Computerized Credit Scoring's Effect on the Lending Industry

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I. INTRODUCTION

Before the era of modems and megabytes, individual consumers were evaluated for credit purposes by institutional lending officers. Basing their decisions in part on a number of set financial criteria, these officials were often also allowed to exercise wide and sometimes improper discretion as to the credit risk of the borrower. In today's economy, however, many major lending institutions have abandoned this approach. Instead, this system has been replaced by a method in which a computer program takes information provided by the applicant, as well as several outside sources, and using a complex set of weighted variables, produces a single number by which to rate the applicant's credit risk. Due to the convenience of these systems, banks are relying more and more on computer credit scoring tools and the credit bureaus that often provide them. But what happens when either the results they receive are inaccurate or these results are used for inappropriate means? In these cases, both lenders and credit bureaus may find themselves facing judicial scrutiny based on federal statutes such as the Community Reinvestment Act, the Equal Credit Opportunity Act or the Fair

3. See Levinsohn, supra note 1, at 54.
4. See Cheryl Jenkins Richardson, Credit Scoring of the Future, COLLECTIONS & CREDIT RISK, April, 1999, at 19. A recent survey by the Consumer Bankers Association showed that "94% of banks cite credit scoring as the most frequently used method on automated loan processes." Id.
Credit Reporting Act\textsuperscript{7}, all of which seek to ensure that every consumer shares the same credit opportunities.

This article will first define computer credit scoring in comparison to previously used lending decision criteria.\textsuperscript{8} Next, a discussion will follow regarding the possible pitfalls that may occur when lending institutions use this powerful tool incorrectly, and how both the lender and consumer can be affected.\textsuperscript{9} Finally, the article will provide possible ways that our current system can be improved to protect both consumers and the lenders who employ credit scoring systems.\textsuperscript{10}

II. THE ADVENT OF CREDIT SCORING

Credit scoring is the use of a statistical formula that evaluates a customer's finances and personal credit history and then condenses his or her credit risk to a single number.\textsuperscript{11} Though credit scoring gained prominence with the emergence of the computer based model, the actual concept of credit scoring has existed for much longer.\textsuperscript{12} Using a set of criteria such as employment, income, age, assets, outstanding debt and history of repayment, banks were able to manually compute a score that could help determine the applicant's credit worthiness.\textsuperscript{13} This cumbersome process, however, had several problems.\textsuperscript{14} First, the manual system required the lender to hire skilled operators to manually calculate these scores, resulting in excessive administrative costs.\textsuperscript{15} Second, the lenders who, due to costs, chose not to use these types of systems were forced to rely primarily upon the business judgment of their lending officers to approve loan

\begin{itemize}
  \item[7.] Id. at § 1681.
  \item[8.] See infra notes 11-41 and accompanying text.
  \item[9.] See infra notes 42-170 and accompanying text.
  \item[10.] See infra notes 171-212 and accompanying text.
  \item[11.] See Sara Oppenheim, Would Credit Scoring Backfire in a Recession?, AM.
  \item[12.] See Richardson, supra note 4, at 19.
  \item[13.] See id.
  \item[14.] See id.
  \item[15.] See id.
\end{itemize}
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applicants. Thus, with the rise of the computer age, the banking industry seemed poised to take advantage of a system that could alleviate these problems.

Beginning in 1956, Bill Fair and Earl Isaac, two mathematicians from the Stanford Research Institute, began work on a computer model that utilized statistics and mathematics along with consumer credit information to create numeric credit scores more quickly and reliably than the traditional methods of the time. In the early 1960's, with the progression of faster computer systems, Fair, Isaac, the company they founded, introduced a behavior scoring model that could be used to predict the credit risk of an institution's existing customers, and within the following two decades, laid the foundation for the types of credit scoring systems that are used today. Although other companies have entered the credit scoring arena, Fair, Isaac is considered the pioneer of the technique and accounts for a majority of all consumer credit scorecards used worldwide.

Before categorizing the types of credit scoring models that are currently available, it is first imperative to determine the source of information that is used within these models. Credit scores are compiled based on both information obtained from the consumer during the application process as well as information acquired from credit bureaus that maintain large databases of consumer data based on individual credit history.

Currently, three national credit bureaus provide lenders with credit information that can be utilized through credit scor-

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16. See Risk Based Compliance Preferable, But Tricky, AM. BANKER-BOND BUYER, July 3, 1995, at 4. Lenders may still encounter compliance difficulties with federal lending laws when bank officials disregard computer scores and approve or deny loans based on their personal judgment. See id.


18. See id.

19. See Levinsohn, supra note 1, at 54. Fair, Isaac and competing company Experian account for 90% of all score cards currently in use. See id.

These companies collect data on consumers from banks, mortgage lenders, credit card companies, department stores, landlords, and credit unions, among others. In essence, the credit report will reflect a consumer's bill paying history. If he or she has defaulted on credit agreements or loans, declared bankruptcy, or has liens recorded against his property, that information will be reflected in the report issued by the credit bureau. When this information is obtained by the bank, a particular credit scoring model can be used to place numeric values upon these past events and then compile the applicant's credit score. In fact, if a simple unsecured transaction such as applying for a credit card is involved, the credit bureau report alone is often the only criteria employed by the lender in determining whether an applicant meets the bank's lending requirements.

For more complex transactions like home equity loans, auto loans, or mortgages, the lender is more likely to couple the consumer's credit report along with personal information provided by the consumer herself. In these cases, information such as job history, residential status, marital status, annual income as well as other sources of income are typically factored into the credit scoring system along with credit report data. By doing so, the lender is presented a more accurate depiction of the borrower's true financial status since they can view the applicant's past credit history found in the credit report, as well as their current economic stability which may reflect their ability to repay any new loans.

