Negative: Improved Credit Reporting for All

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy***

Summary: AFF plan enacts a bill pending in Congress HR 3642 the “Improved Credit Reporting for All” act. It does several small reforms all at once:  
1. Revises dispute process to challenge credit reporting information  
2. Requires more disclosures from credit reporting agencies  
3. Prohibits automatic renewals for promotional consumer credit products.  
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Negative: Improved Credit Reporting for All

DEFINITION

Summary of HR 3642 mandates

Official website of Congress 2019. “H.R. 3642 – 116th Congress (2019-2020) <https://www.congress.gov/bill/116th-congress/house-bill/3642>

This bill generally modifies requirements related to consumer credit reporting. Specifically, it revises the dispute process for consumers challenging information contained on their credit report, establishes an appeals process for disputed information, and establishes the right to injunctive relief. The bill also requires additional disclosures from credit reporting agencies and furnishers of credit information, prohibits automatic renewals for promotional consumer credit products and services, and makes other related changes. Additionally, the bill directs the Consumer Financial Protection Bureau to issue rules under this bill, including rules to provide for (1) accuracy and completeness in credit reports; (2) access to consumer reporting information for nonnative English speakers, the visually impaired, and the hearing impaired; and (3) the registration of consumer reporting agencies.

TOPICALITY

The entire affirmative plan is a minor repair of existing laws and policies. There is no substantial reform anywhere in this Plan.

1. Fair Credit Reporting Act of 1970

FCRA 1970 already grants right to dispute / appeal inaccurate information (AFF plan is a minor repair of some procedures under that law)

Congressional Research Service 2020 (non-partisan research agency of Congress; article written by Cheryl R. Cooper (analyst in Financial Economics) and Darryl E. Getter (Specialist in Financial Economics) updated 22 Jan 2020 <https://fas.org/sgp/crs/misc/R44125.pdf> (brackets added)

The FCRA includes consumer protection provisions. Under the FCRA, consumers must be told when their information from a CRA [Credit Reporting Agency] has been used after an adverse action (generally a denial of credit) has occurred, and disclosure of that information must be made free of charge. Consumers have a right to one free credit report every year (from each of the three largest nationwide credit reporting providers) even in the absence of an adverse action (e.g., credit denial). Consumers also have the right to dispute inaccurate or incomplete information in their report. After a consumer alerts a CRA of such a discrepancy, the CRA must investigate and correct errors, usually within 30 days.

INHERENCY

1. Accuracy of CRA [Credit Reporting Agencies] reports already improving in Status Quo

Status Quo policies are already improving CRA accuracy and reporting disputed information

Congressional Research Service 2020 (non-partisan research agency of Congress; article written by Cheryl R. Cooper (analyst in Financial Economics) and Darryl E. Getter (Specialist in Financial Economics) updated 22 Jan 2020 <https://fas.org/sgp/crs/misc/R44125.pdf>

As mentioned in the previous section, the CFPB has recently encouraged credit bureaus and financial firms to improve data accuracy in credit reporting. For example, since 2014, the CFPB has required the largest consumer reporting firms to provide standardized accuracy reports on a regular basis. The accuracy reports must specify the frequency that consumers dispute information, list furnishers and industries with the most disputes, and provide dispute resolution information. According to the CFPB, the top 100 furnishers provide 76% of tradeline information to the largest nationwide CRAs, and the furnishers regularly update the account status of reported tradelines. In addition, the larger CRAs have also made improvements to the communication tool they use to facilitate the dispute resolution process between consumers and furnishers.

2. Dispute handling and resolution is already improving in Status Quo

Dispute handling and resolution process is already improving thanks to new CFPB policies

Congressional Research Service 2020 (non-partisan research agency of Congress; article written by Cheryl R. Cooper (analyst in Financial Economics) and Darryl E. Getter (Specialist in Financial Economics) updated 22 Jan 2020 <https://fas.org/sgp/crs/misc/R44125.pdf>

The CFPB conducts examinations of the CRAs, reviewing procedures and operating systems regarding the management of consumer data and enforcing applicable laws. In 2017, the CFPB released a report of its supervisory work in the credit reporting system. The report discusses the CFPB’s efforts to work with credit bureaus and financial firms to improve credit reporting in three specific areas: data accuracy, dispute handling and resolution, and furnisher reporting. As the report describes, credit bureaus and financial firms have developed data governance and quality control programs to monitor data accuracy through working with the CFPB. In addition, the CFPB has encouraged credit bureaus to improve their dispute and resolution processes, including making it easier and more informative for consumers.

