

**Federal Trade Commission**  
**Report on Credit Education and the Credit Repair Organizations Act**

**I. Report Overview**

In May 2017 Congress directed the Federal Trade Commission (“FTC”) to report to the Committee on Appropriations of the House and Senate on the Credit Repair Organizations Act’s (“CROA”) effects on credit education products, services, and technology offered by consumer reporting agencies (“CRAs”), as defined by the Fair Credit Reporting Act, and other entities.<sup>1</sup> In compliance with this request, the FTC is submitting this Report. The Report describes information and services available to consumers seeking to improve their credit (Part II); provides background on the history of CROA and the FTC’s role in enforcing it (Part III); discusses potential effects of CROA on credit education products, services, and technology offered by CRAs and others (Part IV); and offers concluding thoughts (Part V).

**II. Consumers Seeking to Improve Their Credit**

Creditors often make decisions whether to extend credit to consumers based on credit reports and credit scores creditors commonly obtain from CRAs. Consumers generally can improve their chances of obtaining credit through measures like paying their bills on time, taking out only the credit they need, and not using too much of the credit lenders have made available to them, such as not borrowing up to the limit on their credit cards. In addition to these measures, consumers also should take steps to make sure the information about them on their credit reports and used in calculating their credit scores is accurate.

The Fair Credit Reporting Act (“FCRA”)<sup>2</sup> applies to companies, known as consumer reporting agencies or CRAs, that compile and sell consumer reports, which contain consumer information that is used or expected to be used for credit, employment, insurance, housing, or other similar decisions about consumers’ eligibility for certain benefits and transactions. CRAs include credit bureaus, background screening companies, tenant screening companies, and check verification services. Credit reports, credit scores, and employment background screening reports are all types of consumer reports. CRAs must implement reasonable procedures to ensure maximum possible accuracy of consumer reports and provide consumers with access to their own information, along with the ability to correct any errors. The FCRA also requires furnishers, those companies that regularly provide information about their customers to CRAs, to have procedures in place to ensure that the information that they are reporting is

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<sup>1</sup> H.R. REP. NO. 114-624, 114th Cong. 2d. Sess. at 62-63 (June 15, 2016); Explanatory Statement for H.R. 244, 163 CONG. REC. H3327, 3782 (May 3, 2017).

<sup>2</sup> 15 U.S.C. §§ 1681-1681x.

accurate and complete and to investigate consumer disputes about the accuracy of the information they provided to CRAs.

Some consumers who are not informed about their credit reports or who are financially distressed and behind on paying their bills may have poor credit scores, which can adversely impact their ability to obtain credit at an affordable rate or at all. Also, sometimes inaccuracies remain on credit reports regardless of consumers' attempts to have them removed.

Several FTC studies have documented problems with the accuracy of the information in the credit reporting system.<sup>3</sup> An FTC study showed that one in four consumers identified inaccuracies in their credit reports, and one in five consumers who identified and obtained correction of such errors saw their credit score rise to a lower credit risk tier.<sup>4</sup> Most consumers who file disputes with CRAs about these errors manage to have the information modified, but some consumers report that errors remain despite their disputes.<sup>5</sup> These findings suggest that a large number of errors persist in credit reports and in many instances have a significant impact on consumers' credit scores, and consumers who are educated about the importance of credit reports and know to file disputes can often improve their credit.

The FCRA includes important protections intended to assist consumers in making sure that CRAs have and use accurate information about them. The FCRA provides consumers with the right to obtain a free annual file disclosure, commonly known as a free credit report, from each of the nationwide consumer reporting agencies.<sup>6</sup> The FCRA also provides consumers with a mechanism for disputing the accuracy of the information in their files and obligates both the CRA and the furnisher (the company that reported the information to the CRA) to reinvestigate and correct inaccurate, incomplete, or obsolete information.<sup>7</sup> These rights enable consumers to stay informed about the contents of their credit report and provide them a method for initiating the correction of errors that can

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<sup>3</sup> At Congress's direction, the FTC conducted these studies and provided interim reports every two years from 2004 – 2012, and a final report. *See, e.g.*, FTC, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Jan. 2015) ("Final Report"), <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>; FTC, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012) ("Fifth Interim Report"), <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>.

<sup>4</sup> *See* FTC, Fifth Interim Report, *supra* note 3.

<sup>5</sup> *See* FTC, Final Report, *supra* note 3.

<sup>6</sup> 15 U.S.C. § 1681j(a). There are a number of other circumstances under which consumers can obtain a free report, *e.g.*, after they receive an adverse action notice, 15 U.S.C. § 1681j(b).

<sup>7</sup> 15 U.S.C. §§ 1681i(a), 1681s-2(a)(8); 16 C.F.R. § 660.4.

detract from their credit. The FCRA also requires that CRAs provide consumers with a “summary of consumer rights,” which informs them of their rights under the FCRA, when they provide the free credit report.<sup>8</sup>

The FTC has vigorously enforced the FCRA and the FTC Act to ensure that CRAs and other entities<sup>9</sup> comply with the law. The FTC has brought several enforcement actions against CRAs when they allegedly violated the FCRA or when their business practices have confused consumers about their FCRA rights, including by deceptively marketing “free” credit reports without adequately disclosing automatic, subsequent costs, and misrepresenting an association with the free credit report consumers are entitled to under federal law.<sup>10</sup> The proliferation of advertisements for free credit reports attached to programs for which consumers are automatically billed on a recurring basis unless they cancel, known as negative option programs, also caused consumer confusion with their right to obtain a truly free credit report under the FCRA. To address this confusion, Congress directed the FTC to promulgate a rule requiring certain disclosures in these advertisements.<sup>11</sup>

In addition, the FTC provides education materials that are aimed at helping consumers to understand and improve their credit, including such publications as “Building a Better Credit Report,” “Disputing Errors on Credit Reports,” and “Credit

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<sup>8</sup> 15 U.S.C. § 1681g(c)(2)(A). The CFPB also publishes the Summary of Rights on its website. *See A Summary of Your Rights Under the Fair Credit Reporting Act*, CFPB, [http://files.consumerfinance.gov/f/201504\\_cfpb\\_summary\\_your-rights-under-fcra.pdf](http://files.consumerfinance.gov/f/201504_cfpb_summary_your-rights-under-fcra.pdf) (last visited June 23, 2017).