21. The three national credit bureaus are: 1) Experian, located in Allen, TX; 2) Equifax, in Atlanta, GA; and 3) Trans Union, in Springfield, PA. See Peter McKenna, All Debts Off, INVESTOR'S BUS. DAILY, May 14, 1999, at B1, available in LEXIS, Banking Library, INVDLY File.
22. See id.
23. See id.
24. See Paul Nadler, Horror at Credit Scoring Is Not Just Foot-Dragging, AM. BANKER, Nov. 2, 1999 at 9. Nadler had been told by several bankers that "no one even looks at any request for $50,000 or less - the computer does it all." Id.
25. See generally Bose & Haskell, supra note 20, at 59.
26. See id.
27. See generally id. Many banks have developed statistical graphs that relate
While lending institutions often customize their own credit scoring systems to fit their needs, the types of models available can generally be placed into one of three categories: 1) the predictive score model, 2) the risk score model, and 3) the default scoring model.\textsuperscript{28}

The predictive score model is often utilized by the lender before credit is offered and can be a valuable tool in prescreening credit customers or targeting market segments.\textsuperscript{29} Relying heavily on past statistical data, this model can be used to predict a customer's ability to pay her bills based on current and past financial information.\textsuperscript{30} For instance, by using this method, a credit card company may use the predictive score model to create a mailing list of consumers who based on their past financial history are pre-approved for new accounts.

The second and most popular credit scoring model involves risk scoring.\textsuperscript{31} The risk scoring model can be used to predict whether existing customers are likely to pay accounts that have become delinquent.\textsuperscript{32} The main function of this model is to analyze the collection potential of the account and help determine the allocation of resources that may be required to collect on existing accounts.\textsuperscript{33} For instance, one mortgage lender using a risk scoring model gave numeric scores from 0 to 800.\textsuperscript{34} From the data used, the company determined that one fifth of the loans associated with a credit score of 580 or less had reported missing customer profitability to individual risk. On these graphs, customer profitability is charted on one axis while risk (usually characterized by a credit score) is placed on the other. Banks are then able to pursue customers whose data falls within the varying quadrants. \textit{See id.}


\textsuperscript{29} \textit{See id.} The predictive score can also be used in combination with other models, or credit departments can create their own scorecards based on the variables for which they are looking. \textit{See id.}


\textsuperscript{31} \textit{See} Fair, Isaac Credit Bureau Risk Scores Mark 10 Years as Decision-Making 'Gold Standard,' \textit{PR NewsWire}, September 7, 1999. Fair, Isaac credit scores are "the most widely used analytical product in the world for marketing, account origination and customer management." \textit{Id.}

\textsuperscript{32} \textit{See} Davis, \textit{supra} note 28, at 32.

\textsuperscript{33} \textit{See id.}

\textsuperscript{34} \textit{See} Parkinson, \textit{supra} note 30, at 22.
a payment within the previous six month period. In contrast, for loans associated with scores greater than 720, the rate dropped to ½ of 1 percent. Therefore, by utilizing the risk scoring model, the lender can better separate the applicant pool between high and low risks and focus its attention in the appropriate area.

Finally, the default scoring model can be used to predict whether a customer is a candidate for bankruptcy. These models provide ongoing customer analysis and can alert the lender to potential "red flags" within a customer's credit history such as histories of late payments or past bankruptcies. If used properly, this model can alert the creditor of the potential risk of bankruptcy with sufficient lead time for the lender to take appropriate actions to reduce any potential losses.

Though credit scoring companies are quick to point out that these scores are not completely accurate, they argue these systems are crucial in helping businesses worldwide maximize the value of customer data and make profitable business decisions based on that information.

III. CREDIT SCORING FROM THE BANK'S PERSPECTIVE

A. Advantages

Undeniably, computer credit scoring has changed the way financial lending institutions evaluate loan applicants. There are several distinct reasons why these money lenders have foregone traditional evaluation methods and have opted instead for a computer scoring model to assist in making these sometimes dif-

35. See id.
36. See id.
37. See id.
38. See Davis, supra note 28, at 32.
39. See Parkinson, supra note 30, at 22.
40. See id.
41. See Fair, Isaac, supra note 17. This information was current as of Feb. 19, 2000. See id.
42. See Richardson, supra note 4, at 19.
ficult choices. First, many lenders praise credit scoring systems for the savings they provide in transaction costs. Rather than a loan officer evaluating an individual or small business applicant, credit scoring provides a computerized formula that analyzes the applicant's finances and personal credit history. In doing so, the applicant's credit risk is reduced to a single number upon which the officer may make her credit decision.

While transaction cost savings are indeed considerable, there are other economic advantages in using an automated scoring system. By using a carefully constructed scoring model, the accuracy of the lender's evaluation decision increases substantially. Rather than relying on the personal intuition of the loan officer, lending institutions contend they have the ability to accept more applications from passing applicants because they are able to "weed out" applications from those more likely to default. In addition to assisting with new accounts, credit scores can also be used to service existing accounts as well. For instance, applicants whose credit scores were just above the passing threshold may only have qualified for a minimum amount while those with higher scores are usually given more latitude.

In the future, however, if the low scoring applicant is able to show an improved financial status, he may then be able to rely on an improved credit score to obtain more funds from the lender.

