follow the instructions provided with it. Your personal credit report includes appropriate contact information including a website address, toll-free telephone number and mailing address.

To submit a dispute online visit Experian's Dispute Center. If you have a current copy of your personal credit report, simply enter the report number where indicated, and follow the instructions provided. If you do not have a current personal report, Experian will provide a free copy when you submit the information requested. Additionally, you may obtain a free copy of your report once a week through April 2022 at AnnualCreditReport.

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EXHIBIT
Ulzheimer 421

https://www.experian.com/blogs/ask-experian/how-much-does-credit-repair-cost/

Ex. 4

Transcript of Ulzheimer Deposition

October 26, 2021

Public Version Redacted

Ex. 5

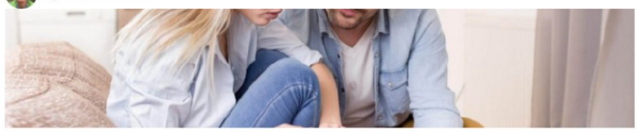
Ulzheimer Dep. Ex. 422

Credit Repair

How Do Credit Repair Companies Work?

May 21, 2020 • 4 min read


By John Ulzheimer



Having good credit is a goal for many of us, often because our credit reports and credit scores are highly influential to financial decisions that impact our lives. Getting a loan, a fantastic interest rate, a competitive insurance premium and even getting a job can be impacted by what's on our credit reports.

For those who have poor credit reports and scores, credit repair may be tempting as a way to clear away credit problems. But as you'll see, there are plenty of better ways to rebuild your credit.

In this article:

What Is Credit Repair?

Credit repair is when a third party, often called a credit repair organization or credit services organization, attempts to get information removed from your credit reports in exchange for payment. These companies are for-profit and their services are marketed as being able to help people improve their credit. Credit repair is legal at the federal level and in almost every state (in Georgia, credit repair is a misdemeanor).

Some credit repair companies suggest their services are designed to help consumers remove inaccurate or unverifiable information from their credit reports. In reality, however, many credit repair companies are simply trying to get negative, but accurate, information removed from credit reports before it would naturally fall off a credit report. There are steps that you may be able take to repair your credit if there's inaccurate information on your credit history.

The Credit Repair Organizations Act

The federal Credit Repair Organizations (CROA) Act not only defines what a credit repair organization is but also how these companies must operate. Enacted in 1996, CROA clearly articulates what credit repair companies must do, and must not do, to remain compliant with federal law.

Practices that are not allowed under CROA include:

- Advising credit repair customers to make false statements to credit reporting agencies
- Advising credit repair customers to change their identification to prevent the credit bureaus from associating them with their credit information
- Charging credit repair customers any fee for services that have not been fully rendered
- Guaranteeing that they can remove information from their credit repair customer's credit reports

The CROA also requires credit repair companies to notify their customers of the following:

- They have the right to dispute their own credit report information for free
- They can sue the credit repair company if they violate CROA
- That while the credit bureaus must maintain reasonable procedures to maintain the accuracy of credit information, mistakes may occur

Credit repair companies are not allowed to hide the above notices within the language of their contracts. These disclosures and others must be provided in a separate standalone form. And finally, credit repair companies are not allowed to force or entice you to sign a waiver whereby you would give up some or all of the aforementioned rights. Any attempt to do so would be a violation would give up some or all of the aforementioned rights. Any attempt to do so would be a violation of the CROA.

What Do Credit Repair Companies Do?

Ultimately, credit repair companies communicate on your behalf either with the credit bureaus or with the companies that reported or "furnished" your credit information to the bureaus. These data furnishers are almost always debt collectors or financial services companies, like banks and credit card issuers.

The intent is to have the credit bureaus or furnishers either delete the credit information altogether or modify it in some way that's more favorable to the consumer. Communications by credit repair companies can happen via the internet, phone or U.S. mail. The U.S. mail has historically been the method that's preferred by credit repair companies for several reasons.

Mailing a few letters to the credit bureaus might sound unsophisticated, but it's the approach that works with how credit repair companies tend to operate. Some credit repair companies employ a process called "jamming," which involves sending repetitive and often frivolous letters to the credit bureaus and their data furnishers.

The theory is if a credit repair company can send a large volume of dispute letters challenging the same item over and over, that somewhere along the way either a credit bureau, lender or debt collector will fail to process the dispute within the 30-day period specified by the Fair Credit Reporting Act (FCRA), resulting in the account being deleted.

How Much Does Credit Repair Cost?

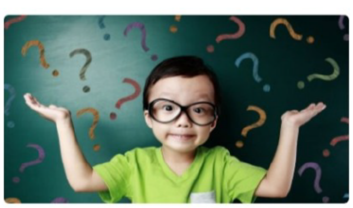
Credit repair companies generally charge one of two ways. The first is a garden-variety subscription service in which the credit repair company charges your credit card at the end of the month for services performed during the previous month. Subscriptions for credit repair generally fall somewhere between $50 and $100 per month, although there can be outliers. With the subscription fee structure, the credit repair company has a financial incentive to keep you as a paying customer as long as possible.

The second method of payment for credit repair is called "pay per delete." With pay per delete, the credit repair company only charges you when an item on your credit report is actually deleted pursuant to their efforts. The theory with pay per delete is that it keeps the customer happy because they are only paying for tangible results, and the credit repair company stays on the right side of the CROA because they don't charge their customers until after results have occurred.

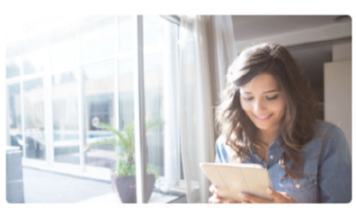
Does Credit Repair Work?

While some credit repair companies claim to have deleted millions of negative credit entries, there are no reliable statistics available regarding the effectiveness of credit repair services. There are also no statistics about credit repair's impact on their customers' average credit scores, how many of the disputes they file result in deletion, or the average price paid by a credit repair customer.

Because there is nothing a credit repair company can do that you can't do for yourself, it's better to ensure the accuracy of your credit reports on your own. The process is free, and has always been. Also keep in mind that accurate negative information will automatically be removed from your credit reports once it's seven to 10 years old.



How Much Does Credit Repair



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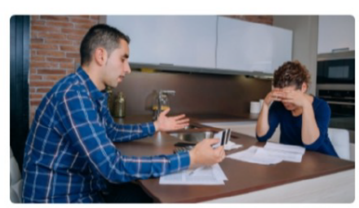

Can Credit Repair Companies

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To submit a dispute online visit Experian's Dispute Center. If you have a current copy of your personal credit report, simply enter the report number where indicated, and follow the instructions provided. If you do not have a current personal report, Experian will provide a free copy when you submit the information requested. Additionally, you may obtain a free copy of your report once a week through April 2022 at AnnualCreditReport.

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EXHIBIT
Ulzheimer 422

https://www.experian.com/blogs/ask-experian/how-do-credit-repair-companies-work/