

# AUTOMATED INJUSTICE REDUX

Ten Years after a Key Report,  
Consumers Are Still Frustrated Trying  
to Fix Credit Reporting Errors

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By

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## ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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## EXECUTIVE SUMMARY

Ten years ago, the National Consumer Law Center (NCLC) issued *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*, the landmark report on the serious dysfunctions in the American credit reporting system. Since then, the Consumer Financial Protection Bureau (CFPB) began exercising supervision authority over the Big Three credit bureaus (Equifax, Experian and TransUnion), and started the difficult task of compelling them to reform their procedures and practices. A coalition of more than 30 state Attorneys General reached a breakthrough settlement with the credit bureaus in 2015, requiring an array of reforms.

Despite these very laudable achievements, the credit bureaus and the companies that supply them with information still have serious problems in ensuring the accuracy of credit reports, affecting millions of American consumers. The dispute process required by the Fair Credit Reporting Act (FCRA) that was intended to fix these problems remains ineffective and biased.

This report provides a 10-year update to NCLC's 2009 *Automated Injustice* report. It uses stories from lawsuits and the CFPB Complaint Database to illustrate that American consumers still suffer from credit reporting abuses, such as:

- having their credit files “mixed” with the wrong person,
- negative information that remains even after court judgments or legal settlements declare that a consumer doesn't owe a debt,
- the after-effects of identity theft when credit bureaus and creditors don't believe the victim, and
- being labeled as dead when they are alive and breathing.

This report also documents the massive number of credit and consumer reporting complaints to the CFPB, over 380,000 since July 2011, with over three quarters or about 285,000 involving Equifax, Experian, or TransUnion. Credit and consumer reporting is often the top category of complaints to the CFPB, especially during the last two years.

Part of the problem is that some furnishers (creditors or other companies that supply information to the credit bureaus) still conduct pro forma, perfunctory investigations into credit reporting disputes and ignore CFPB guidance to consider critical documents and information. Another part of the problem is that the credit bureaus still fail to conduct their own independent investigations and continue to blithely accept what a furnisher tells them, despite evidence such as court judgments or police reports to the contrary.

This report makes recommendations to Congress and regulators detailing the large-scale changes necessary to finally end these problems, including:

- a right of appeals for consumers when they disagree with a furnisher or credit bureau about the results of a dispute investigation,
- stricter matching criteria to ensure that information belonging to one consumer does not get wrongfully mixed into the credit report of another consumer,

- a requirement that credit bureaus devote sufficient resources to the dispute system and a clarification that they must conduct independent analyses instead of simply parroting what furnishers tell them,
- a right to seek court orders to compel credit bureaus to fix reports,
- more control for consumers by requiring that they must proactively authorize the use of their credit reports for credit, insurance and other uses, and
- a publicly-owned alternative to the credit bureaus.

## I. BACKGROUND

### A. Introduction: the importance of credit reports and the unacceptable error rates in them

Credit reports and credit scores play a crucial role in consumers' lives. They determine a consumer's ability to obtain credit and the amount they must pay for it, and whether they can buy a house or rent an apartment. It could even affect a consumer's ability to find a job. Lenders rely on credit reports and credit scores as a primary factor in the decision whether to extend credit and at what price; home and auto insurers decide whether to offer insurance and base their rates on specialized credit scores; and many employers and landlords rely on reports before making decisions about whom to hire or rent to.

With such far-reaching implications, the importance of ensuring maximum possible accuracy in credit reports should be paramount. Yet unacceptable levels of inaccuracies in credit

reports persist, affecting tens of millions of Americans. A landmark 2012 study by the Federal Trade Commission (FTC) found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious they would be denied credit or need to pay more for it.<sup>1</sup> With an estimated 208 million Americans in the credit reporting system, this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering.<sup>2</sup>

With an estimated 208 million Americans in the credit reporting system, this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering.

Furthermore, despite significant reforms in the last ten years and decades of advocacy by consumer groups, systemic inaccuracies still pervade the credit reporting system and the processes for fixing those inaccuracies remain broken and biased. This report reviews the reforms from the last 10 years and documents how problems remain even after valiant efforts by federal and state regulators to

fix them. This report also makes policy recommendations for reform, including a dramatically progressive concept of providing a publicly-owned alternative to the credit bureaus.

### B. Market failures and commoditized consumers

To understand why problems persist in the credit reporting system, we must always keep in mind a crucial truth: that the paying clients of this industry are *not* consumers, but the creditors and debt collectors who furnish or use the information contained in the credit bureaus' databases. The Equifax data breach in mid-2017, in which that credit bureau allowed hackers to obtain the sensitive personal information of 148 million Americans,<sup>3</sup> made many policy-makers and Americans realize how consumers are the commodity of the credit bureaus, not the customers. Unlike most industries, consumers cannot vote with our feet when the credit bureaus fail to respond to our complaints and problems. Indeed, two years after the Equifax data breach, every single American consumer who wants credit still needs to deal with Equifax.

As one Texas consumer who complained to the CFPB in 2015 put it:

*... I 'm tired and beat up from a constant battle for the last few months, against data furnishers that don't report accurate information and the credit bureaus act like we consumers are always wrong and never look further into the issues, but allow this to go on. It seems as though consumers get the short end of the stick because we don't pay for the service like the creditors do.*

Source: Excerpted from CFPB Complaint No. 1562377, filed Dec. 5, 2017.

(This report relies on complaints in the CFPB database, but we have paraphrased some complaints and edited others to remove typographical and grammatical errors.)

This truth lies at the heart of the continued failure of our credit reporting system to adequately respond to the interests and complaints of American consumers. The credit reporting system started out rigged and remains rigged, despite heroic efforts as described below at the end of the sentence.

### C. Findings of NCLC's 2009 *Automated Injustice* report

In January 2009, the National Consumer Law Center released *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*, its original report on this subject. The 2009 report explained the basic structure of our credit reporting system; how economic forces in that system created and perpetuated inaccuracies in credit reports; and the complete travesty of a system for resolving consumer disputes. That report focused, as this updated report does, on the “Big Three” nationwide consumer reporting agencies—Equifax, Experian, and TransUnion—referred to here as “credit bureaus.”

Under the Fair Credit Reporting Act (FCRA), credit bureaus and other consumer reporting agencies must follow “reasonable procedures to ensure maximum possible accuracy.”<sup>4</sup> Despite this stringent standard, the 2009 report detailed endemic problems that caused systemic inaccuracies in credit reports, such as:

- **Mixed Files.** The credit bureaus use insufficient and overly loose matching criteria, in particular the practice of matching data from creditors and debt collectors to consumers’ files based on only 7 out of 9 digits of a Social Security number. This leads to one of the worst problems in credit reporting—the “mixed file,” where information belonging to one

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### What is a Consumer Reporting Agency?