3. FTC solves

Federal Trade Commission prosecutes CRA’s for bad behavior regarding consumer credit disputes

[Andrew M. Smith and Jeremy R. Mandell 2014. ( Andrew M. Smith is a partner in the Washington, D.C. office of Morrison & Foerster LLP, and Vice Chair of the Consumer Financial Services Committee of the American Bar Association Section of Business Law. Jeremy R. Mandell is an associate in the Washington, D.C. office of Morrison & Foerster LLP) https://www.wsgr.com/attorneys/BIOS/PDFs/next-wave-14.pdf](%20Andrew%20M.%20Smith%20and%20Jeremy%20R.%20Mandell%202014.%20(%20Andrew%20M.%20Smith%20is%20a%20partner%20in%20the%20Washington,%20D.C.%20office%20of%20Morrison%20&%20Foerster%20LLP,%20and%20Vice%20Chair%20of%20the%20Consumer%20Financial%20Services%20Committee%20of%20the%20American%20Bar%20Association%20Section%20of%20Business%20Law.%20Jeremy%20R.%20Mandell%20is%20an%20associate%20in%20the%20Washington,%20D.C.%20office%20of%20Morrison%20&%20Foerster%20LLP)%20%20https://www.wsgr.com/attorneys/BIOS/PDFs/next-wave-14.pdf)

In August 2013, Certegy Check Services, Inc. (“Certegy”), a nationwide specialty consumer reporting agency that compiles consumers’ personal information and uses it to help retail merchants throughout the United States determine whether to accept consumers’ checks, agreed to settle FTC charges that it violated the FCRA. The FTC alleged, among other things, that Certegy failed to have a streamlined process for consumers to obtain free file disclosures, as required by the FCRA. The FTC also alleged that, when consumers notify Certegy that they dispute the accuracy or completeness of information in their file, Certegy attempted to shift the burden of conducting a reinvestigation to consumers, rather than fulfilling its legal obligation to reinvestigate disputed information. For example, the FTC alleged that if a consumer disputed a returned check from a particular merchant, Certegy would require the consumer to contact the merchant himself to resolve the dispute. In addition to a $3.5 million civil penalty, the settlement requires Certegy to comply with the so-called Furnisher Rule.

4. Deceptive services already solved

Credit reporting agencies already were prosecuted for selling deceptive “subscriptions” – because they’re already illegal

WALL STREET JOURNAL 2017 (journalist Rachel Witkowski) 3 Jan 2017 “Equifax, TransUnion Settle CFPB Claims of Deceptive Marketing” <https://www.wsj.com/articles/equifax-transunion-settle-cfpb-claims-of-deceptive-marketing-1483488627>

Top credit-reporting companies Equifax Inc. and TransUnion have agreed to pay more than $23 million over federal claims that they deceptively marketed and sold credit scores to consumers. The Consumer Financial Protection Bureau said Tuesday that Atlanta-based Equifax and Chicago-based TransUnion—two of the three largest credit-reporting firms—falsely advertised how lenders use credit scores and deceptively charged consumers for subscriptions to check their own score.

HARMS / SIGNIFICANCE

1. Harms exaggerated

There aren’t huge numbers of errors in the Agencies’ data, those claims are exaggerated.

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

Among the numerous sources of error alleged by U.S. PIRG, some large creditors were reporting incomplete information in an effort to drive their customers’ credit scores down so that other lenders would not compete for their business.22 The credit reporting industry strongly disputes these findings. Consumer Data Industry Association head Stuart Pratt cited studies by the Government Accountability Office and Federal Reserve Board in 2007 congressional testimony to argue that consumer groups’ error statistics are “flawed” and that the proportion of individuals affected by data problems is small. A 1992 Arthur Anderson study commissioned by the industry group, for example, found that 3 percent of applicants denied credit had errors in their reports the correction of which would have resulted in a different outcome. A 2011 study finds that 0.93 percent of consumer credit reports have disputed information the correction of which increases credit scores by 25 points or more. Just 0.5 percent of credit reports move to a higher “credit risk tier,” potentially qualifying the subject consumer for better loan terms as a result of a modification.