43. See Oppenheim, supra note 11.
44. See id. By using a computer based scoring system, the average processing time for a loan application can be reduced from 12 hours to as little as 25 minutes. See id. A new lending machine has also been proposed that would utilize a credit scoring mechanism. By using this machine as opposed to a traditional lending officer, the cost of making the average loan would be decreased from $136 to only $38. See Lisa Troshinsky, Loan Machine Is Lauded as CRA Tool, AM. BANKER-BOND BUYER, Oct. 23, 1995, at 1.
45. See Warren L. Dennis, Fair Lending and Credit Scoring, MORTGAGE BANKING, Nov. 1995 at 55, 56-57. The use of credit scoring in regard to mortgage lending is a very recent phenomenon facilitated by the increasing use of computerized processing of loan applications. See id. at 55.
46. See id. at 56.
47. See id.
48. See id.
49. See id. at 58.
50. See id.
Advocates of scoring systems contend that perhaps the most beneficial result to the lender is the system's ability to help ensure compliance with the Equal Credit Opportunity Act (ECOA).\textsuperscript{51} Under a computer based system, proponents allege the human element in credit evaluation is replaced by a nondiscriminatory system that is objectively blind to racial and lifestyle factors.\textsuperscript{52} Rather than appraising these types of subjective criteria, the system simply counts the number of positive points from the consumer's application and weighs them against the negatives based on a number of objective credit factors that are linked to similar past occurrences.\textsuperscript{53} Since elements such as race are removed from these calculations, proponents of computer scoring contend that lenders can avoid charges of discrimination by simply showing the absence of virtually any opportunity for subjective criteria to enter the lender's decision.\textsuperscript{54}

B. Disadvantages

Although the above mentioned factors have weighed heavily in the decisions of many lenders in considering the viability of computer credit scoring systems, some within the banking sector have been far more critical.\textsuperscript{55} In fact, the industry has addressed several problems encountered when using computer based sys-

\textsuperscript{51} 15 U.S.C. § 1691(a) (1994). The statute declares:
It shall be unlawful for any creditor to discriminate against any applicant, with respect to any credit transaction on the basis of race, color, religion, national origin, sex or marital status or age (provided the applicant has the capacity to contract; (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under this chapter.

\textit{Id.}

\textsuperscript{52} See Warren L. Dennis, Fair Lending and Credit Scoring, MORTGAGE BANKING, Nov. 1995 at 55, 56.

\textsuperscript{53} See \textit{id.} at 56-57.

\textsuperscript{54} See \textit{id.}

\textsuperscript{55} See Elizabeth D. Festa, Credit Scoring Embraced With Joy and Caution, AM. BANKER-BOND BUYER, Oct. 23, 1995, at 6. While lenders are becoming less fearful of computer credit scoring, many are still shy from endorsing it wholly in its current form. \textit{See id.}
tems that could affect future use of such systems. These include:

1) the argument that computer scoring systems which appear neutral on their face may actually have a disproportionately adverse effect on the classes sought to be protected;\(^56\)

2) the tendency of some lenders to override poor computer scores and issue loans to those whose qualifications would be questionable under the computer based system;\(^57\)

3) the belief by many community activists that banks using computer credit scoring are incapable of complying with the fair lending legislation like the Community Reinvestment Act (CRA)\(^58\);

4) the fact that computer based systems rely upon the past ability of the consumer to pay rather than the consumer's current financial status;\(^59\) and

5) the information they receive from credit bureaus may not always be correct, thus resulting in inaccurate credit scores.\(^60\)

As mentioned, computer credit scoring relies on the use of numerous variables that are used to determine the applicant's credit score.\(^61\) On the surface, these variables may appear objective, but in reality they may still reflect racial bias.\(^62\) For example, a credit-scoring system may place a low score on occupations such as migratory work or low paying service jobs. While this action alone may have no discriminatory intent, if a majority of these workers in the geographic area are racial minorities, this job classification can have an unfair effect upon that consumer's loan

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57. See Steve Cocheo, 14 Tips for Avoiding Compliance Trouble, A.B.A. BANKING J., Sept. 1998, at 38. Robert Chamness, chief operating officer of CFI ProServices, Inc. notes that in regard to the overriding of a computer credit score: "One person's 'intuition' could be another person's 'discrimination.'" Id.

58. 12 U.S.C. § 2901(a) (1994). "(1) Regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business." Id.

59. See Oppenheim, supra note 11. A "credit score assessment is only as good as the data it's based on and the underlying assumptions about which statistics best predict a borrower's ability to repay a loan." Id.

60. See Edmund Mierzwinski, Nightmare on Credit Street, CONSUMER PROTECTION REP., Feb. 1994 at 1, available in LEXIS, Legnew Library, AGCONS File.

61. See Oppenheim, supra note 11.

application decision. Based on the legislative history of the Equal Credit Opportunity Act, Congress has articulated an intolerance for not only blatant discrimination in consumer lending practices, but also acts which produce these same effects. Thus, in these cases, the lender who has relied on the computer credit scoring model to ensure compliance with government lending laws, may be forced to defend the very criteria used to sort through the applicant pool.

Another problem area in connection with ECOA compliance has involved lenders overriding computer credit scores. When scores are clearly above or below the benchmark set by the lender, approval or disapproval of the loan takes relatively no human judgment at all. The problem, however, lies with those applicants whose scores fall on or very near this cutoff line. In these situations, the opportunity for racial discrimination is once again possible. In fact, in September, 1999, Washington-Deposit Guaranty National Bank, one of the largest banks in Mississippi agreed to pay $3 million to African-Americans who had been denied loans based on discriminatory lending practices. In this case, loan officers had been given wide discretion to override credit scores and approve loans that would have otherwise been denied. During a three year period from 1995 until the end of 1997, this practice resulted in a denial rate of 32% for African-