The Fair Credit Reporting Act regulates all “consumer reporting agencies,” which is a broad definition that encompasses credit bureaus, employment background check companies, check-writing databases, tenant screening companies, and many other types of database companies. The Big Three credit bureaus (Experian, TransUnion, and Equifax) are a subset of consumer reporting agencies referred to in the Act as “nationwide consumer reporting agencies.”

Sources: 15 U.S.C. § 1681a(f), 15 U.S.C. § 1681a(p), and 15 U.S.C. § 1681e(b).

consumer is improperly reported in another consumer's credit report. Credit bureaus use these overly loose matching criteria and err on the side of including information because their customers—users of credit reports—would rather have a consumer tagged with false negative information rather than have negative information missing about a consumer.

- **Furnisher Errors.** Errors in credit reports are often caused by the creditors and debt collectors that provide data to the credit bureaus, known as “furnishers.” The errors include attributing an account or debt to the wrong consumer, incorrectly recording a payment history, or “re-aging” a debt by reporting an incorrect Date of First Delinquency, which is the trigger for the seven-year period that negative information generally can stay on a credit report.
- **Fallout from Identity Theft.** Credit bureaus and furnishers both bear a share of the blame for the fallout from identity theft. The credit bureaus' loose matching procedures contribute to the problem of identity theft, and their data breaches give thieves the tools needed to commit fraud. When consumers try to fix the aftereffects of identity theft, furnishers sometimes fail to believe them and remove the information. As discussed below, the credit bureaus will always take the furnishers' side when consumers try to remove false information.

### What is e-OSCAR?

e-OSCAR is a web-based, automated system that enables furnishers and credit bureaus to create and respond to consumer credit history dispute. It was created by the Big Three credit bureaus and fourth consumer reporting agency, Innovis.

Source: e-OSCAR, About Us, <https://www.e-oscar.org/implementation/about-us>.

In addition to requiring maximum possible accuracy, the FCRA has delineated a specific procedure for consumers to dispute the accuracy of information contained in their credit reports. If a consumer disputes an error, the credit bureaus have an obligation to conduct a reasonable investigation, within 30 days, that considers all relevant information supplied by the consumer.<sup>5</sup> As part of that investigation, the CRA must send the furnisher of the disputed information a notice that includes “all relevant information regarding the dispute that the agency has received from the consumer.”<sup>6</sup> Despite these specific requirements, the 2009 *Automated Injustice* report documented gross inadequacies in the credit bureaus' dispute processes, including:

- **Insufficient Information Conveyed and Considered in Investigations.** Credit bureaus use the highly automated e-OSCAR system to convey disputes to furnishers, primarily using shorthand two- or three-digit codes, and at most only a line or two of text in a minority of instances. The credit bureaus use the same four or five codes over 80% of the time.
- **Failure to Transmit Information Submitted by the Consumer.** Credit bureaus failed to send supporting documentation submitted by consumers to furnishers, in clear violation of the FCRA.
- **Perfunctory Credit Bureau Investigations.** Credit bureaus limit the role of their employees who handle disputes, or of the foreign workers employed by their offshore vendors, to little more than selecting these two or three digit codes. Workers do not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute.
- **Credit Bureaus Always Side with Furnishers.** Credit bureaus are universally biased in favor of furnishers and against consumers in disputes. In a practice known as “parroting,”

credit bureaus blindly adopted the response of the furnisher without performing any independent review.

- **Perfunctory Furnisher Investigations.** Furnishers conducted pro forma investigations, doing nothing more than check whether the information in the dispute transmittal form, called an Automated Consumer Dispute Verification (ACDV) form, matched the information in their own computer systems—the very systems that likely caused the error in the first place.

As of January 2009, this sham system meant that no one was really investigating the merits or substance of disputes. After multiple fruitless disputes, some consumers resorted to filing lawsuits in order to have inaccurate information corrected.

As discussed in the next section, much has happened in the nearly ten years since NCLC released *Automated Injustice*. A number of reforms have been imposed on credit bureaus and furnishers with the goal of addressing the problems documented in the report. Despite this, serious and intractable problems remain with accuracy and the dispute process.

## II. REGULATORY AND POLICY CHANGES SINCE 2009

Over the ten years since *Automated Injustice* was published, a number of regulatory and enforcement actions have changed the landscape for credit bureaus and furnishers. Federal and state regulators have attempted to address violations of the FCRA, improve the accuracy of credit reports, and provide meaningful reform of the FCRA dispute system

### A. Furnisher accuracy and integrity regulations; direct dispute rights

On July 1, 2009, the federal banking regulators and FTC finalized a joint rule implementing the requirements of the Fair and Accurate Credit Transactions Act of 2003 (FACTA) to establish standards for furnishers regarding the accuracy of information and to process disputes sent to them directly.<sup>7</sup> The rule, which was later restated by the Consumer Financial Protection Bureau (CFPB), requires furnishers to establish written policies and procedures for accuracy and integrity, commensurate with the nature, size, complexity, and scope of the furnisher.<sup>8</sup> According to the regulations, appropriate policies under the rule would include maintaining records for a reasonable amount of time, ensuring adequate oversight of service providers, furnishing data in a way that prevents re-aging and mixing of files, and providing sufficient information to tie account data to a particular consumer.<sup>9</sup>

The rule also requires furnishers to investigate disputes that they directly receive from consumers.<sup>10</sup> Neither the accuracy and integrity provision nor the direct dispute right is enforceable through a private right of action,<sup>11</sup> which may be the reason the rule seemed to produce little improvement until the CFPB began supervising furnishers (see pages 8–10).

### B. Multistate attorney general settlement

In 2015, a number of state Attorneys General's offices worked together to reform practices at the credit bureaus. Following investigations, two significant settlements were reached. First, the New York Attorney General entered an agreement with Equifax, Experian, and

Transunion.<sup>12</sup> Shortly thereafter a group of Attorneys General from 31 states entered into an “Assurance of Voluntary Compliance” with the credit bureaus, with many similar provisions.<sup>13</sup> Collectively, these agreements require the credit bureaus to implement a number of specific reforms, including:

■ **Mixed Files**

- Credit bureaus will share information with each other when one credit bureau confirms that a consumer’s file has been mixed with another person’s file and will establish best practices for handling and sharing information about mixed files.

■ **Better procedures to monitor furnishers**

- Credit bureaus must track and compile furnisher dispute statistics and provide the Attorneys General’s offices with the names of companies that consistently provide inaccurate information.
- Credit bureaus will take corrective action against furnishers that fail to comply with data furnishing obligations and dispute investigation requirements.

■ **Dispute Process**

- Credit bureaus will implement escalated handling for disputes involving mixed files, fraud, and identity theft, including assignment to specialized groups with substantial experience in those types of disputes.
- In the case of a dispute where the credit bureau does not otherwise modify the information as requested by the consumer, the credit bureaus must assign an agent to review a consumer’s supporting documentation, who will have discretion to decide to make the change requested by the consumer.