SOLVENCY

1. Weak consumer response

Link: Success depends on consumers taking the initiative to report problems

Congressional Research Service 2020 (non-partisan research agency of Congress; article written by Cheryl R. Cooper (analyst in Financial Economics) and Darryl E. Getter (Specialist in Financial Economics) updated 22 Jan 2020 <https://fas.org/sgp/crs/misc/R44125.pdf>

Public record data must contain minimum identifying information (i.e., name, address, and Social Security number or date of birth) and must be updated at least every 90 days; otherwise, the tax lien and civil judgment information will no longer be reported. The accuracy of credit reports, nonetheless, ultimately depends upon consumers to monitor and dispute any discrepancies.

Fail: It’s too much hassle, consumers won’t do it

Congressional Research Service 2020 (non-partisan research agency of Congress; article written by Cheryl R. Cooper (analyst in Financial Economics) and Darryl E. Getter (Specialist in Financial Economics) updated 22 Jan 2020 <https://fas.org/sgp/crs/misc/R44125.pdf>

The inclusion of negative information may be particularly limiting to consumers under circumstances in which such information is inaccurate or needs to be updated to reflect more current and possibly more favorable financial situations. Furthermore, consumers may find the process of making corrections to consumer data reports to be time-consuming, complex, and perhaps ineffective.

Fail: Too much hassle, too many barriers. Consumers don’t send in disputes on credit reporting errors

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

The January 2009 NCLC report does not say how much credit bureaus should spend domestically per dispute. But it does articulate a series of shortcuts that it alleges the credit reporting industry takes, thus denying consumers a fair opportunity to dispute material in their credit reports. The NCLC report notes other impediments to data correction as well: “Many consumers with errors in their reports do not send disputes because of barriers such as lack of time or resources, educational barriers, and not knowing their rights.”

2. Federal regulations can never solve credit reporting

They’ve been trying to solve the same issues AFF is raising since FCRA in 1970. It’s not because the regulations need more reform, it’s because top-down regulation of CRA’s from government always fails

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

How is it that four decades of federal regulation have not achieved the goals Proxmire sought for credit reporting? Why is a fair and privacy-protective credit reporting industry so elusive? The answers are not obvious, but experience under the FCRA serves as a caution about regulating our information economy top-down from Washington, D.C. This is not because information collection, processing, and use are free of problems, but because regulation is ill-equipped to solve them. Credit reporting involves deep complexities, including identification issues, contested notions of relevance, and the surprisingly difficult problem of arriving at “fairness.” Government regulation of credit reporting has not effectively solved these problems or reconciled the conflicting values that drive them. Meanwhile, the Fair Credit Reporting Act has likely protected the credit reporting industry from competition, denying consumers the benefits of innovation.

Credit reporting is so complex that the federal government can’t hope to understand it nor regulate it effectively

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

The lesson of four decades under the Fair Credit Reporting Act is that information regulation—in the name of credit reporting fairness, privacy, or whatever goal—is complex and value-laden. Because the federal government lacks the capacity to foresee how technology, the economy, and society will evolve, it should not regulate information practices. Deviating from our nation’s founding principles of freedom is as much a mistake in the information arena as in any other.

3. Credit reporting “fairness” can’t be achieved

Not only can’t be achieved, it can’t even be defined.

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

The question of what is fair and unfair in credit reporting is a matter of ongoing controversy. A single-minded statistician would mine every piece of data about every person to determine the relevance of each item of biography to creditworthiness. The privacy advocate would object to having so much data available, regardless of the purpose. Those who believe in redemption think it is unfair for information from the distant past to haunt one’s present. Redistributionists might pursue rules for credit reporting that help people get credit who otherwise wouldn’t, making up for some difficulty society has laid before the consumer. All of these interests are represented in the debate about credit reporting. With all these conflicting dimensions, credit reporting fairness is hard to administer on a mass scale.