63. See id.
64. See id. The rule generally applied to in these situations is that a factor that is “facially neutral” can be prohibited if used in a credit-granting system and it can be shown statistically to have a “disparate impact” on a prohibited basis. See id.
65. See Safeguard Scores From Disparate Impact Qualities, supra note 56. Several ways that banks can protect themselves from disparate impact suits include: 1) making sure that all credit criteria used in the scoring system have a legitimate business purpose; 2) evaluating multiple borrower strengths and weaknesses to show a thorough analysis has been made; and 3) improving service during the loan process since a lack of response to consumer requests can be interpreted as an unfair lending practices. See id.
66. See Cocheo, supra note 57, at 33.
67. See id. at 38.
70. See id.
American applicants seeking home improvement loans, while the comparable denial rate for similar white applicants was only 8.9%.71 In its case against the bank, the Department of Justice found the criteria used in approval decisions had been both "inconsistently applied" and "poorly documented," and were the direct result of lack of supervision from a central office.72 While Deposit Guaranty denied it had violated fair-lending laws through discrimination, its situation serves as a prime example of how lenders who use credit scoring systems should limit the number of overrides they issue. Additionally, lenders should implement a system where any overrides by individual lending officers are examined by a higher ranking official.73

Another reason a lender may wish to limit the number of overrides it allows is a purely financial one. As stated, most banks feel that a certain number of overrides are necessary to increase the lender's consumer base.74 However, while some override gambles might pay off by earning the bank new creditworthy customers, statistics show that overrides of low scores generally perform poorly compared to those approved based on acceptable scores.75 In fact, one scoring consultant for a major credit bureau found that overrides were typically three to four times more likely to result in a loss than score approvals.76 Thus, lenders may be faced with the difficult choice of denying all those who do not meet objective credit scoring criteria and losing some potentially good customers, or allowing score overrides and the possible risks that may result.77

Though overrides of credit scores can pose a potential problem for credit score users, other problems can be much more

71. See id.
72. See id.
73. See Cocheo, supra note 2, at 7.
74. See Snyder, supra note 68.
75. See id.
76. See id (citing Carol H. Dietrichs, a scoring consultant for Experian Strategic Solutions in Atlanta).
serious. Primarily, those choosing to utilize computer credit scoring must ensure they are in strict compliance with the Community Reinvestment Act (CRA). Under this legislation, lenders are required to demonstrate that their deposit facilities serve the convenience and needs (both for credit and deposit services) of their local communities including its low to moderate income consumers. By using computer credit scoring, however, some activists have argued that banks will simply be unable to meet CRA requirements since many of those low to moderate income customers are those who will fail most credit scoring tests. For example, a group of African American Washington, D.C. residents brought suit against NationsBank in 1995 claiming that the bank would not allow them to explain away blemishes on their credit record or include part time job salaries when calculating their income to be used for a credit score. According to the plaintiffs, the lender did not comply with the CRA when it chose to accept a credit score as conclusive proof of his or her financial situation rather than the plaintiff's statements. Thus, a bank which had been noted for its past compliance with the CRA still found itself vulnerable to suit.

Next, skeptics argue that computer based credit scoring is simply not as reliable as many believe. These critics are quick to point out that computer credit scores are based on past occurrences and may not adequately reflect the current financial situation of the applicant. For instance, in AT&T Universal Card

80. See Safeguard Scores From Disparate Impact Qualities, supra note 56. Advocacy groups have voiced concern that components of scoring systems are neutral on their face, but can still discriminate against minority groups. Assistant Secretary of the U.S. Dept. of Housing and Urban Development, Roberta Achtenberg stated: "Disparate treatment operates to disproportionately disadvantage persons because of race, color, national origin, religion, handicap, sex or familial status." Id.
81. See Troshinsky, supra note 77, at 1.
82. See id.
83. See id.
84. See Mierzwinski, supra note 60.
85. See Oppenheim, supra note 11.
Services v. Mercer,86 the court failed to allow the lender to recover a substantial debt after the plaintiff had declared bankruptcy. In doing so, the court noted that the borrower had amassed a $35,000 gambling debt in the two years prior to the issuing of her pre-approved credit card.87 This preapproval had been based upon a pre-screening process undertaken by the lender after the consumer was required to provide only her reported income, social security number, date of birth, and home and business addresses.88 In admonishing the defendant for not requesting more information from the applicant, the court stated that “offering this customer a pre-approved card, without making any individual inquiry into her financial status, is the equivalent of buying a horse with one eye.”89 Though a bankruptcy specialist employed by the defendant testified as to the thoroughness of defendant’s pre-screening process, examples like this clearly show that computer credit-scoring has not and will never be a perfect tool to evaluate low risk loan candidates.90

Finally, a major problem for those using credit scoring involves the conduct of the very credit bureaus from whom they obtain so much of their information. When lenders use consumer information gleaned from credit reports, the general assumption is that the data is both accurate and complete. When this assumption fails, however, lenders may find themselves turning away potential customers who would have been approved had their credit reports been properly maintained.91 In fact, this realization of the growing power of credit bureaus to affect consumers prompted Congress to pass the Fair Credit Reporting Act (FCRA) in 1968 as a means of requiring “that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the con-

87. See id. at 321.
88. See id. at 319-320.
89. See id. at 325.
90. See id.
91. See Mierzwinski, supra note 60, at 1.
sumer, with regard to the confidentiality, accuracy relevancy, and proper utilization of such information."

The problem, however, lies in the fact that all three national credit bureaus have continuously failed to ensure their data is mistake free. For example, in 1991, TRW, a credit reporting company, wrongly characterized every taxpayer in a small Vermont town as a poor credit risk by enclosing false public record information into their reports. A year later, in a separate case, Equifax was forced to settle with the citizens of Middlesex County, Massachusetts for virtually the same offense. Although the major credit bureaus now insist their record keeping methods have dramatically improved, lenders must still be aware that the credit score they may rely on to approve or deny a customer may not always be reliable.