■ **Data Reporting Reforms**

- Credit bureaus must prohibit furnishers from reporting debt that did not arise from a contract or agreement to pay (including tickets and fines) and implement a process to remove existing information about such debts.
- Credit bureaus will not report medical debts less than 180 days old and will remove medical debts paid by an insurer.
- Credit bureaus must periodically remove or suppress all debt collection accounts that have not been updated by the debt collector furnisher within the last six months.

The reforms were to be implemented in staggered stages over a three-year period ending in September 2018, and do not have a termination date.

### C. CFPB supervision of credit bureaus and furnishers

A critical development was the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Dodd-Frank Act created the Consumer Financial Protection Bureau (CFPB) and endowed it with the authority to write regulations to implement the FCRA and to enforce it.<sup>14</sup> Perhaps most importantly, the Dodd-Frank Act gave the CFPB supervision authority over the credit bureaus—a much more powerful and searching tool to reform the credit bureaus than an enforcement-only approach. This authority allows the CFPB to conduct on-site examinations of credit bureaus, just as bank examiners do for banks, in order to assess their compliance with federal consumer protection laws, obtain information about their activities and compliance systems, and detect and assess risks their practices pose for consumers and the marketplace.<sup>15</sup> In addition, the CFPB has supervisory authority over

many of the largest furnishers of information, such as large banks, mortgage servicers, student loan servicers, and debt collectors.<sup>16</sup>

In July 2012, the CFPB published a rule establishing its supervision authority over consumer reporting agencies that deal with financial products and services and have annual receipts of over \$7 million from consumer reporting.<sup>17</sup> This includes the Big Three credit bureaus and a number of other consumer reporting agencies that focus on financial information. The CFPB's original director, Richard Cordray, immediately made it a priority to examine the credit bureaus' compliance with the FCRA, including the accuracy of credit reports and the credit bureaus' processes for error resolution.<sup>18</sup>

Using its authority in this area, the CFPB has studied the problems with various aspects of the credit reporting system and issued bulletins that provide guidance to credit bureaus and furnishers. These include:

- **CFPB Research Confirms Rampant Problems.** The CFPB's 2012 *Key Dimensions* report described the inner workings of the credit reporting industry in detail, documented problems, and laid the groundwork for reform.<sup>19</sup> The report confirmed many of the problems identified in our 2009 *Automated Injustice* report. It also documented that as of 2012, the credit bureaus were still asserting that their systems did not permit consumer-submitted documents to be forwarded to furnishers, allegedly due to "technological limitations, challenges evaluating the authenticity of consumer documents, and privacy concerns."<sup>20</sup> Finally, the report noted that debt collectors make up only 13% of account information in credit reports, but are responsible for nearly 40% of disputes.<sup>21</sup>
- **CFPB Puts Furnishers on Notice.** In 2013, the CFPB issued a bulletin putting furnishers on notice of their specific obligation to review all relevant information connected with a consumer dispute.<sup>22</sup> Meeting this obligation, the CFPB stated, required, among other things, "Maintaining a system reasonably capable of receiving from CRAs information regarding disputes, including supporting documentation."<sup>23</sup> At about the same time, the credit bureaus finally began making consumer-submitted documents available to the furnishers by uploading them to e-OSCAR. The CFPB followed up its 2013 bulletin with a blog post in February 2014 stating that consumers now had more options for disputing errors in their credit reports, including the ability to upload, mail, or fax supporting documents relevant to a credit report dispute.<sup>24</sup>
- **CFPB Documents Problems Discovered During Supervision.** The CFPB has used its periodic "Supervisory Highlights" publications to point out deficiencies in the credit reporting industry and to document when it has required improvements. Most significantly, the CFPB issued a special edition of Supervisory Highlights in March 2017 that documented the serious and widespread deficiencies uncovered during its supervisory examinations of the credit bureaus as well as furnishers, particularly regarding data accuracy and dispute processes.<sup>25</sup> These problems included insufficient quality control systems for testing the accuracy of credit reports and deficiencies in the credit bureaus' relationship with furnishers, especially as related to the dispute process. The CFPB also found that in cases where consumers had submitted documentary evidence in support of a dispute, "one or more [credit bureaus] failed to review and consider the attached documentation and relied entirely on the furnisher to investigate the dispute,"<sup>26</sup> plainly identifying parroting as a violation of the FCRA.

The March 2017 Supervisory Highlights report also documents how CFPB supervision has compelled the credit bureaus to take measures to improve accuracy and dispute handling. These measures include:

- **Formalizing and centralizing data governance policies** and establishing robust quality control programs.
- **Enhancing standards for public records data** including greater frequency of updates and stricter identity-matching criteria. This has led to the removal of over 90% of lawsuit records and 50% of tax lien records.<sup>27</sup>
- **Monitoring furnishers on an ongoing basis**, including a process to temporarily stop accepting data from furnishers that have accuracy problems or that fail to provide regular updates.
- **Tracking furnishers with higher rates of disputes** and ceasing to accept data from such furnishers when they failed to correct problems.
- **Improving access of data quality reports for furnishers**, including providing these reports to data furnishers at no cost.
- **With respect to disputes, revising policies and procedures** to ensure that the credit bureau conducts an independent review of the dispute and reviews all documents submitted by consumers to prove their dispute.

The CFPB's examinations of large furnishers has also resulted in a number of instructions to some of these furnishers to change their credit reporting practices, as summarized in the March 2017 report. These include:

- **Prevent Re-aging of Accounts.** The CFPB found that furnishers had inadequate systems to prevent re-aging of accounts, in that these furnishers reported accounts that had been transferred to them without any "date of first delinquency" (DOFD).<sup>28</sup> In addition, the Bureau noted that some furnishers updated the DOFD when a consumer filed bankruptcy, to reflect the bankruptcy filing date as the DOFD.<sup>29</sup> The CFPB directed furnishers to revise their written policies to correct these problems.<sup>30</sup>
- **Properly Update Information and Conduct Investigations.** The CFPB directed furnishers to fix problems with their failure to promptly update information sent to credit bureaus when a furnisher determined that reporting was incomplete or inaccurate; their failure to provide notice to consumers of the results of direct disputes or determinations that a dispute was frivolous or irrelevant; and their failure to timely complete investigations when credit bureaus referred disputes to them.<sup>31</sup> Examiners found that furnishers who had not completed their investigations within the statutorily allowed timeframe would at times report information as verified even though a review was not yet completed.<sup>32</sup> The CFPB directed these furnishers to implement systems for timely completion of investigations.

While the CFPB admitted at the time that its efforts were a work in progress,<sup>33</sup> it appeared to succeed in moving the proverbial needle. It was the most progress made in the decades of struggle to reform the credit bureaus' practices. However, as described below, problems persist and we fear the needle on the speedometer for reform is stuck on slow. Moreover, there is a risk that the change in administration at the CFPB has resulted in a dialing back of these efforts to get the credit bureaus to clean up their act.

## D. CFPB enforcement actions against the credit bureaus and furnishers

In addition to supervisory efforts, the CFPB has taken enforcement action against both the credit bureaus and furnishers. The CFPB's enforcement actions against the credit bureaus primarily involved their sale practices in promoting credit monitoring products,<sup>34</sup> and did not involve accuracy or dispute issues.

