



# CDIA

CONSUMER DATA INDUSTRY ASSOCIATION  
*Empowering Economic Opportunity*

May 19, 2008

The Honorable Barney Frank  
Chairman  
House Committee on Financial Services  
Washington, DC 20515

The Honorable Spencer Bachus  
Ranking Member  
House Committee on Financial Services  
Washington, DC 20515

**Re: HR 2885, Credit Monitoring Clarification Act**

Dear Chairman Frank and Ranking Member Bachus:

I wish to address a letter dated May 14, 2008 from several consumer groups regarding HR 2885, which would amend the Credit Repair Organizations Act ("CROA"). The letter mischaracterizes the purpose and effect of this amendment.

**The Amendment Protects the Availability of Credit Monitoring to Combat ID Theft**

Credit monitoring is widely recognized as an important consumer protection tool endorsed by the Federal Trade Commission ("FTC"). It offers consumers a cost-effective way to protect themselves against identity theft. It is also a valuable tool to monitor for potential identity theft after companies experience data security breaches. When consumers receive notices from a credit monitoring service of activity in their credit report file, they can access their credit reports and view the action. In some cases, consumers might learn that they are potential victims of identity theft or determine that an inaccurate item was placed on the credit report. In this way, credit monitoring services may help consumers improve their credit.

CROA was enacted in 1996 at the consumer reporting industry's request. It is an important tool for the FTC and consumers in combating pernicious credit repair activities. Credit repair organizations falsely offer to "repair" or "improve" a consumer's credit report in exchange for a fee. Typically, they attempt to accomplish this by flooding credit bureaus with challenges to accurate negative information in the hopes of overwhelming the reinvestigation system. These organizations also typically charge high fees in advance, and then never deliver on their promise and fail to "improve" a consumer's credit report by deleting negative but accurate information in their credit reports. These practices harm consumers, the consumer reporting agencies, and creditors.

When CROA was enacted, no one thought to exempt credit reporting agencies, their affiliates or business partners, because those entities, along with consumers, were – and still are – the victims of credit repair organizations. In addition, because credit monitoring services had not been developed at that time, no one thought to exclude them.

CROA defines a "credit repair organization" so broadly that a company offering credit monitoring services may be found to come within the technical definition by offering services that by implication can help consumer improve their credit. For example, a victim of identity theft who is alerted to the theft through a monitoring service will necessarily "improve" his credit by clearing the fraudulent charges from his credit report. By providing timely notice of changes to credit files, credit monitoring companies can, in fact, help consumers improve their credit. However, in no way is a credit monitoring service designed to "repair" or "improve" credit by deleting negative but accurate information in a consumer's credit report. For that reason, unlike credit repair organizations, credit monitoring companies do not engage in credit repair.

### **The Amendment is Necessary**

The amendment is needed to protect credit monitoring service companies from the cost of defending lawsuits with potentially inconsistent results. Companies offering credit monitoring services have been faced with class action lawsuits nationwide. The consumer groups cite to a case where the court concluded that a company offering a credit monitoring service is not covered by CROA (*see, Hillis v. Equifax Consumer Services, Inc.*, 237 F.R.D. 491 (N.D.Ga. Aug. 18, 2006))<sup>1</sup> If that were the only case, there would be no need for an amendment. Unfortunately, it is not the only case. Other courts have reached the opposite conclusion (*see e.g., Reynolds v. Credit Solutions, Inc.*, 2008 WL 835270 (N.D. Ala. Feb. 26, 2008) (Court declined to follow relevant guidance in *Hillis* because it found that opinion strayed from the plain language of CROA); *Zimmerman v. Cambridge Credit Counseling Corp.*, 529 F.Supp.2d 254, 276 fn 20 (D. Mass. Jan. 7, 2008); *Helms v. Consumerinfo.com, Inc.*, 436 F.Supp.2d 1220 (N.D. Ala. Feb. 14, 2005) (Finding that because credit monitoring company advertised that its product could improve credit, it was subject to CROA). Other lawsuits have settled. (*see, e.g., Browning v. Yahoo! et al.*, 2007 WL4105971 (N.D. Cal. 2007) (Nationwide class settlement of allegations that Yahoo's! Credit Manager service, which included credit monitoring, fell within CROA.) Without the amendment, companies offering legitimate credit monitoring services are faced with the prospect of new litigation.<sup>2</sup>

### **The Amendment is Narrowly Drawn**

HR 2885 provides for a technical amendment to CROA. The amendment would clarify that the definition of credit repair organization does not include credit monitoring companies when they advertise and provide credit monitoring services and related products and services that help consumers monitor their credit report information. The amendment would also require important new consumer disclosures and give consumers the right to cancel credit monitoring services and receive pro-rata refunds.