IV. CONSUMERS AND COMPUTER CREDIT SCORING

A. Advantages

Just as lenders have found benefits in the use of computer scoring techniques, consumers have profited as well. By focusing on objective credit scoring criteria, some consumer advocates feel that lending institutions have been less able to reject otherwise qualified consumers based on personal whim or subjective measures. In fact, acts like the ECOA have served as a valuable means for the disgruntled consumer to challenge the lending decisions of financial institutions when their credit scores would otherwise afford them a loan. For instance, in Davidson v. Citicorp/Citibank, the defendant bank had been granted summary

93. See Mierzwinski, supra note 60, at 1.
94. See id.
95. See id.
96. See id.
97. See Dennis, supra note 62, at 56.
98. See id. at 57.
judgment by the trial court when the plaintiff, an African American, failed to state a claim under the ECOA.\textsuperscript{100} Upon amendment of the complaint, however, the plaintiff alleged the bank had been loaning money to white applicants whose credit scores were equal or inferior to those of the plaintiff.\textsuperscript{101} By including this fact, the court felt plaintiff’s complaint could now be brought under the act.\textsuperscript{102}

In Johnson v. Kakwand,\textsuperscript{103} the plaintiff attempted to refinance a thirty year mortgage through the defendant. Though having an above average credit rating, she was denied a loan based on reasons the court found clearly dubious.\textsuperscript{104} By introducing her credit history as evidence, the court found a distinct violation of the ECOA and required the lender to take considerable steps to ensure future compliance.\textsuperscript{105} Thus, as these examples illustrate, credit scoring can not only serve as a useful tool to the lender, but the criteria used in scoring models can help establish a cause of action for the plaintiff if lenders choose to deny their services for non-economic reasons.

B. Disadvantages: Privacy Concerns in Modern Lending Practices

Until now, the focus has been on the conception of the computer credit scoring system, why businesses may or may not use them, and the advantages they might serve to the average consumer.\textsuperscript{106} No look at this ever-changing field would be com-

\textsuperscript{100} See id.
\textsuperscript{101} See id.
\textsuperscript{102} See id.
\textsuperscript{103} 192 F.3d 656 (7th Cir. Sept. 1999).
\textsuperscript{104} See id. While completing the initial application, the plaintiff had informed the defendant of a second floor kitchen that had been installed before she purchased the home. Two weeks later, the defendant rejected the plaintiff’s application claiming the kitchen made the property unacceptable for refinancing purposes. See id. at 658.
\textsuperscript{105} See id. Having found to have violated the Equal Credit Opportunity Act, the defendant was required to: adopt a uniform loan application and develop, institute and apply a uniform procedure for handling loan inquires which shall include uniform criteria relating to the income, credit, credit history, family size and other relevant criteria for loan applicants. See id. at 659.
\textsuperscript{106} See supra notes 1-105 and accompanying text.
plete, however, without an examination of the problems that continue to plague borrowers who are forced to deal with lenders and credit bureaus who they feel may only see them as a numeric credit score. The first of these concerns deals with a consumer’s privacy rights regarding their credit scoring information. With the inception of the FCRA, Congress recognized the need for an accurate yet equitable system in which lenders could assess the creditworthiness of applicants. It also recognized, however, the type of information kept by these institutions should be considered private and released only under specific circumstances. Therefore, Congress included language within the statute that required consumer reporting agencies to show “respect for the consumer’s right to privacy.” Although this language was an important part of the act when passed, in today’s information age even more emphasis is justifiably being placed on how data is being gathered and how it can be used in other contexts.

In fact, some lenders have been undeterred in grasping the opportunity to take personal information used in computing credit scores and use that information for improper gain. This potential for misuse was perhaps best stated by a bank employee

108. 15 U.S.C. § 1681(a) (1994) states:
“(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers. Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers. There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s rights to privacy.

Id.
109. See 15 U.S.C. § 1681(b) (describing in explicit detail when a credit bureau may release a consumer’s credit report).
111. See Barefoot, supra note 107, at 22.
112. See id. at 24.
who described the ability banks now have to probe the private lives of its customers:

We have all these bits of paper passing through our hands each day containing information about our customers. We used to think our business was just to take information off the bits of paper to make transaction entries in the customers' accounts. Now, we see the real value is in the information that is on the bits of paper—data about what the customer likes to buy, and how much they spend, what their interests are, what their needs are, what their tastes are, how their lives may be changing. Knowing this about them gives us the ability to sell all kinds of things to them, that we otherwise would not be able to do.\textsuperscript{113}

Thus, it certainly comes as no surprise that some banks are no longer content with maintaining various databases that are used only to touch the tip of the consumer information iceberg. Instead, new-age bankers envision one enormous database that may contain data regarding deposits, savings, loans, credit cards, brokerage, insurance, annuities, securities underwriting and more.\textsuperscript{114} In fact, to manipulate these complex databases, the lending industry has even begun recruiting from such fields as economics, psychology, and sociology in hopes of taking full advantage of this new found resource.\textsuperscript{115}

In their defense, bank officials are quick to point to the long term benefits of using these types of systems to avoid the cost of subsidizing high-risk borrowers, and also contend that the more varied information they obtain about the consumer, the more accurate judgments they can make.\textsuperscript{116} For instance, online

\begin{flushleft}
\textsuperscript{113} See id.
\textsuperscript{114} See Alan Levinsohn, supra note 1, at 52.
\textsuperscript{115} See id.
\textsuperscript{116} See Joe Asher, Look what credit scoring can do now; Loan analysis, behavior prediction, fair lending enhancement, and more. Banks start to apply it to mortgages and small
\end{flushleft}
book purchases, gifts paid for by credit card, or credit charges at
your favorite restaurant can all be acquired and plugged into
credit scoring systems as factors that predict the behavior of the
potential borrower. In fact, one business academic has gone as
far as saying that in today’s unsteady credit market, banks would
be “positively negligent” if they did not use all the information at
their disposal. He then gave the following scenario as illustration:

Two individuals both apply for loans and everything about them is the same except one person
goes to Las Vegas once month and the other never
seems to gamble. You know the one who goes to
Las Vegas is going to be more of a risk. [Or] Some-
one who has a bunch of $100 charges to Jane’s
House of Pleasure or a person who buys nitrogly-
erin at a pharmacy for a heart condition may or may
not be more of a risk.