More relevant to this update, the CFPB has taken a number of enforcement actions against furnishers for failing to ensure the accuracy of information furnished to the credit bureaus and other CRAs.<sup>35</sup> The CFPB has brought several actions against debt collectors for failing to reasonably investigate disputes.<sup>36</sup>

However, in a troubling sign, the CFPB settled its latest enforcement action against a furnisher for reporting inaccurate information and other FCRA violations without obtaining any monetary relief for consumers and without imposing civil penalties.<sup>37</sup> Such toothless enforcement signals to furnishers that they may violate consumer rights without any consequences.

## III. PERSISTENT PROBLEMS ENDURE DESPITE REFORMS

Despite the CFPB's supervision and the reforms at the credit bureaus that it compelled, as well as the multistate Attorney General settlement, the deficiencies with the accuracy of credit reports and flaws with the dispute system continue to be significant and intractable. Two indications of the persistent nature of the problems are (1) the number of consumer complaints about credit reporting to the CFPB and (2) the evidence from the consumer complaint narratives as well as legal cases that the credit bureaus fail to correct even obvious errors in the face of compelling evidence.

### A. Credit reporting tops consumer complaints to the CFPB

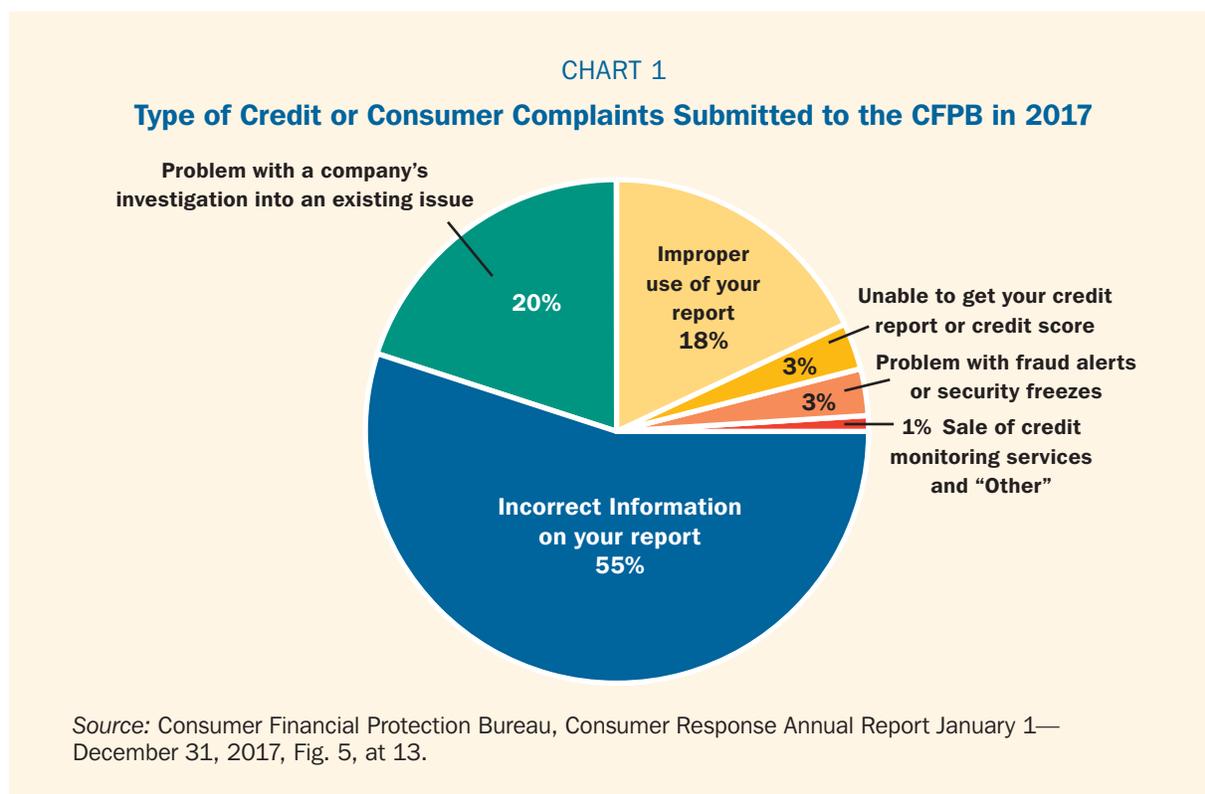
The continuing nature and scope of the problem with credit reports is made abundantly clear from the number of complaints received by the CFPB on the issue. Since its creation, there have been over 380,000 complaints about credit reporting or other consumer reporting (collectively "consumer reporting") issues to the CFPB.<sup>38</sup> About three quarters of these complaints—around 285,000—involved inaccurate information on Equifax, Experian or TransUnion credit reports.<sup>39</sup> From July 2011 to December 2017, consumer reporting issues were the third most complained about category, behind debt collection and mortgage complaints.<sup>40</sup>

In 2017, consumer reporting complaints took the top spot, as the number of complaints nearly doubled from 53,900 in 2016 to 100,000 in 2017.<sup>41</sup> The available data from 2018 indicates that consumer reporting will once again be the top category of complaints, with over 100,000 complaints from January to October 2018, compared to about 70,000 for debt collection in the number two spot.<sup>42</sup> In addition, the Big Three credit bureaus have often occupied the top three spots in terms of which companies the CFPB has received the most complaints about.<sup>43</sup>

In 2017, consumer reporting complaints took the top spot, as the number of complaints nearly doubled from 53,900 in 2016 to 100,000 in 2017. The available data from 2018 indicates that consumer reporting will once again be the top category of complaints, with over 100,000 complaints from January to October 2018.

[N.B. Note that while the dramatic increase in complaints in 2017 occurred in the year of the Equifax data breach, which resulted in theft of the personal information of about 148 million consumers, it was likely too early for an uptick of errors based on identity theft from the data breach. Instead, we believe that many consumers who typically would not have checked their credit reports did so prompted by the Equifax breach and discovered that their credit reports were riddled with errors.]

More than half (54%) of consumer reporting complaints to the CFPB involved inaccurate information. About 20% of complaints involved a credit bureau or other company’s investigation into an existing issue, e.g., the investigation did not fix the error or took over 30 days.



Looking exclusively at those complaints to the CFPB regarding credit bureau investigations that were transmitted back to Experian, TransUnion, or Equifax, the majority were that the investigation did not fix the error in the consumer’s report.



Thus, if CFPB complaints are any indication, existing efforts to date have not proven sufficient to stem the tide of complaints against the credit bureaus about inaccurate information and unreasonable investigations of disputes.

### B. Ten years after NCLC’s report, systemic problems continue even after regulatory reforms

Despite the recent reforms, the credit reporting system remains flawed and the dispute process is still biased against consumers. One of the key problems that remains unresolved is the continued existence of mixed files. Another problem is shoddy, minimal investigations by furnishers, and the fact that the credit bureaus continuing to parrot or automatically accept the results of those sham investigations instead of taking their own steps to determine the truth.