### **CROA's Protections Against Credit Repair are Unaffected**

Some have suggested that the amendment will somehow create a loophole such that credit repair organizations will no longer be regulated under the CROA. There is no basis for this concern. Neither credit reporting agencies nor credit monitoring companies want an inadvertent loophole that would enable credit repair organizations to evade CROA and inflict harm on the integrity of consumer report data. Nothing in the amendment would change the application of CROA to real credit repair organizations, and

<sup>1</sup> Note that the issue in *Hillis* was not whether credit monitoring is credit repair, but whether the company offering those services comes within the technical definition.

<sup>2</sup> The amendment is not retroactive in effect and would not affect ongoing litigation.

no entity could evade the Act's coverage by the way it characterized its activities. The amendment would have no effect on consumers' protection against any alleged deception in the advertising or provision of credit monitoring services. The FTC will continue to use the FTC Act to redress consumer injury caused by any company that engages in unfair and deceptive acts or practices in the advertisement or sale of credit monitoring services. If an entity attempts to circumvent CROA by claiming that it is engaged in an exempt activity – and the entity is, in reality, engaged in credit repair activities – the FTC will still have enforcement authority under CROA, as well as the FTC Act. Moreover, the amendment will not affect any consumer lawsuits against credit monitoring companies based on unfair or deceptive acts or practices. In short, the amendment will not jeopardize the force and effectiveness of any consumer protection law.

### **The FTC Has Recognized the Value of Credit Monitoring**

The FTC has testified in support of the value of credit monitoring services and the need to exempt legitimate credit monitoring and similar educational products and services from CROA:

As a matter of policy, the Commission sees little basis on which to subject the sale of legitimate credit monitoring and similar educational products and services to CROA's specific prohibitions and requirements, which were intended to address deceptive and abusive credit repair business practices. Credit monitoring services, if promoted and sold through a truthful manner, can help consumers maintain an accurate credit file and provide them with valuable information for combating identity theft.<sup>3</sup>

The FTC has not taken a position on the language of the amendment in HR 2885, stating only that any "amendment to provide an exemption for legitimate credit monitoring services must be carefully considered and narrowly drawn."<sup>4</sup>

### **Other Consumer Protections are Assured and Enhanced**

The amendment would not in any way weaken consumers' protection from deceptive practices of debt collectors, payday lenders or any other entity. Debt collectors that do not engage in credit repair activities are not currently covered by CROA, so the amendment would not affect them at all. The amendment would have no effect on the remedies currently available to the FTC, state attorneys general and consumers under federal and state law to redress any unfair or deceptive practices by any other entity. Debt collectors would also continue to be subject to these laws and to the Fair Debt Collection Practices Act with its broad remedial provisions.

Moreover, consumers will receive important new protections under the amendment. No existing law gives the consumer the right to cancel a credit monitoring subscription before the end of its term and receive a pro-rata refund. The amendment would give consumers that new right. The amendment would also assure that consumers are given clear and conspicuous disclosures about their right to free annual credit reports and other important rights. Therefore, consumers will substantially benefit from the enactment of this amendment.

<sup>3</sup> See Prepared Statement of the Federal Trade Commission Before the Senate Committee on Commerce, Science and Transportation, July 31, 2007, at 19-20.

<sup>4</sup> *Id.* at 20.

**Conclusion**

The CROA amendment will serve consumers and legitimate businesses alike. It will assure the continuation of credit monitoring services, which the FTC and members of Congress acknowledge to be a powerful consumer protection tool. The amendment is narrowly tailored to the issues it addresses. The consumer groups' letter misstates the scope of the amendment and distorts its consequences.

Sincerely,

Stuart Pratt  
President and CEO  
Consumer Data Industry Association

Equifax Inc.  
Experian Information Solutions, Inc.  
Trans Union LLC

cc: Members of the House Financial Services Committee