DISADVANTAGES

1. Barriers to new CRA competition (the 3 existing “bad” ones will never face any new competition)

Link: AFF plan either substantially or trivially increases regulations on Consumer Reporting Agencies

If it’s trivial, then Negative wins the round right now on Topicality. But if it’s substantial, then…

Link: New regulations = more costs, and more costs deter new firms from entering the CRA market

Congressional Research Service 2020 (non-partisan research agency of Congress; article written by Cheryl R. Cooper (analyst in Financial Economics) and Darryl E. Getter (Specialist in Financial Economics) updated 22 Jan 2020 <https://fas.org/sgp/crs/misc/R44125.pdf>

Benefits to users of consumer data increase as more individual companies choose to participate as furnishers, but furnishers do incur costs to report data. To become furnishers, firms must be approved and comply with the policies of a CRA, such as fee registration requirements. The transfer of consumer data involves security risks, and many CRAs have adopted standardized reporting formats and requirements approved by the Consumer Data Industry Association (CDIA) for transferring data. Furnishers must be able to comply with industry data transfer requirements or some CRAs are unlikely to accept their data. Compliance may require investing in technology compatible with the computer systems of a CRA. Compliance costs may be more burdensome for smaller firms, causing some to choose not to be furnishers. In addition, entities that elect to become furnishers face legal obligations under the FCRA. The FCRA requires furnishers to report accurate and complete information as well as to investigate consumer disputes. Hence, reporting obligations could possibly, under some circumstances, result in legal costs, which may also influence a firm’s decision to become a furnisher.

Impact: Turn the AFF harms. Lack of competition is the root of many CRA problems, so they get worse after an AFF ballot

Reuters news service 2019. (journalist Pete Schroeder) 26 Feb 2019 “Credit reporting agencies face pressure from skeptical U.S. Congress” <https://www.reuters.com/article/us-usa-house-creditreporting/credit-reporting-agencies-face-pressure-from-skeptical-u-s-congress-idUSKCN1QF2KM>

The panel’s top Republican, Representative Patrick McHenry, agreed the industry was in need of a makeover. However, he emphasized a desire to see more companies compete with the three largest agencies. “What I see here is an oligopoly,” he told executives. “I don’t see that vibrant competition which is needed for these agencies to actually help consumers.”

Impact: Lack of competition massively harms consumers

Rep. Patrick McHenry 2019 (R-N.Carolina, ranking member of the House Financial Services Committee) Financial Services Republican Leader Examines Lack of Innovation, Competition in Credit Reporting System 26 Feb 2019

Republican Leader of the House Financial Services Committee, Patrick McHenry (NC-10), pressed the witnesses on their efforts to modernize the credit reporting system, which suffers from a lack of innovation and competition. Ultimately, this leads to complacency and technological inadequacies with catastrophic consequences, such as the 2017 Equifax breach that put two out of every five Americans’ personal information at risk.

Impact: Standardized regulations block competition and block better solutions, so consumers are worse off. Federal regulations were what created the problems AFF is trying to solve!

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

As economic theory predicts, the credit reporting industry appears to have benefited from the ossifying effects of regulation. Though the information and technology environments have changed dramatically over the last four decades, the credit reporting and reputation marketplace has seen little change or innovation. A potential related market for identity services is also stagnant thanks in part to government policies. When Congress chose to preempt common law remedies for wrongs done by credit bureaus, it withdrew a tool that could have guided credit reporting toward better service to consumers and a more innovative and vibrant marketplace. With uniform national regulations, we cannot know how credit reporting might have evolved for the better.

2. Reduced use of credit reporting agency (CRA) data

Link: AFF increases regulatory burden on CRAs

It’s all throughout their plan.

Link: Regulatory burdens under Status Quo FCRA are already immense

Jim Harper 2012 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee, ) Advertising, Credit Reporting, and ‘Anti‐​Objectification’ 15 Dec 2012 <https://www.cato.org/blog/advertising-credit-reporting-anti-objectification>

The FCRA preempted state common law—you can’t sustain a defamation action against a credit bureau, no matter how wrong its reporting is—replacing it with opaque and unwieldy bureaucratic procedures for those who believe their credit bureau records are inaccurate.