<sup>9</sup> *See, e.g., Spokeo to Pay \$800,000 to Settle FTC Charges Company Allegedly Marketed Information to Employers and Recruiters in Violation of FCRA*, FTC (June 12, 2012), <https://www.ftc.gov/news-events/press-releases/2012/06/spokeo-pay-800000-settle-ftc-charges-company-allegedly-marketed> (alleging that data broker Spokeo violated the FCRA by failing to make sure that information it sold was accurate and would be used only for legally permissible purposes, and failing to tell users of its consumer reports about their obligations under the FCRA, including the requirement to notify consumers if the user took an adverse action against the consumer based on information contained in the report).

<sup>10</sup> In 2005, Experian entered into a consent order with the FTC to settle allegations that the company misled consumers with claims of free credit reports without adequately disclosing consumers’ enrollment in a credit monitoring service for which they would be billed if they did not cancel within the trial period (a billing structure known as a “negative option”). *See Marketer of Free Credit Reports Settles FTC Charges*, FTC (Aug. 16, 2005), <https://www.ftc.gov/news-events/press-releases/2005/08/marketer-free-credit-reports-settles-ftc-charges>. In 2007, the FTC alleged that Experian violated the settlement order by continuing to mislead consumers about a negative option program for its credit monitoring service and entered into another settlement with the company. *See Consumerinfo.com Settles FTC Charges*, FTC (Feb. 21, 2007), <https://www.ftc.gov/news-events/press-releases/2007/02/consumerinfocom-settles-ftc-charges>.

<sup>11</sup> *See Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures*, 74 Fed. Reg. 52,915 (Oct. 15, 2009); *Free Annual File Disclosures*, 75 Fed. Reg. 9,726 (Mar. 3, 2010) (codified as 16 C.F.R. pt. 610).

Repair: How to Help Yourself.”<sup>12</sup> These materials provide advice for improving one’s credit, tips for disputing inaccurate or obsolete information on a credit report, and a sample dispute letter. The Consumer Financial Protection Bureau (“CFPB”) also provides credit education on a variety of topics, including “Tips for Building and Keeping a Good Credit Score” and “How to Dispute an Error on Your Credit Report.”<sup>13</sup> Many state attorneys general also provide credit education materials.<sup>14</sup> Non-profit organizations also provide personalized credit education for consumers that can help consumers learn to better handle their finances and, in time, improve their credit scores.<sup>15</sup>

Private firms also offer a variety of services to assist consumers with credit concerns to supplement these statutory rights and government efforts. Credit monitoring firms market and advertise services that purportedly will assist consumers in maintaining or improving their credit through addressing inaccuracies in the information CRAs have about them. Credit monitoring firms track activity on credit reports of consumers<sup>16</sup> and usually alert consumers if: (a) a company checks one’s credit history, (b) new credit is extended in the name of a consumer, (c) a creditor or debt collector has reported an account to a CRA as being delinquent or in default, (d) public records show a consumer has filed for bankruptcy, (e) a judgment has been entered against the consumer, (f) the consumer’s credit limit has changed, or (g) the consumer’s personal information has

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<sup>12</sup> See *Building a Better Credit Report*, FTC (May 2014), <https://www.consumer.ftc.gov/articles/pdf-0032-building-a-better-credit-report.pdf>; *Disputing Errors on Credit Reports*, FTC (Feb. 2017), <https://www.consumer.ftc.gov/articles/0151-disputing-errors-credit-reports>; and *Credit Repair: How to Help Yourself*, FTC (Nov. 2012), <https://www.consumer.ftc.gov/articles/0058-credit-repair-how-help-yourself>. See also *Sample Letter for Disputing Errors on Your Credit Report*, FTC (Aug. 2013), <https://www.consumer.ftc.gov/articles/0384-sample-letter-disputing-errors-your-credit-report>; *Coping with Debt*, FTC (Nov. 2012), <https://www.consumer.ftc.gov/articles/0150-coping-debt>; *Free Credit Reports*, FTC (Mar. 2013), <https://www.consumer.ftc.gov/articles/0155-free-credit-reports>; *Credit Scores*, FTC (Sept. 2013), <https://www.consumer.ftc.gov/articles/0152-credit-scores>; *Choosing a Credit Counselor*, FTC (Nov. 2012), <https://www.consumer.ftc.gov/articles/0153-choosing-credit-counselor>; and *Credit Repair Scams*, FTC (Aug. 2012), <https://www.consumer.ftc.gov/articles/0225-credit-repair-scams>. These materials are available on the FTC’s website, and the FTC offers free printed copies.

<sup>13</sup> See *Credit Reports and Scores*, CFPB, <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores> (last visited June 23, 2017).

<sup>14</sup> See, e.g., *Credit Repair*, THE ATTORNEY GENERAL OF TEXAS KEN PAXTON, <https://www.texasattorneygeneral.gov/cpd/credit-repair> (last visited Aug. 17, 2017); *Credit Reporting*, ILLINOIS ATTORNEY GENERAL LISA MADIGAN, <http://www.illinoisattorneygeneral.gov/consumers/creditreport.html> (last visited Aug. 17, 2017).