Unconvinced as to the legitimacy of this use of personal
information, consumer advocacy groups have raised three dis-
tinct issues they feel must be addressed regarding privacy and
the circulation of consumer information to be used in credit de-
termination.

These issues are: 1) the infringement on personal liberties
that may result from the use of personal information for credit
scoring purposes; 2) the misappropriation of this type of informa-
tion; and 3) the wrongful dispersion and use of this information.
To understand the privacy plight of the consumer, each
must be addressed separately.

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117. See generally Barefoot, supra note 107, at 22. Barefoot describes an e-mail
she received warning that for a small fee, anyone could acquire data about her that
ranged from her driver’s license to the amount paid for her home. See id.
118. See Levinsohn, supra note 1, at 55 (quoting Lewis Manell, the Dean of the
University of Buffalo School of Management).
119. See id.
120. See id.
121. See id.
As mentioned earlier, technological advances like the Internet, e-commerce, and especially the use of credit cards have essentially provided a window for viewing how we live.\textsuperscript{122} Thus, as consumers become more and more afraid that "big brother" is watching, the inevitable result has been the petitions of legislatures for more stringent laws controlling how this type of information may be used.\textsuperscript{123} In fact, Congress has been quite responsive in addressing the privacy issue.\textsuperscript{124} For instance, the end of the 105\textsuperscript{th} Congress saw a total of 250 privacy bills that were pending, many of which regarded electronic commerce issues.\textsuperscript{125} Senate Banking Committee Chairman, Phil Gramm, even conducted a full committee hearing regarding financial privacy issues on June 9, 1999 stating that "the current laws covering banking and securities were written before the Internet became a part of daily life and before the explosion in new technology."\textsuperscript{126} In fact, this need for more modern legislation addressing our new economy culminated in the passing of the Gramm-Leach-Bliley Act on November 4, 1999.\textsuperscript{127} Set to go into effect on March 12, 2000, the act contains several provisions designed to protect consumer financial information from improper use.\textsuperscript{128} Under this plan, all financial institutions are required to disclose their privacy policy regarding the sharing of non-public personal information with third parties.\textsuperscript{129}

Consumers also have the option to "opt out" of sharing non-public personal information with nonaffiliated third parties.

\textsuperscript{122} See Michael Tarsala and Nick Turner, \textit{Lawmakers Aim to Make Secrets Safe in Cyberspace}, \textsc{Investor's Bus. Daily}, May 10, 1999 at A6, available in \textsc{Lexis}, Bankng Library, INVDLY File. (stating that "privacy has emerged as the number one issue for Internet users").

\textsuperscript{123} See id.

\textsuperscript{124} See Michelle Clayton, \textit{Your Bank May Have a Privacy Problem}, \textsc{America's Community Banker}, Jan. 1, 1999, at 18.

\textsuperscript{125} See id.


\textsuperscript{128} See id.

\textsuperscript{129} See id.
as well. Finally, the Federal Trade Commission is given the authority to enforce the Act by administering civil penalties for any violation. Thus, by enacting this legislation, Congress has recognized that the convenience and ease in which consumer financial information can be freely exchanged must be tempered by laws that prohibit its unauthorized use. In fact, since a consumer’s credit information is some of the most important personal data available, both lenders and credit bureaus who employ credit scoring means will inevitably be required to address the privacy issue and ensure that their dealings with third parties are in compliance with the Gramm-Leach-Bliley Act.

While the problem of private companies selling consumer information is compelling, perhaps the more egregious practice occurs when lenders take advantage of their custodial position of consumer credit information by directly selling customer data to third parties. For instance, in June of 1999 a state action was brought in Minnesota accusing U.S. Bancorp of selling customer information to a third party telemarketing company for $4,000,000 and 22% of the company’s sales. This third party company then allegedly used this information to solicit the sale of health club memberships. Although U.S. Bancorp initially denied the charges, the consumer backlash that resulted from news of the allegations prompted the company to settle the suit only weeks later. In doing so, the company agreed to pay an amount equal to that received from the telemarketing firm to the

130. See id.
131. See Capital Briefs: Bipartisan Group to Push for Consumer Privacy, AM. BANKER, Feb. 11, 2000, at 2. Alabama Senator Richard Shelby (R) has openly expressed the view that the privacy provisions in Gramm-Leach-Bliley are not tough enough and is seeking to enact even tougher privacy laws this year. See id.
134. See id.
135. See id.
state as well as to provide its customers with an opt-out option that would not allow the bank to release information to commercial parties unless the individual consented.\textsuperscript{137}

V. CONSUMER V. CREDIT BUREAU:
WHEN THE CREDIT BUREAU PREVAILS

Based on the incidents addressed, consumer concern as to how credit scoring information is obtained and used is clearly well founded. Although the Gramm Act has helped inhibit commercial entities from engaging in suspect use of consumer financial information, focus should now rest on how our fair lending legislation is addressing problems regarding how credit scoring information is maintained, and how consumers can ensure their credit score is kept both accurate and private.