## Credit Bureaus Refuse to Correct Mixed File

Tammy Brown is a North Carolina resident who works for University of North Carolina Health Care. In 2014, Ms. Brown learned that her credit reports had been mixed with the file of another Tammy Brown in Indiana. Indiana Tammy Brown had filed for Chapter 7 bankruptcy in 2013, which was showing up in North Carolina Tammy Brown's credit reports at Equifax and Experian. In addition, her credit card accounts and a previous mortgage were showing up as discharged in bankruptcy, despite the fact that North Carolina Tammy Brown had not filed for bankruptcy in 2013. Her current mortgage was labeled as delinquent or with missed payments, despite the fact that she had not missed those payments. Her TransUnion report also contained erroneous information belonging to the Indiana Tammy Brown. North Carolina Tammy Brown sent dispute after dispute to the credit bureaus, but they never managed to properly fix her credit reports and she was forced to sue all three companies in 2016.

Source: Synopsis of Complaint, *Brown v. Experian Info. Sol.*, Civ. Act. No 16-cv-000348 (N.C. Gen. Ct. Marc. 18, 2016).

### 1. Mixed files

Mixed files are arguably the worst kind of credit reporting error, and they continue to be a thorny and unresolved problem for consumers. To our knowledge, the credit bureaus continue to use overly loose matching criteria, such as partial Social Security Number matches, which leads to information being placed in the wrong consumer's file. Some examples of mixed files include:

From a complaint in the CFPB database:

*So I recently found out that all credit bureaus mixed my credit history with my brother's credit history into a single report. I already contacted all bureaus with this dispute. Unfortunately, XXXX is the only credit bureau that handled this dispute as a professional company. XXXX is able to fix this dispute within XXXX hours and I received the corrected report already. However, XXXX and TransUnion are the worst agencies I have ever encountered. . . . Those XXXX companies keep claiming that it is my creditor's fault for not reporting the information with all detail (as they claim they never receive my SSN so all my information were filed under my brother's name and SSN which means I don't exist in this country). . . . Second, the representatives ask me to mail in a copy of my SSN to prove my identity so they can handle the dispute "properly." I complied with the*

*request yet it's been freaking XXXX weeks and I haven't heard back from them regarding the status of the dispute.*

Source: Excerpt from CFPB complaint No. 1510006, filed August 9, 2015.

### 2. Automated investigations continue

As discussed on page 9, one of the key reforms brought about by CFPB supervision was that the credit bureaus and the e-OSCAR system began providing furnishers with copies of the documents submitted by consumers. Furnishers are supposedly required to review those documents. The CFPB's 2013 Bulletin establishes a requirement that furnishers must fully review all the information available to them when processing a dispute.<sup>44</sup> Despite this requirement, some furnishers are ignoring these consumer-submitted documents and failing to review critical information, including account notes. Instead, they continue to conduct pro forma, perfunctory investigations.

The following is the deposition of an employee of Chrysler Financial Services who processed the dispute of Gary Sullivan. Chrysler Financial sued Mr. Sullivan in state court to collect a debt and lost the lawsuit. Despite a judgment that Mr. Sullivan did not owe the debt, Chrysler Financial continued to report it on his credit report. Mr. Sullivan submitted *twenty-one* disputes, yet neither Chrysler Financial nor the credit bureaus changed the information despite the court judgment.

Q: All right. And what kind of information would you look at when you're responding to an ACDV [Automated Dispute Verification Form, i.e., the dispute transmittal form used by credit bureaus]?

A: The status of the account, the contract and the application.

Q: All right. And when you say account status, are you talking about the account history and notes in the account history?

A: No.

Q: All right. So you would not look at the account notes?

A: No.

Q: And did you make the determination on your own not to look at the account notes or is that how you were trained?

A: Trained.

Q: All right. And do you see where it says image information a little bit below that?

A: Yes.

Q: And it says associated images, does that indicate to you that there was an image attached to the ACDV?

A: Yes.

Q: Sitting here today, do you remember what that image was?

A: No.

Q: Do you know if there's a way to pull up and look at what that image was?

A: No.

Q: And no, you don't know if there's a way or no, there is not a way to do that?

A: I do not know.

*Source:* Excerpt of Deposition of Stephanie Hairston, Sullivan v. Equifax Info. Services, LLC, Civ. Ac. N. 14-CV-02377 (D. Colo. May 11, 2015)

### C. Consumer stories of despair in fighting the credit bureaus

In order to give readers a sense of the severity of the problem with the credit bureaus and furnishers' dispute processing, this report includes selected stories that have occurred or were reported during the last five years, after CFPB supervision began and in some case after the multistate Attorney General settlement. These stories either come from legal cases or are credit reporting complaints from the CFPB complaint database. These stories illustrate both how the dispute process for credit reports remains broken, and the human toll that the lack of credit bureau and furnisher accountability takes on ordinary consumers.

## 1. Failure to correct information even when there is a judgment or legal settlement

One of the most obvious, head smacking, errors occurs when a consumer obtains a court judgment that they do not owe the debt or a legal settlement to fix reporting, yet the debt still appears on their credit report. In a gross example of bias towards furnishers, the credit bureaus will still parrot whatever the furnisher responds with even when confronted with court orders and legal settlements. Examples of this include Gary Sullivan’s case against Chrysler Financial in the last section and the following cases.

### *Reporting a Debt Despite a State Court Judgment against the Furnisher*

*Caren Dacumos co-signed a car loan for Melanthon Ibanez with Toyota Motor Credit Corporation. Mr. Ibanez defaulted on the loan, so Toyota sued both Mr. Ibanez and Ms. Dacumos in King County Superior Court. Ms. Dacumos was able to successfully defend against Toyota’s lawsuit and in June 2016, she obtained an order of dismissal with prejudice. “With prejudice” means that the court made a final determination on the merits of the case and Toyota could never sue Ms. Dacumos on the debt again. Despite the dismissal, Ms. Dacumos’s credit reports were not updated to reflect that she no longer owed a debt to Toyota. Instead, the car loan was report as a charge off and that \$13,593 was past due. (A “charge-off” occurs when a creditor moves a debt from profit to a loss on its balance sheet. Its appearance on a credit report is seen as highly negative and it will cause a significant decrease in a credit score).*

*Ms. Dacumos submitted multiple online disputes in 2016 and 2017 attempting to correct this information. Each time, Toyota verified the false information that Ms. Dacumos still owed \$13,593 on the car loan, and the credit bureaus continued to parrot that information on her credit report. In April 2017, Ms. Dacumos sent another round of dispute letters to all three credit bureaus, this time by postal mail, attaching a copy of the court order dismissing Toyota’s claims with prejudice. TransUnion responded by correcting the balance to \$0. However, Toyota continued to erroneously claim to Experian and Equifax that Ms. Dacumos owed \$13,593 on the car loan, and the two credit bureaus continue to take Toyota’s side—despite having a copy of the order of dismissal. The ordeal caused Ms. Dacumos significant frustration, emotional distress, embarrassment and the humiliation of being turned down for credit twice at Navy Federal Credit Union. Even worse, the federal court rule against Ms. Dacumos in her lawsuit in a strange opinion holding that even though Toyota could never legally enforce the debt against Ms. Dacumos, it theoretically existed in the abstract and thus could be reported.*