<sup>15</sup> For example, the National Foundation for Credit Counseling certifies member agencies that provide free or low-cost counseling. See <https://www.nfcc.org>.

<sup>16</sup> Unlike credit monitoring services, identity monitoring services alert consumers if information about them (e.g., bank account information or Social Security numbers) is being used in ways that generally do not show up on credit reports yet still could be harmful to consumers. See *Identity Theft Protection Services*, FTC (Mar. 2016), <https://www.consumer.ftc.gov/articles/0235-identity-theft-protection-services>.

changed.<sup>17</sup> If credit monitoring services inform consumers that information on their credit reports is inaccurate (e.g., they arise from a mistake or identity theft), consumers can exercise their rights under the FCRA to have CRAs correct this inaccurate information. Some credit monitoring firms are subsidiaries or affiliates of CRAs.

Private firms also sell consumers a wide variety of credit education goods and services to assist them in dealing with credit concerns.<sup>18</sup> CRAs and other firms, for example, offer and provide consumers with “educational” credit scores and related information about what factors increase or decrease these scores. These scores typically are not the actual credit scores lenders would use to make credit decisions about consumers, because the scores the lenders purchase from CRAs are likely to be generated using different scoring models and different information than educational scores. Nevertheless, some consumers may decide to purchase such educational credit scores and related information to obtain a general sense of their creditworthiness and of how changing their behavior could affect their credit scores.

Finally, credit repair firms typically offer services specifically targeted at making consumers appear more creditworthy.<sup>19</sup> Credit repair firms may contact CRAs on behalf of consumers and demand that CRAs delete adverse information on credit reports that is inaccurate or obsolete. Credit repair scams often demand that CRAs delete not only adverse information on credit reports that is inaccurate or obsolete but also delete adverse information that is accurate and not obsolete, i.e., information that is highly relevant to prospective lenders in making decisions whether to extend credit. Even more problematic, credit repair scams also may offer to assist consumers in trying to obtain a new credit identity. These scams frequently direct consumers to apply to the Internal Revenue Service for an Employee Identification Number (“EIN”) and then tell consumers to use the EIN rather than their Social Security numbers on loan applications. Consumers who lie on a credit application, misrepresent their Social Security numbers, or obtain an Employee Identification Number from the IRS under false pretenses violate federal criminal laws.

### **III. The Credit Repair Organizations Act**

The FTC plays an important role in enforcing federal consumer protection laws that apply to the credit repair industry. As part of its broad mandate to protect consumers, the FTC enforces the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices that are in or affect commerce.<sup>20</sup> The FTC also enforces CROA, which specifically pertains to credit repair services.<sup>21</sup>

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<sup>17</sup> *See id.*

<sup>18</sup> Some service providers, such as credit card companies, may offer their customers similar services.

<sup>19</sup> *See Credit Repair Scams*, FTC (Aug. 2012), <https://www.consumer.ftc.gov/articles/0225-credit-repair-scams>.

<sup>20</sup> 15 U.S.C. § 45.

Congress enacted CROA to protect the public from unfair or deceptive practices by credit repair organizations (“CROs”) and to provide consumers with “the information necessary to make an informed decision.”<sup>22</sup> CROA’s protections include prohibiting CROs from making deceptive claims to consumers<sup>23</sup> or charging fees prior to fully performing services,<sup>24</sup> and requiring consumers be provided with pre-sale disclosures and a written contract.<sup>25</sup> In considering proposed legislation that was a precursor to CROA, the Senate Committee on Banking, Housing and Urban Affairs recognized that credit repair services may benefit consumers, but also recognized that consumer concern about the impact of poor credit had created fertile ground for the growth of fraudulent business models that offered an illusory “quick fix” to credit problems at a substantial price.<sup>26</sup> Citing FTC testimony, the Committee noted that “[f]raudulent companies that lead consumers to believe that the companies can ‘repair’ bad credit histories have bilked consumers [out] of millions of dollars in the past several years . . . .”<sup>27</sup>

In connection with the same proposed legislation, the House Committee on Banking, Finance and Urban Affairs recognized that “representations by credit repair clinics are often misleading, and consumers, mostly low- and moderate-income individuals, are cheated out of the money they paid for services.”<sup>28</sup> The Committee further explained that CROA was intended to provide consumers with “necessary information about credit repair organizations so that they can make informed decisions regarding the purchase of their services and to protect the public from unfair and deceptive advertising and business practices by the industry.”<sup>29</sup> House discussion of the bill included the observation that prohibiting credit repair organizations from collecting

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<sup>21</sup> 15 U.S.C. §§ 1679-1679j.

<sup>22</sup> 15 U.S.C. § 1679(b).

<sup>23</sup> 15 U.S.C. § 1679b(a).

<sup>24</sup> 15 U.S.C. § 1679b(b).

<sup>25</sup> 15 U.S.C. §§ 1679c-d.

<sup>26</sup> S. REP. NO. 103-209, at \*7 (1993), pertaining to the Consumer Reporting Reform Act of 1994, S. 783, 103rd Cong. This bill, and previously introduced versions of this bill, contained substantially the same language as that subsequently enacted in CROA.

<sup>27</sup> *Id.* (citing FTC testimony before the Committee on May 27, 1993).

<sup>28</sup> H.R. REP. NO. 103-486, at \*59 (1994), pertaining to the Consumer Reporting Reform Act of 1994, H.R. 1015, 103rd Cong.