Perhaps the biggest problem for credit agencies in terms of compliance with the FCRA has been when these organizations are accused of releasing consumer credit information to those who are not authorized to obtain it.\textsuperscript{138} In fact, many FCRA cases involve either private individuals suing others for improperly obtaining their credit information or suits against the credit bureaus themselves for negligence in releasing this data to the wrong person.\textsuperscript{139}

In \textit{Wilson v. Sessoms, Equifax},\textsuperscript{140} a private insurance investigator improperly obtained a copy of the plaintiff's credit information from a local subsidiary of Equifax in violation of the FCRA.\textsuperscript{141} The question faced by the court, however, was whether in allowing the investigator to obtain this credit information, the credit bureau had impinged upon the FCRA requirement that credit bureaus maintain appropriate procedures to ensure that

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\textsuperscript{137} See id.
\textsuperscript{138} See \textit{U.S. Bancorp Privacy Snafu May Doom H.R.10, supra} note 133, at 1.
\textsuperscript{139} See \textit{Pinner v. Schmidt}, 805 F. 2d 1258, 1263 (5th Cir. 1986), \textit{cert. denied}, 483 U.S. 1022 (1987) (holding that a plaintiff who proves damages under the FCRA is entitled to actual damages as well as reasonable attorney's fees as provided under 15 U.S.C. § 1681(o)).
\textsuperscript{140} No. 4:96 CV01031, 1998 U.S. Dist. LEXIS 8154, (M.D. N.C. Mar. 1998).
\textsuperscript{141} See id. (citing 15 U.S.C. § 1681e(a) (1994)).
reports are furnished to third parties only for permissible purposes.142 The court held that "the standard of conduct for determining whether the consumer reporting agency maintained reasonable procedures is what a reasonably prudent person would do under the circumstances."143 Thus, under this standard, the credit bureau simply had to prove that neither it nor its subsidiary had any reason to believe that the insurance agent would obtain the plaintiff's credit report for an improper purpose.144 Since the agent had earlier certified that he would request consumer credit information only for permissible purposes, and this had been his first offense in this regard, the court granted summary judgment for both credit bureaus.145

In the somewhat analogous case of Andrews v. Trans Union Corp.,146 a consumer brought suit against the credit bureau under the FCRA for providing credit reports for an impostor who had stolen the plaintiff's name, driver's license and social security numbers, and attempted to obtain credit using them.147 Under the plaintiff's theory, the credit bureau's dissemination of her credit information had not been reasonable, since her report had been disclosed in response to her impostor's applications for credit.148 In refuting plaintiff's argument, the court held that even though the consumer's information was being obtained without her permission, the impostor's creditor indeed had a "legitimate business need" for the credit report of the person being impersonated.149 Thus, the court found no FCRA violation, and granted summary judgment for the credit bureau on this count.150

Although the habit of credit bureaus giving sensitive credit information to improper parties is noteworthy, perhaps some of the most serious violations by credit bureaus involve their failure

142. See id. (citing 15 U.S.C. § 1681b(3) (1994)).
143. Id. (citing Pinner v. Schmidt, 805 F.2d 1258, 1263 (1987)).
144. See id.
145. See id.
146. 7 F. Supp. 2d 1056 (C.D.Cal. 1998).
147. See id. at 1063.
148. See id. at 1065.
149. See id. at 1061 (citing 15 U.S.C. § 1681(e)(a) (1994)).
150. See id. at 1084 (citing 15 U.S.C. §1681b(3)(e) (1994)).
to correct inaccurate information within consumer credit reports after these mistakes have been brought to their attention.\textsuperscript{151} As mentioned earlier, banks are often placed in a precarious position when they use inaccurate data provided by credit bureaus.\textsuperscript{152} However, it is the consumer who is often forced to bare the brunt of these inaccuracies during their daily lives.\textsuperscript{153} As stated, the FCRA requires credit bureaus to adopt reasonable procedures to ensure the information they maintain within their computer databases is accurate.\textsuperscript{154} As the following case illustrates, the threshold set forth by the courts as to what constitutes a reasonable effort can be quite low, and the consumer is faced with the daunting task of proving willful or negligent misconduct on the part of the credit bureau.

In \textit{Renninger v. Chexsystems & Equifax Credit Information Services, Inc.},\textsuperscript{155} the plaintiff brought suit against the credit bureau for failing to correct its records that listed her as having died in 1992.\textsuperscript{156} During the period from 1992 until 1997, plaintiff applied for credit on at least seven different occasions and was turned down due to the defendant's failure to correct its mistake.\textsuperscript{157} After each occasion, the plaintiff contacted the credit bureaus offering to provide proof that she indeed was alive.\textsuperscript{158} Unable to resolve the problem, she brought suit in early 1997 claiming the credit bureaus had willfully or negligently failed to correct their mistake.\textsuperscript{159} In response, the defendant claimed that no "credit report" as defined by the FCRA had been issued regarding the plaintiff, and that her previous requests for her report constituted

\textsuperscript{151} See Mierzwinski, \textit{supra} note 60.
\textsuperscript{152} See \textit{supra} notes 91-96 and accompanying text.
\textsuperscript{153} See Mierzwinski, \textit{supra} note 60, at 1.
\textsuperscript{155} 1998 WL 295497 (N.D.III. 1998).
\textsuperscript{156} See id. This information had been obtained from the Social Security Administration in 1992. Upon receiving notice of the error in 1992, the SSA had immediately corrected the mistake. See \textit{id.} at *1.
\textsuperscript{157} See \textit{id.} Although the mistake had been present in plaintiff's credit reports from all three major credit bureaus, both Trans Union and Experian had corrected the problem after the first request. See \textit{id.}
\textsuperscript{158} See \textit{id.} at *1.
\textsuperscript{159} See \textit{id.} at *2-3.
a "credit disclosure" not subject to liability. In finding for the credit bureau, the court concluded that no "credit report" had been issued by the bureau within the applicable statute of limitations, and that the plaintiff had suffered no damage due to the inaccuracies within her file. Though the court expressed its sympathies for the plaintiff's plight, it felt compelled to honor the law as it had been written and deny recovery.