*Source: Synopsis of Dacumos v. Toyota Motor Credit Corporation, 287 F.Supp.3d 1152 (W.D. Wash. 2017).*

### *Furnisher ignores its own settlement*

*In 2013, Ocwen Loan Servicing took over the servicing of Valerie Jeffers’s mortgage. For the entire time Ocwen has had the loan, Ms. Jeffers has been current on all of her payments. Yet Ocwen has, for the most part, always treated her as in default. This led to threats to foreclose, false credit reporting, and other abuses. Ms. Jeffers responded by filing a lawsuit, which resulted in a settlement agreement in September 2016 requiring Ocwen to pay damages and to fix the loan history to show that the mortgage was always current, including instructing the credit bureaus to fix Ms. Jeffers’s credit reports. Unfortunately, Ocwen failed to live up to its promise to fix the reporting of the*

mortgage. A month after the settlement agreement, Ms. Jeffers ordered her credit report after being denied a credit card at Sunglass Hut, only to find that Ocwen was again reporting false information. Ocwen reported that, as of September 2016, Ms. Jeffers was 90 days late, thousands of dollars past due, and hadn't made a payment in months.

Ms. Jeffers' next step was to file disputes with the credit bureaus—four times. Every single time, Ocwen responded falsely that Ms. Jeffers was 90 days late, thousands of dollars past due and hadn't made a payment in several months. Ocwen did so, despite its own settlement agreement, because like the credit bureaus, it was conducting sham investigations. Discovery from Ms. Jeffers legal case revealed that when Ocwen gets notice of a dispute, the company outsources its processing to overseas locations, where the people spend about one or two minutes doing the so-called investigation. Literally all the workers do is pull up the account information on their computer, and look at how the loan is currently reporting. Then, on another computer screen, they pull up what they previously reported to Equifax or Experian. And then all they do is match the data—to make sure the name, date of birth, SSN, and balance are the same for both screens. Ocwen never reviewed its own settlement agreement in its so-called investigation. And the credit bureaus accepted whatever Ocwen reported for each dispute.

Source: Synopsis of Trial Transcript, *Jeffers v. Ocwen Loan Servicing, LLC*, Civ. Ac. No. 17-CV-00025 (D. Colo. Feb. 20, 2018)

### *Debts paid and dismissed*

The CFPB's complaint database similarly contains examples of debts being reported as owing and outstanding despite legal judgments to the contrary:

*In XX/XX/XXXX I obtained a home mortgage loan with XXXX. A credit report inquiry by XXXX revealed one derogatory line on my credit report (Item 29 XXXX: see attached) that was incorrectly still present in my record despite the fact that this debt was satisfied (paid off) and signed off by the County Judge (Order of dismissal with Prejudice) one year prior (XX/XX/XXXX Court Order: see attached).*

*I attempted to dispute and resolve this issue directly with the Credit Reporting Agencies with no success.*

*I am about to apply for a new home mortgage loan and before I do that I would like to ensure that this derogatory line-item is permanently removed from my file with all 3 major credit reporting agencies.*

*I am reaching out to CFPB to help me solve satisfactorily this issue.*

Source: Excerpt of CFPB Complaint No. 3085700, filed November 28, 2018.

*Submitted complaints to all three credit bureaus on XX/XX/XXXX. Within a few days, XXXX and XXXX had removed the paid tax liens from my credit report, but Transunion refused to do so and made a cursory examination with no results. I disputed their answer and have since provided additional documentation, including data from the IRS and XXXX County Court indicating these tax liens have been withdrawn. Transunion has made no effort to make the obviously incorrect changes and has now XXXX times knowingly reported incorrect information to my prospective employer. I have now lost my lucrative job due to their incompetence, rudeness and ignorance.*

*Among other things, each time we provide them with additional documentation, they restart the 30 day clock making this an endless, pointless exercise that only they seem to engage in.*

Source: Excerpt of CFPB Complaint No. 2430488, filed April 12, 2017.

## 2. Identity theft

Identity theft has become alarmingly frequent in our country. In 2017, 16.7 million consumers were victims of identity thieves, who collectively stole \$16.8 billion.<sup>45</sup> The FTC reported receiving 371,061 reports of identity theft in that year.<sup>46</sup> The credit bureaus bear a significant share of responsibility for this problem. First, lax data security led to theft of sensitive information from both Equifax in 2017 (148 million consumers) and Experian in 2015 (15 million consumers). Second, the credit bureaus' loose matching procedures contribute to the problem of identity theft; for example, if a thief has only adopted the victim's first name and SSN but not the last name or address, the algorithm used by credit bureaus may merge the fraud information into the victim's file. Third, and most critically for our purposes, both furnishers and the credit bureaus often fail to believe consumers when they report identity theft and try to fix the aftereffects, even in the face of clear evidence, such as a confession from the thief or a police report.

### *Groundhog Day*

*Adrienne Escobar's mother, Julie, took a loan out in Adrienne's name and then defaulted on the loan. After the defaulted loan was reported on Adrienne's credit reports, Julie sent a letter in May 2008 to the Pennsylvania Higher Education Assistance Agency Services (PHEAA) admitting that she, not her daughter, took out the loan and offered to fill out the paperwork so that charges could be pressed against her. Instead PHEAA continued to report that Adrienne was responsible for the loan to the credit bureaus and sent her case to a debt collector.*

*In August 2014, Adrienne filed a dispute about the defaulted loan with two credit bureaus, and PHEAA simply responded that Adrienne "had a charged off student loan with an unpaid balance reported as a loss by a credit grantor that had been transferred to recovery." A second dispute in September 2014 resulted in a variation of that response.*

*In June 2015, Adrienne tried another tactic by filing a police report identifying her mother as the person who had stolen her identity — something Julie had told PHEAA 7 years earlier. In August 2015, Adrienne sent another dispute package to the credit bureaus, this time including the police report. Once again, Experian and TransUnion referred the dispute to PHEAA, which did not result in any change in the reporting. Equifax also sent the dispute to TransWorld Systems, a debt collector, who did instruct Equifax to delete the account for fraud. Additional disputes for fraud in October 2015 simply elicited the same response from PHEAA.*

*Finally in May 2016, after sending four disputes complete with documentation to the credit bureaus, and eight years after her mother had admitted to PHEAA in writing that she had committed fraud, the credit bureaus deleted the fraudulent account. Despite this, TransWorld Systems placed another collection account related to the student loan on Adrienne's Equifax file in November of 2016.*

*In an open and shut case of identity theft and fraud, with the perpetrator admitting in writing that she had stolen the victim's identity, it took four disputes over two years for the credit bureaus*

to remove the account—and it got reported once again when a new debt collector took over the account.