<sup>29</sup> *Id.*

payment until they have fully performed the services would “help weed out the corrupt actors in this growing industry.”<sup>30</sup>

In a hearing related to another piece of substantially similar legislation prior to enactment of CROA, the Committee expressed concern about credit repair companies that overpromise and under deliver:

Credit repair clinics pose a threat to consumers who can least afford it. These organizations hold out the promise of a quick credit fix at a high cash price. They prey on consumers whose often dire straits and dreams of a better life make them susceptible to the false promises of unscrupulous credit clinic operators.<sup>31</sup>

CROA contains several provisions aimed at protecting consumers when they interact with CROs. CROA defines a “credit repair organization” as follows:

any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of – (i) improving any consumer’s credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i) . . . .<sup>32</sup>

By including this broad definition of a CRO to which CROA applies, CROA prevents entities offering credit repair services from evading the law.

CROA contains prohibitions and requirements to protect consumers from the harmful conduct of some CROs. CROs cannot make deceptive claims, or advise others to make such claims, with respect to any consumer’s credit worthiness, credit standing, or credit capacity to any CRA, creditor, or potential creditor.<sup>33</sup> Further, CROs cannot charge fees prior to fully performing services.<sup>34</sup> CROs also must provide consumers with

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<sup>30</sup> 140 CONG. REC. E1247-01, E1247 (1994), pertaining to the Consumer Reporting Reform Act of 1994, H.R. 1015, 103rd Cong. Consistent with this rationale, the FTC has imposed advance fee bans on providers of debt relief services and mortgage assistance relief services, among others, based on findings of widespread deception in those industries. See Telemarketing Sales Rule (“TSR”), 16 C.F.R. §§ 310.4(a)(2)-(5)(i); Mortgage Assistance Relief Services Rule (“MARS Rule”), 16 C.F.R. § 322.5(a).

<sup>31</sup> *Credit Repair Organizations Act: Hearing on H.R. 458, A Bill to Prevent Consumer Abuse by Credit Repair Organizations, Before the H. Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance, and Urban Affairs*, 100th Cong. 1-2 (1988).

<sup>32</sup> 15 U.S.C. § 1679a(3).

<sup>33</sup> 15 U.S.C. § 1679b(a).

<sup>34</sup> 15 U.S.C. § 1679b(b).

pre-sale disclosures and a written contract.<sup>35</sup> The pre-sale disclosures inform consumers of their rights with respect to their credit files and CROA, including their right to dispute inaccurate information by contacting credit bureaus directly, their right to obtain credit reports and credit bureaus' obligation to provide someone to help consumers interpret the information in their credit files, and consumers' right to sue CROs that violate CROA. CROs further must provide consumers with a cancellation form and with the right to cancel without penalty for three days after entering into a contract.<sup>36</sup> In light of the statute's text and structure, some courts have interpreted CROA's three-day right of cancellation to function as a three-day cooling-off period before CROs can begin to provide services.<sup>37</sup>

Congress gave the FTC the authority to enforce CROA.<sup>38</sup> CROA also provides for state<sup>39</sup> and private rights of action.<sup>40</sup> Prior to the enactment of CROA, state authorities struggled to enforce state laws concerning credit repair. In testimony to Congress, two Maryland consumer protection authorities explained that the state "has encountered difficulties in attempting to enforce" its credit repair organization law and that the "most significant roadblock . . . is that of state boundaries."<sup>41</sup> In addition, then-FTC Chairman Daniel Oliver wrote in a letter to Congress that a private right of action under CROA would provide consumers "with a mechanism for recovering, at a minimum, the fees paid to a violative organization" and encourage companies to comply.<sup>42</sup>

The FTC has vigorously enforced CROA. For example, the FTC recently sued Strategic Student Solutions, a company that allegedly bilked individual consumers out of hundreds or thousands of dollars and did not improve their credit or alleviate their debts,

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<sup>35</sup> 15 U.S.C. § 1679c-d.

<sup>36</sup> 15 U.S.C. § 1679e.

<sup>37</sup> See *U.S. v. Cornerstone Wealth Corp.*, 2006 U.S. Dist. LEXIS 8294, at \*2-4, 10 (N.D. Tex. Mar. 3, 2006) (finding that a contrary reading "would render several provisions of CROA superfluous"); *FTC v. Gill*, 71 F. Supp. 2d 1030, 1036 (C.D. Cal. 1999) (describing the provisions of CROA, including that CROs may not provide services until (1) the consumer has signed a written and dated contract for the purchase of such service, and (2) three business days have passed since the date the contract was signed).

<sup>38</sup> 15 U.S.C. § 1679h(a)-(b).

<sup>39</sup> 15 U.S.C. § 1679h(c).

<sup>40</sup> 15 U.S.C. § 1679g.

<sup>41</sup> *Credit Repair Organizations Act: Hearing on H.R. 458, A Bill to Prevent Consumer Abuse by Credit Repair Organizations, Before the H. Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance, and Urban Affairs*, 100th Cong. 135 (1988) (statement of George L. Rayburn and George Jones).