Link & Impact: More burdens will mean less accurate credit ratings and harm consumers

Jim Harper 2012 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee, ) Advertising, Credit Reporting, and ‘Anti‐​Objectification’ 15 Dec 2012 <https://www.cato.org/blog/advertising-credit-reporting-anti-objectification>

The FCRA already reduces consumer welfare by keeping new entrants out of the credit reporting business. When companies edge toward providing data that might be used for credit decisions, employment screening, housing, and the like, they quickly learn to eschew that market so they can avoid the FCRA’s obligations and regulator inquests. The result? Our economy is making less intelligent decisions about credit, employment, and housing. Efficiences that would lower costs to consumers across the board are not being found.

3. Credit repair scams

Link: Plan makes “3rd party” reporting of credit disputes easier

Title I Section 101 paragraph 7 of the “Improving Credit Reporting for All Consumers Act” 2019. <https://www.congress.gov/bill/116th-congress/house-bill/3642/text>

A consumer reporting agency may not refuse to conduct a reinvestigation under this subsection because the agency determines that the dispute was submitted by an authorized third party, unless the agency has clear and convincing evidence that the third party is not authorized to submit the dispute on the consumer’s behalf.

Link: “Credit Repair” scams claim to offer consumers “improved credit ratings” by just flooding the CRA’s with disputes as a 3rd Party complainant. We sure don’t need more of that.

Jim Harper 2011 (law degree from Univ. of California-Hastings; was a founding member of the U.S. Department of Homeland Security’s Data Privacy and Integrity Advisory Committee) Reputation under Regulation: The Fair Credit Reporting Act at 40 and Lessons for the Internet Privacy Debate 8 Dec 2011 <https://www.cato.org/publications/policy-analysis/reputation-under-regulation-fair-credit-reporting-act-40-lessons-internet-privacy-debate>

In the early years of credit repair fraud, many scams claimed that they could permanently remove accurate information from a consumer’s credit report. They would attempt to deliver on this promise by “flooding” credit bureaus with disputes. Some credit repair firms today encourage their customers to dispute all items in their credit file. Or they advise consumers to apply for an employer information number (EIN) from the IRS and use it to build fresh credit. These are misuses of the FCRA at best. Fifteen years ago, Congress had to enact new legislation to address the fraud potential it created with the FCRA. Congress passed the Credit Repair Organizations Act in September 1996, hoping to remedy the opportunistic use of FCRA rights. Credit repair organizations are still aggressive users of FCRA-mandated processes. As of 2007 one industry estimate held that credit repair organizations are responsible for as much as 30 percent of the disputes that credit bureaus and data furnishers must reinvestigate, at a cost that is substantial in the aggregate.

Impact: Consumers ripped off.

Brian Johnson 2008 (journalist) 16 Sept 2008 More Harm Than Good: Beware of Credit-repair Scams <https://www.mdmag.com/journals/pmd/2006/113/4862>

Eradicating a lifetime of terrible credit for a small fee is a tempting offer that lures many consumers. The truth is, according to the Federal Trade Commission (FTC), no one can legally remove accurate and timely negative information from a credit report. Although some legitimate credit-repair firms can help you to dispute inaccurate items, no third party can make debt disappear. "There is no such thing as legal credit repair, and that's the first warning sign," says Rod Griffin, manager of public education at Experian. "An organization that requires up-front payment before providing service or asks that you change your identifying information is violating the Credit Repair Organizations Act."   
Modern Credit Swindles  
Armed with the knowledge that there's no magical quick fix for your credit, it's easy to spot the wide variety of scams out there. Bankrate.com warns consumers to beware of credit-repair companies that contact you, use hard-sell tactics, and make extreme promises. Some companies may claim that they have an "in" with the credit agencies, but that's simply not possible. If they don't just take your money and run, their most likely course of action will be to flood the credit agencies with frivolous disputes over your debt. If the credit agency investigates, your debts may disappear during the investigation, which the scam company will show you as proof that your debt has been cleared, but this improved credit won't last.