Source: Synopsis of Escobar v. PHEAA, 2018 WL 1740364 (E.D. Pa. Apr. 11 2018).

### *That's why it's called identity theft*

This is taken from a complaint filed with the CFPB:

*Over ten years after subletting an apartment in 2007, a servicemember found that a debt collection item had been reported on their credit report, not once but three times, stemming from utility services at the apartment. The servicemember learned that someone had opened a utilities account in their name at the apartment they had sublet. In addition, the thief had opened another fraudulent account in the servicemember's name for another apartment five or six years ago at an apartment where the servicemember had never lived. The first account was not only fraudulent, it was over ten years old and thus too old to appear on any credit report because it was past the FCRA's time limits.*

*The servicemember complained about their inability to get the information deleted with the following analysis:*

*"Experian can not now claim that the information is verified as accurate when it's fraud. Just because someone has my name, ssn and birthdate doesn't mean the account they opened is a legitimate account . . . that's why it's called identity theft."*

Source: Synopsis of CFPB Complaint No. 2828095, filed Feb. 27, 2018.

This servicemember's case illustrates that too often consumers end up in a Catch-22—how does the average consumer prove identity theft or fraud to a credit bureau that only accepts facts from furnishers? This is especially problematic when the furnisher is a debt collector, which has no incentive to get the reporting correct but primarily wants to get paid on an account. As noted in the CFPB's *Key Dimensions* report, nearly 40% of disputes involve debt collectors yet they only account for 13% of account-level information in credit reports.<sup>47</sup> Despite the skewed incentives of debt collectors, it appears the credit bureaus are still automatically taking their side in credit report disputes.

### *They don't even believe elderly widows with a police report*

*F.I. is a 70 year old widow who has had a Citi credit card since 1996. A thief stole Ms. I.'s Citi credit card, and charged \$16,000—first at Best Buy on June 12, 2018 and then at an Apple Store on June 19, 2018. Ms. I. was not present at the respective stores on either date, did not make the purchases, and did not receive any goods or services from the stores. Citi was alerted to the unusual purchases through its Fraud Early Warning System and called Ms. I.; for some reason, a guest in her home, using her phone, confirmed the purchases.*

*Ms. I. disputed the charges on June 21, 2018. On July 20, Citi notified Ms. I. that it rejected her dispute and claimed "you participated in the transaction(s) with the merchant by providing them with your card." On August 9, 2018 and again on October 26, Ms. I.'s attorney sent a formal written dispute to Citi enclosing her police report as to the transactions, asking Citi to listen to tapes of the conversations, requesting documentation of the purchases, and asking that Citi get videos of the transactions from the stores. To date, Ms. I. has not received an acknowledgement or response.*

*Ms. I.'s attorney also sent a dispute of the Citi debt to Equifax on August 13, 2018, including a copy of the police report. Equifax conveyed the dispute, with the image of the police report, to Citi, yet Citi once again verified the debt as legitimate. Neither Citi nor the credit bureaus ever conducted a reasonable investigation of the dispute by, for example, using Citi's voice biometrics system to compare the conversations with Ms. I. and with the person who stole her credit card; reviewing the account history that showed the highest balance ever incurred by Ms. I.'s was less than \$2,500 or that her average balance was less than \$1,000, or that she had always paid the account as agreed before the theft. They did not review the sale slips to compare signatures with past purchases or contact Best Buy or Apple. Most critically, they disregarded the police report that was consistent with Ms. I.'s earlier disputes of unauthorized use.*

Source: Synopsis of Complaint, *F.I. v. Citibank, N.A.*, Case 3:19-cv-00002 (D. Conn. Jan. 2, 2019).

### 3. Mixed messages

To the extent that CFPB supervision and the multistate AG settlement has improved dispute handling, this reform has proven to be inconsistent. The following example shows how consumers might find themselves helped one day and stonewalled the next. From a CFPB complaint:

*After being denied a car loan because mortgage and auto debt that did not belong to them, a Texas consumer called Transunion to figure out what was going on. The consumer was informed that TransUnion had merged their credit profile with someone else's with a similar name. The accounts and incorrect personal information were deleted.*

*After going back for a car loan, however, the consumer was denied because of excessive credit inquiries dating to when their file was merged. The consumer spoke to TransUnion again and was assured the information would be removed. It was not. Upon calling TransUnion again, they were told there was nothing that could be done and they would have to wait for the information to fall off. The next person the consumer spoke to said they had to file a police report for fraud. The consumer noted that you can't file a police report if there was no fraud—simply an error by TransUnion that they had admitted to the consumer.*

*Summing up the frustration and sense of futility that pervades these complaints the consumer noted: "the creditors are saying call the bureaus and the bureaus say call the cred[it]ors."*

Source: Synopsis of CFPB Complaint No. 2497366, filed May 30, 2017.

### 4. Reporting consumers as deceased

One of the most bizarre problems is the reporting of a living consumer as deceased. Usually the error occurs when a creditor reports a consumer as deceased by entering a value of "X" in the data field otherwise used to report an account as a joint obligation or as an authorized user account. When the creditor then furnishes the inaccurate account information to the credit bureau, the deceased condition is reported to the consumer's file. This results in the entire file essentially shutting down, as the file will no longer be able to generate a credit score.<sup>48</sup> As part of the multistate Attorney General settlement, the credit bureaus agreed to develop best practices for identifying and preventing inaccurate reporting when a consumer

disputes a report stating that he or she is deceased.<sup>49</sup> However, so far these practices appear not to be working very well.

### *I'm not dead!*

*In March 2017, Peggy B. found herself unable to use her personal credit or debit card through her primary bank. According to her banker, her card no longer worked because Equifax had been reporting to the bank that Ms. B. was deceased. Shortly thereafter, Ms. B. received a letter dated April 3, 2017 stating that she was denied a request for prequalification by Credit One Bank because Experian was also reporting her as deceased.*

*Subsequently, Ms. B. received additional letters denying her credit on the basis that she was being reported as deceased. She also received two letters expressing condolences for her own death, a particularly unnerving experience. Ms. B. was also greatly concerned and highly upset about being reported as deceased because she generates income from buying and selling real estate, and a deceased notation would prevent her from obtaining the credit she needed to sustain that real-estate related income.*

*On February 9, 2018, Ms. B. sent a written dispute letter to Experian requesting that they correct any “Deceased” coding from her credit file. Experian responded that they had “updated” information about several accounts, attaching a copy of a credit report that did not reflect a Deceased notation on any of Ms. B. accounts. However, in July 2018, Ms. B. once again received a letter from denying her a credit card because a credit bureau was reporting her as Deceased. At that point, Ms. B. decided to seek legal assistance and file a lawsuit.*

*Source: Synopsis of Complaint, Peggy B. v. Experian Info. Sol., Civ. Ac. No. 4:19-cv-00120 (E.D. Mo. Jan. 29, 2019).*

### **5. Ignoring disputes as “suspicious requests”**

At least one credit bureau—Experian—has a practice of regularly rejecting disputes as “suspicious requests,” asserting that it believes that the dispute was not sent by the consumer. While the credit bureaus are permitted to reject “frivolous and irrelevant” disputes, Experian has a habit of being overly inclusive in what it considers suspicious, even rejecting disputes with identification documents, sent by certified mail, and accompanied by supporting documentation.