<sup>42</sup> *Id.* at 178 (letter of Chairman Daniel Oliver, May 11, 1987).

despite promising them a “unique, legal, and fast way to improve your FICO score” and claiming that it had “assisted thousands of consumers . . . to rebuild their credit.”<sup>43</sup> The FTC alleged that one victim in that case, a service member, paid approximately \$750 to be enrolled in a student loan forgiveness program, only to learn the defendants pocketed her money and never contacted her loan servicer, causing her to miss payments and her credit score to decrease.<sup>44</sup> The FTC also sued Consumer Assistance Project, a company that allegedly charged upfront fees, did not deliver on its promises to reduce consumers’ student loan debts and repair their credit, and did not provide disclosures required by CROA.<sup>45</sup> In another recent case, the FTC brought an action against “FTC Credit Solutions,” a company that allegedly impersonated the agency, claimed that a new federal law allowed the deletion of debts, and guaranteed that it would obtain a 700 credit score for all consumers, regardless of their current credit score.<sup>46</sup> In addition to bringing individual cases,<sup>47</sup> the FTC has conducted multiple law enforcement sweeps of fraudulent credit repair operations.<sup>48</sup>

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<sup>43</sup> See *FTC Stops Operators of Unlawful Student Debt Relief and Credit Repair Scheme*, FTC (May 25, 2017), <https://www.ftc.gov/news-events/press-releases/2017/05/ftc-stops-operators-unlawful-student-debt-relief-credit-repair>.

<sup>44</sup> See Plaintiff’s Ex Parte Motion for Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, Immediate Access, and Other Equitable Relief, and an Order to Show Cause Why a Preliminary Injunction Should Not Issue and Memorandum in Support, Exhibit PX08 at 00672-76, *FTC v. Strategic Student Solutions LLC*, No. 17 Civ. 80619 (S.D. Fla. May 15, 2017), ECF No. 7-19. A representative from Strategic Student Solutions also allegedly rushed a disabled veteran who had just taken medication through the sign-up process. See Plaintiff’s Supplemental Memorandum in Support of Its Motion for an Order to Show Cause Why a Preliminary Injunction Should Not Issue, Exhibit PX25 Att. JJ at 1379:12-15 (S.D. Fla. May 25, 2017), ECF No. 39-2.

<sup>45</sup> See *FTC Cracks Down on Debt Relief Schemes Targeting Student Loan and Mortgage Borrowers*, FTC (May 25, 2016), <https://www.ftc.gov/news-events/press-releases/2016/05/ftc-cracks-down-debt-relief-schemes-targeting-student-loan>.

<sup>46</sup> See *At FTC’s Request, Court Shuts Down Credit Repair Scam That Impersonates FTC*, FTC (March 27, 2015), <https://www.ftc.gov/news-events/press-releases/2015/03/ftcs-request-court-shuts-down-credit-repair-scam-impersonates-ftc>.

<sup>47</sup> See also *FTC v. One or More Unknown Parties Doing Business As American Bill Pay Organization and American Benefits Foundation*, FTC (Aug. 22, 2014), <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-asks-court-shut-down-phony-debt-relief-credit-repair-scheme>; *FTC v. DebtPro 123 LLC*, FTC (June 3, 2014), <https://www.ftc.gov/news-events/press-releases/2014/06/ftc-charges-operation-selling-bogus-debt-relief-services>; *FTC v. RMCN Credit Services, Inc.*, FTC (Oct. 13, 2011), <https://www.ftc.gov/news-events/press-releases/2011/10/ftc-charges-credit-repair-operators-misleading-credit-bureaus>.

<sup>48</sup> See *‘Operation Clean Sweep’: FTC and State Agencies Target 36 ‘Credit Repair’ Operations*, FTC (Oct. 23, 2008), <https://www.ftc.gov/news-events/press-releases/2008/10/operation-clean-sweep-ftc-and-state-agencies-target-36-credit>; *Project Credit Despair Snares 20 Credit Repair Scammers*, FTC (Feb. 2, 2006), <https://www.ftc.gov/news-events/press-releases/2006/02/project-credit-despair-snares-20-credit-repair-scammers>; *Credit Identity Defendants Settle FTC Charges*, FTC (Oct. 21, 1999), <https://www.ftc.gov/news-events/press-releases/1999/10/credit-identity-defendants-settle-ftc-charges>; *Credit Repair? Buyer Beware! FTC, States Announce Crackdown on Scams That Bilk Consumers*, FTC

The states also have brought law enforcement actions against CROs. Some of these cases have involved credit education or similar products, such as *Arkansas v. Seibert*.<sup>49</sup> The *Seibert* defendants, operating at times under the name “Arkansas Credit Education,” promised to help consumers “develop credit knowledge and learn what it takes to maintain their credit excellence,” and that their services would improve consumers’ credit worthiness.<sup>50</sup> The State of Arkansas alleged that the defendants’ services were a sham, and that the defendants violated CROA in several ways, including falsely promising consumers improved credit worthiness, failing to disclose that accurate and non-obsolete entries cannot be removed from a credit report, and charging illegal advance fees.<sup>51</sup> The parties agreed to a consent judgment that barred the defendants from operating in the credit repair industry and required that the defendants pay more than \$470,000.<sup>52</sup>

There also have been many private actions brought against CROs for violating CROA. In *Stout v. Freescore, LLC*, for example, the plaintiff alleged that the defendant violated CROA by charging fees prior to the completion of its credit repair services.<sup>53</sup> The Ninth Circuit held that Freescore was a CRO within the meaning of CROA because it offered a service for the implied purpose of providing advice or assistance to consumers to improve their credit record, history, or rating when it advertised that its service would help consumers “[s]pot damaging inaccuracies” on their credit reports and help consumers “climb to financial freedom.”<sup>54</sup> The court then remanded to the district court for a ruling on whether Freescore had violated CROA; the parties voluntarily dismissed the action before a final ruling.<sup>55</sup>

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(Mar. 5, 1998), <https://www.ftc.gov/news-events/press-releases/1998/03/credit-repair-buyer-beware-ftc-states-announce-crackdown-scams>.

<sup>49</sup> No. 09-cv-960 (E.D. Ark. filed Dec. 29, 2009).

<sup>50</sup> Complaint at 10, *Seibert*, No. 09-cv-960, ECF No. 1.

<sup>51</sup> *Id.* at 11, 17-18.

<sup>52</sup> Consent Judgment at 6-8, *Seibert*, No. 09-cv-960, ECF No. 28; *see also Colorado Attorney General Sues Veracity Credit Consultants*, CONSUMER AFFAIRS (Feb. 25, 2010), [https://www.consumeraffairs.com/news04/2010/02/co\\_veracity\\_credit.html](https://www.consumeraffairs.com/news04/2010/02/co_veracity_credit.html) (describing Colorado case against credit repair company that promised to repair or erase bad credit and charged advance fees).

<sup>53</sup> 743 F.3d 680, 685-87 (9th Cir. 2014).

<sup>54</sup> *Id.*

<sup>55</sup> *See id.* at 688; *Stout v. Freescore*, Joint Stipulation of Voluntary Dismissal, No. 2:10 Civ. 4395 (C.D. Cal. Apr. 22, 2014). *See also Zimmerman v. Puccio*, 613 F.3d 60, 72 (1st Cir. 2010) (holding that defendants’ company was a CRO because it provided “credit counseling aimed at improving future creditworthy behavior” and that it violated § 1679b(a)(3) when it advertised itself as a non-profit credit counseling service but subsequently transferred its customers’ accounts to a for-profit for servicing, misleading consumers). *But see Hillis v. Equifax Consumer Servs., Inc.*, 237 F.R.D. 491, 511-17 (N.D. Ga. 2006) (holding that a subsidiary of a CRA that provided credit advice to consumers so that the consumer

Some consumers have filed private actions alleging that CRAs (or their subsidiaries or affiliates) violated CROA. For example, in *Helms v ConsumerInfo.com, Inc.*, private plaintiffs sued ConsumerInfo.com, a subsidiary of Experian, for violations of CROA.<sup>56</sup> ConsumerInfo.com provided credit scores, credit reports, and credit check monitoring services, advertised that its services would allow consumers to “monitor and manage” their credit, and gave advice for disputing inaccuracies on credit reports.<sup>57</sup> The plaintiff, who had signed up for defendant’s credit monitoring service, alleged that ConsumerInfo.com violated several requirements of CROA because it charged upfront fees and it failed to provide the required disclosure, cancellation form, and a written contract. ConsumerInfo.com conceded that it charged the fees and did not provide the materials; however, it argued that it was not a CRO and was therefore not required to comply with CROA.<sup>58</sup> The court held otherwise, finding that the company made implied promises to help consumers improve their credit ratings and that its actions violated CROA.<sup>59</sup>

#### **IV. CROA’s Potential Effects on Credit Education Products, Services, and Technology**

Congress has specifically asked the FTC to consider “the benefits of consumer access to credit education and improvement services, and the extent to which CROA impedes the research, development, and provision of new credit education products, services, and technology in the marketplace” by CRAs.<sup>60</sup> The FTC views consumer education, including credit education, to be beneficial to consumers and does not have evidence that the costs of current CROA requirements outweigh the benefits.

One way to consider this request is through an application of microeconomic principles. In theory, any policy that affects costs or benefits to individuals or firms is also likely to change consumer or firm behavior. Policies that increase costs to consumers will generally lead to less use of the more costly good or service, while policies that decrease costs will generally lead to more use of the good or service, all else equal. Policies that increase costs to firms generally lead to less provision of the affected good or service, while policies that decrease costs to firms will generally lead to more provision of the good or service, all else equal.

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could work to improve their credit was not a CRO subject to CROA, and therefore the company’s admitted failure to comply with CROA was not a violation of law).

<sup>56</sup> 436 F. Supp. 2d 1220 (N.D. Ala. 2005).

<sup>57</sup> *Id.* at 1226.

<sup>58</sup> *Id.* at 1234.

<sup>59</sup> *Id.*

<sup>60</sup> *See supra* note 1.

In theory, CROA, like any regulation, changes costs and benefits to consumers and firms. A primary benefit of CROA is that it can improve consumer welfare by increasing the costs to illegitimate credit repair firms relative to case-by-case enforcement, thus diminishing the supply of harmful, illegitimate credit repair services. At the same time, some of these costs could diminish the provision of legitimate credit education products and services and investment in related technologies.

It is also theoretically possible that reductions in CROA restrictions could improve consumer access to credit education and improvement services, by decreasing costs to firms of developing and providing such services, which in turn might decrease the cost of consumer search and learning. CROs must comply with CROA, and CROA uses broad language to describe the activities that make an entity a CRO. Congress chose such language to prevent credit repair entities from evading coverage under CROA. As discussed above, courts have concluded that some providers of credit education and credit monitoring services were CROs because the courts interpreted the language of CROA to apply to their services in certain circumstances. CRAs (and their subsidiaries and affiliates) and others that offer or provide such services therefore face the risk of CROA liability when they provide such services. Such language therefore creates a potential risk of decreasing the credit education that CRAs (and their subsidiaries or affiliates) provide to consumers. CRAs and their subsidiaries and affiliates could avoid the risk of such liability through complying with CROA in connection with offering and providing credit monitoring services. Other provisions of CROA might also come with costs that could decrease the availability of credit education services. For example, the advance fee prohibition and the three-day cooling-off provision, which some courts have interpreted as a requirement of CROA mandating CROs wait three days after consumers sign a contract before providing services,<sup>61</sup> could make some types of products or services more difficult to provide than they would be otherwise.