From the CFPB complaint database:

*I have spent the past 6 months sending disputes monthly to Experian about XXXX inaccurate accounts reporting on my credit report. ( XXXX Accounts and XXXX Account ) Experian has consistently disappointed me by doing everything in their power to not honor the disputes. They've said: 1) This is a suspicious request and we are protecting your identity, so we will not honor your disputes (Although the dispute was not suspicious, it was sent certified mail with a return receipt and included my identification documentation and a list of the accounts in question); 2) Send more documentation, we can't verify your identity (although I sent a copy of my passport, driver's license and social security card with the original dispute and the address on my disputes matched the address on my driver's license and credit report); 3) We have previously verified these accounts, we believe your dispute is not valid, so we will refuse to process it. (Although their other responses were*

*not verifying the accounts at all, they were requesting more information and fraudulently denying me my rights under the Fair Credit Reporting Act); 4) Now they have stopped responding to my disputes all together. It's evident to me that Experian is willfully non-compliant and blatantly breaking the law. When I sent the request to XXXX and XXXX, they deleted it right away.*

Source: Excerpt of CFPB Complaint No. 1409259, filed June 6, 2015.

## 6. Re-aging

A problem that sometimes occurs with debt collectors is the “re-aging” of obsolete debts. The FCRA requires most consumer debts to be deleted from a credit report after seven years from the date of charge-off or 180 days after the delinquency. Re-aging occurs when debt buyers fail to report or purposefully misrepresent the critical date of first delinquency, which is the trigger date from which the seven years is counted. A 2013 FTC report on the debt buying industry indicated that debt buyers obtained information about the date of first delinquency for only 35% of accounts at the time of purchase<sup>50</sup>—which means that up to two-thirds of debt buyer accounts could be reporting an incorrect date.

The following is a complaint from the CFPB database—it appears from the text of the complaint that the redacted dates (XX/XX/XXXX) are over seven years old:

*TransUnion continues to report late payments of 180 days past due on a mortgage that is now over 10 years old. I first spoke with [a TransUnion representative], then with her Manager, who explained to me that until [the furnisher] reports the information using the correct term “date of first Delinquency” rather than “date of last payment,” this will remain on my report indefinitely. Date of first delinquency is XX/XX/XXXX if last payment made is XX/XX/XXXX. But because that exact phrase was not provided I am told the information is accurate.*

*“I also called [the furnisher], but after being transferred from 3 different depart[ment]s, I was sent to a dead connection. This information by law should have been removed no later than XXXX, yet it continues to report today and apparently will always be on report. They have the info needed to correct but refuse to do so. It's crazy that such an incompetent company has so much power over a consumer's financial future. [This] continues to cost me thousands of dollars in over interest rates and refusal of credit.*

*The other reporting agencies each removed this information yet Transunion continues to report outdated information and say they will do so indefinitely. Those are their words not mine.*

Source: Excerpt of CFPB complaint 2745578, filed Dec. 5, 2017.

## IV. POLICY RECOMMENDATIONS

Despite the substantial and valiant efforts of the CFPB and the state Attorneys General, there is still a great need for reform of the credit reporting industry. Note that these recommendations only address problems with accuracy and the broken dispute system. There are a number of other flaws in the credit reporting system, which require their own reforms.

### 1. Right to appeal

Congress should establish a right for consumers to appeal when they disagree with a furnisher or credit bureau about the results of a dispute investigation. The appeal could either be to an independent unit in the credit bureau or to a regulator, such as the CFPB or FTC. If the unit is housed within a credit bureau, the unit must have direct and unfettered authority to make independent decisions and not be subject to any restrictions or incentives to process disputes quickly or in favor of furnishers.

### 2. Stricter matching criteria

Congress should require the credit bureaus to use stricter matching criteria, including matching information based on all nine digits of the consumer's SSN or eight digits plus full name and address. At a minimum, Congress should require the CFPB to engage in a rulemaking that considers imposing such a requirement and in general establishing minimum procedures to ensure "maximum possible accuracy."

### 3. Require the credit bureaus to devote sufficient resources and conduct independent analyses in disputes

Congress, the federal regulators (CFPB, FTC) and state regulators must:

- Require credit bureaus and furnishers to dedicate sufficient resources and provide well-trained personnel to handle disputes.
- Enforce (for the regulators) or clarify (for Congress) that credit bureaus must conduct an independent analysis of disputes, separate from that of the furnisher.

### 4. Injunctive relief for consumers

Congress should give consumers the right to obtain court orders (injunctive relief) compelling credit bureaus to fix a credit report.

### 5. Give consumers more control over their credit reports

Consumers should be in the driver's seat in terms of the sharing of their credit reports. Congress should require that consumers proactively authorize the use of their credit reports for credit, insurance, and other uses. This could be combined with identity verification requirements which would act as a security measure against identity theft—basically making credit reports "frozen" by default.

## 6. A publicly owned credit bureau

Congress should establish a publicly owned alternative for credit reporting. This would provide the true competition so desperately needed in this industry.

In some countries, credit reporting is a public function or there is a publicly owned database that serves as a public option. Congress should establish a publicly owned alternative for credit reporting. While public agencies are far from perfect, at least they would be responsive to public pressure and government oversight. If the commercial credit bureaus are not responsive to a consumer's dispute, the consumer would have the option of having a lender or other user rely on the publicly-owned credit bureau. This would provide the true competition so desperately needed in this industry. We note that Demos will be coming out with a report proposing a public credit reporting system in the near future.

## V. CONCLUSION

In the ten years since NCLC published *Automated Injustice*, we've seen incremental improvement in the credit reporting system, obtained at the cost of much effort by the CFPB and the state Attorneys General. We commend the federal and state regulators for their hard work, but there is much more that still needs to be fixed. American consumers have suffered enough at the hands of the credit bureaus. We must have large scale and sweeping reform, and soon.

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30. *Id.* at 15.
31. *Id.* at 19-20.
32. *Id.* at 20-21.
33. Prepared Remarks of Consumer Financial Protection Bureau Director Richard Cordray at the Consumer Advisory Board Meeting, Mar. 2, 2017, <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-consumer-advisory-board-meeting-march-2017/> (“Although much more improvement still is needed, we are making real headway; “In short, our oversight work has spurred a great deal of progress by the consumer reporting companies and their data furnishers in the past several years in improving data accuracy and dispute handling. Nonetheless, there is more to be done to improve these practices”).
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