Although it is theoretically possible that costs imposed on legitimate firms by CROA could diminish the provision of some legitimate credit education products and services, the FTC is not aware of any reliable evidence concerning whether and the extent to which the prospect of CROA liability or specific provisions of CROA has affected the availability to consumers of credit education or credit monitoring services, per se. In our review of the literature, we focused on empirical studies investigating the effect of credit education on consumer creditworthiness and the potential effects of CROA on credit education. Our review indicates that while there is substantial evidence of the potential benefits of credit education on credit scores, in contrast, there is a paucity of evidence on the potential effects of CROA provisions.

Several studies have examined the impact of financial and credit education on consumers' creditworthiness. In a 2015 study commissioned by the CFPB, the Urban Institute found that financial education and coaching had positive effects on certain financial outcomes, and one of two coaching programs studied improved consumers'

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<sup>61</sup> See *supra* note 37.

credit scores.<sup>62</sup> In a 2007 study of how individualized credit counseling can improve consumers' credit profiles, researchers from George Washington University found evidence that consumer credit profiles do improve following counseling, compared to a control group of uncounseled consumers. The study attempts to account for selection bias, finding that while much of the improvement is due to other factors that also make consumers motivated to seek counseling, some of the improvement is associated directly with counseling.<sup>63</sup> Another study, conducted by the National Foundation for Credit Counseling and Ohio State University, found that personalized financial and credit education offered by non-profit credit counselors resulted in improvement in consumers' financial situation.<sup>64</sup> As explained in the report on the study, such counseling is able to focus on the specific financial needs of the consumer and often includes follow-up counseling sessions if needed.<sup>65</sup>

The Policy and Economic Research Council ("PERC") conducted research on the potential benefits of credit education services and the effect of compliance with CROA's requirements on the provision of them.<sup>66</sup> This research is summarized in a Final Report published in 2016.<sup>67</sup> PERC conducted a study in which it offered a personalized credit

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<sup>62</sup> See URBAN INSTITUTE, AN EVALUATION OF THE IMPACTS AND IMPLEMENTATION APPROACHES OF FINANCIAL COACHING PROGRAMS (Oct. 2015), <https://www.fdic.gov/news/conferences/consumersymposium/2015/presentations/theodos.pdf>.

<sup>63</sup> See Gregory Elliehausen et al., *The Impact of Credit Counseling on Subsequent Borrower Behavior*, 41 THE JOURNAL OF CONSUMER AFFAIRS 1 (2007).

<sup>64</sup> See STEPHEN ROLL & DR. STEPHANIE MOULTON, OHIO STATE UNIVERSITY, THE NFCC'S SHARPEN YOUR FINANCIAL FOCUS INITIATIVE IMPACT EVALUATION, FINAL REPORT (Apr. 12, 2016), <https://www.incharge.org/wp-content/uploads/2015/06/NFCC-OSU-Credit-Counseling-Statistics-Final-Report-2016.pdf>.

<sup>65</sup> See *id.* at 23.

<sup>66</sup> See MICHAEL TURNER & PATRICK WALKER, POLICY AND ECONOMIC RESEARCH COUNCIL, PERSONALIZED CREDIT EDUCATION: CONSUMER AND SMALL BUSINESS OWNER ATTITUDES, IMPACTS AND IMPEDIMENTS, FINAL REPORT (Nov. 2016) ("Final Report"), [http://www.perc.net/wp-content/uploads/2016/11/CE\\_PERC\\_FinalReport\\_113016web.pdf](http://www.perc.net/wp-content/uploads/2016/11/CE_PERC_FinalReport_113016web.pdf); MICHAEL TURNER & PATRICK WALKER, CRA CREDIT EDUCATION SERVICES: AN EXAMINATION OF CONSUMER IMPACTS, INTERIM REPORT (Apr. 2016), [http://www.perc.net/wp-content/uploads/2016/04/Prelim\\_CE\\_Report.pdf](http://www.perc.net/wp-content/uploads/2016/04/Prelim_CE_Report.pdf); MICHAEL TURNER ET AL., POLICY AND ECONOMIC RESEARCH COUNCIL, IS CROA CHOKING CREDIT REPORT LITERACY? (Apr. 2015) ("Initial Report") <http://www.perc.net/wp-content/uploads/2015/04/CROA.pdf>. PERC describes itself as "a think tank that develops economic research and innovative solutions to financial access problems." *New PERC and TCAI Study Finds Federal Law Discourages Consumers from Learning About Credit Reports and Scores*, BUSINESSWIRE (Apr. 23, 2015), <http://www.businesswire.com/news/home/20150423005838/en/New-PERC-TCAI-Study-Finds-Federal-Law>. PERC lists on its website the CRAs Equifax, Experian, and TransUnion and the CRA industry association, the Consumer Data Industry Association, as being among its financial supporters. *Supporters*, PERC, <http://www.perc.net/about/supporters/> (last visited Aug. 17, 2017).

<sup>67</sup> See MICHAEL TURNER & PATRICK WALKER, "Final Report," *supra* note 66. See also "Interim Report," *supra* note 66. These reports, published in 2016, discuss findings from the same study of consumers who

education session to consumers. This session involved a forty-five minute tutorial over the telephone in which the educator instructed the consumer on various aspects of his or her credit report and score and how the consumer could improve both, for example, by paying off certain debts first or disputing inaccuracies. Using Experian's proprietary credit scores, the study examined changes in consumers' credit scores for three months, and for some consumers, nine months, after they completed the session. The study found that credit scores increased more for consumers who completed the education session than for consumers in the general population who did not receive any credit education as part of the study. This was particularly true for those with lower credit scores, who therefore had the most room for improvement.

The PERC Final Report acknowledges some limitations to the study, including use of a non-random sample, possibly leading to selection bias. Selection bias may arise because the consumers who participated in the study were those who chose to engage in a personalized credit education session, thus demonstrating an interest in improving their credit situation. These consumers could also be more motivated to take steps to improve their credit scores, for example, by reporting inaccuracies and paying off certain loans. Without a randomized control group of persons who are also motivated to improve their credit scores but who do not receive the educational session, there is no way to know if similarly motivated consumers would obtain similar improvements in their scores. These observed improvements could also have come about through consumers' own attempts to learn about their credit, or from receiving other credit education materials, including the resources discussed in Part II.

In addition to its primary focus on the possible relationship between credit education and improved credit, the PERC Final Report offers anecdotal evidence that the three-day cooling-off provision of CROA may adversely affect the likelihood that consumers will enter and successfully complete the education session that reportedly had improved consumer credit.<sup>68</sup> PERC acknowledges that "this study was not directly designed to measure whether and to what extent CROA regulatory requirements" affect consumer use of the services, and that the study is "far less useful in assessing the potential impacts of CROA requirements on consumer behavior."<sup>69</sup> Nevertheless, the Final Report cites comments from participants who viewed the three-day cooling-off period negatively and expressed a preference to receive the services at the time they had chosen to call.<sup>70</sup>

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were recruited to participate in Experian's Credit Advisor program. The April 2015 report draws some similar conclusions from an earlier study of consumers who participated in Experian's program.

<sup>68</sup> See MICHAEL TURNER & PATRICK WALKER, "Final Report" *supra* note 66 at 35-38.

<sup>69</sup> See *id.* The Final Report also cites the American Student Assistance ("ASA") "Credit Educator Final Report," the author of which suspected that the three-day waiting period accounted for a low participation rate in the ASA study. See *id.* at 38.

<sup>70</sup> *Id.*

The Final Report also notes that, in a 2015 study of enrollment in an Experian credit education service, there was a high drop-off rate during the sign up process<sup>71</sup> – that is, consumers advanced partway through the sign up process but dropped off either at the scheduling stage or before.<sup>72</sup> In a follow-up survey questioning why consumers did not complete the education session, the three-day cooling-off period was one of the most common explanations. While this result points to one potential drawback of CROA requirements, the survey has limitations, including that it requires consumers to self-report their intended actions instead of measuring what consumers actually do, and that its results may be specific to Experian’s enrollment interface testing and not generalize to experiences with other credit education programs. The study suggests that a three-day cooling-off period may have some effect on participation; however, the PERC Reports do not provide sufficient methodological detail to assess the reliability of this evidence. In addition, we lack other empirical evidence on this issue. Overall, it is premature to draw conclusions on the extent of this effect based on this single study. Also, although some consumers may be deterred from participating in credit education programs they would find valuable if they have to wait three days, others may benefit from the three-day cooling-off period because it may give them an opportunity to think about whether a particular service is right for them.<sup>73</sup> PERC’s Final Report also studied whether the CROA-required disclosure affected participation, and found that it did not.<sup>74</sup>

## V. Conclusion

A positive, accurate credit history is an important component of consumers’ financial well-being. Given this importance, Congress enacted—and the FTC has vigorously enforced—federal laws such as FCRA and CROA to provide consumers with rights to fair dispute procedures and protections from unfair and deceptive conduct. These laws, particularly CROA, have provided vital consumer protections and have been powerful and necessary enforcement tools. Indeed, CROA’s broad language has prevented CROs from evading the law and provided the necessary flexibility to bring law enforcement actions to protect consumers.

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<sup>71</sup> See MICHAEL TURNER & PATRICK WALKER, “Initial Report” *supra* note 66 at 6.

<sup>72</sup> See MICHAEL TURNER & PATRICK WALKER, “Final Report” *supra* note 66 at 37.

<sup>73</sup> The National Consumer Law Center has noted the usefulness of the three-day waiting period and other aspects of CROA as providing basic protections, such as prohibiting false claims and requiring companies to provide services before charging for them. See NCLC, Questions and Answers Regarding Opposition to H.R. 347; Letter from National Consumer Law Center, Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, National Council of La Raza, National Housing Resource Center, U.S. PIRG, and Empire Justice Center, to Chairman Hensarling and Ranking Member Waters, H. Comm. on Fin. Servs. (Apr. 27, 2015), Re: H.R. 347 (Royce), Facilitating Access to Credit Act (Oppose).

<sup>74</sup> The Report noted that consumers are accustomed to seeing disclaimers. Aside from the three-day cooling-off period, it did not find that any other parts of CROA created a disincentive to participate. See MICHAEL TURNER & PATRICK WALKER, “Final Report” *supra* note 66 at 43.

Credit education services, some of which are already available to consumers, can benefit consumers if their providers market, offer, and provide them in a truthful, non-misleading manner. Because CROA may apply to these services, there is some risk that it is causing or may cause a reduction in these services. Some companies may avoid offering credit education services to avoid being subject to CROA. Other companies may decide to comply with CROA's requirements, but requirements such as its three-day cooling-off period may reduce the number of consumers participating in the credit education component of their programs. The FTC believes that these effects on credit education are theoretically possible but the FTC has not seen convincing empirical evidence to confirm their existence or magnitude.

As discussed above, CROA serves an important function in protecting consumers from fraudulent credit repair firms. The FTC recommends that Congress therefore consider carefully whether and, if so, how to amend CROA to decrease or eliminate potential adverse effects on consumer credit education. As noted above, Congress broadly defined CROs under CROA because of its acknowledgement that narrower language would create the risk that credit repair firms would circumvent CROA. Because this risk of circumvention continues, Congress should carefully consider this risk in connection with considering proposals to modify CROA.

The FTC is prepared to continue working with Congress and other stakeholders to strike the right balance between promoting credit education that benefits consumers without hindering the critical consumer protections Congress intended CROA to confer.