VI. CONSUMER V. CREDIT BUREAU: WHEN THE CONSUMER PREVAILS

Does legislation like the Fair Credit Reporting Act still protect the consumer in today's electronic age? Based on these examples, one may be inclined to answer no. After all, if a woman who repeatedly seeks for five years to have her credit report show she is alive and not dead cannot recover as the statute is currently written, it would appear that most consumer actions would fail. However, one area where the courts do seem to give deference to the plaintiff occurs when a third party interprets the general language of the FCRA too liberally and construes the act as allowing them access to another's credit file.

In Duncan v. Handmaker, the plaintiffs, who had earlier brought suit against their mortgage company for failing to inspect the property's water supply before sale, brought suit against the lender's attorney for improperly obtaining a copy of the plaintiff's credit report. In preparing for the deposition of the plaintiffs in the real estate case, the attorney had obtained their credit report through his firm's association with Equifax. In defending this acquisition, the defendant claimed his firm had

160. See id. at *4 (citing 15 U.S.C. § 1681(g)(a)).
161. See id. Since plaintiff's earlier requests for credit had not occurred within 2 years of the time of suit (as required under the FCRA), plaintiff relied upon a letter from the credit bureau seeking more information from the SSA to constitute a "consumer report" under the statute. The court, however, declined to accept the letter as a report and dismissed the case. See id. at *6.
162. See id.
163. 149 F.3d 424 (6th Cir. 1998).
164. See id. at 426.
165. See id. at 426.
a legitimate business interest in obtaining the credit report of the plaintiff as required by the FCRA, and this need was connected with the lending transaction between the plaintiff and the lender. In refuting this contention, the court stated: "basic principles of statutory construction prevent us from interpreting § 1681b(3)(E) in a fashion that allows a party to obtain a consumer [credit] report for a purpose only tangentially related to the extension of credit. If we interpret § 1681b(3)(E) too broadly...we would inadvertently transform it into a provision that enabled information-seekers to circumvent the restrictions of the FCRA." Thus, the court appears ready and willing to admonish those select few who take advantage of the ease of access modern technology provides to acquire data that should not be available to them.

Another improper use of credit reports occurs when the documents have been used in employment hiring decisions without the prospective employee's knowledge. In *Mathews v. Government Employees. Ins. Co.*, 800 individuals, who had applied to GEICO for employment and had been denied, filed suit after being informed this decision had been based in part on the use and evaluation of their consumer credit reports. Although the company admitted this action may have been an FCRA violation, it argued that the plaintiff had failed to meet the high standard for willful conduct that is usually required by the court in FCRA cases. The court, however, noted that willful conduct could be demonstrated by a reckless disregard for the company's responsibilities under the FCRA, and that its conduct in this situation clearly qualified as such. Thus, the court again expressed that while the statutory language used in the FCRA was not completely rigid, it did not allow third parties to exploit the

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166. See id.
167. See id. at 427.
169. See id. at 1165. See also *Casella v. Equifax Credit Information Services*, 56 F. 3d 469, 476 (2nd Cir. 1995) (holding there is no violation of the FCRA when a credit bureau refuses to delete allegedly false information in a credit report when the agency has reason to believe it is accurate).
170. See id. at 1164.
necessary latitude provided to ensure a fair system for all parties.

VII. LENDERS, CONSUMERS, AND CREDIT BUREAUS: 
HOW ALL PARTIES CAN WIN

Many of the problems in the computerized systems used today can be traced not to the integrity of the systems themselves, but instead to their maintenance.\textsuperscript{171} As mentioned, credit bureaus are the primary source of credit scoring information.\textsuperscript{172} Having recognized the importance of these entities in the commercial industry, Congress, when drafting the FCRA, showed an initial deference to credit bureaus that has resulted in a myriad of inefficiency and abuse.\textsuperscript{173} Therefore, any reformation of the current system where creditworthiness is determined through an automated process must begin by examining how these bureaus are currently regulated and how the system could be improved.

One prominent requirement imposed by the FCRA states that “whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure a maximum possible accuracy of the information concerning the individual about whom the report relates.”\textsuperscript{174} As might be expected, the courts have generally found the accuracy of a report to be a complete defense to any action brought under this provision.\textsuperscript{175} The problem, however, often lies in determining what constitutes accuracy under the act.\textsuperscript{176} Several cases have held that

\begin{itemize}
  \item \textsuperscript{171} See Mierzwinski, supra note 60, at 1. The complaints against credit bureaus had achieved such notoriety that they had been deemed “Public Enemy #1 at the FTC”. Id.
  \item \textsuperscript{172} See supra notes 21-27 and accompanying text.
  \item \textsuperscript{173} See Austin v Bankamerica Service Corp., 419 F. Supp. 730 (N.D.Ga. 1974). The FCRA does not impose strict liability for incompleteness in a report. In the case, a credit report which correctly stated that a credit applicant was named as a defendant in a lawsuit failed to mention that his involvement was only in his official capacity as a deputy county marshal. Here the court held the report to be accurate under the language of the FCRA. See id.
  \item \textsuperscript{174} 15 U.S.C. § 1681e(b) (1994).
  \item \textsuperscript{176} See Booth v. TRW Credit Data, 768 F. Supp. 434 (S.D.N.Y. 1991) (distinguishing between accuracy and completeness in a credit report).
\end{itemize}
an omission from a credit report does not render the report inaccurate under the FCRA. For example, in *McPhee v. Chilton Corp.*, the credit report of a husband and wife had truthfully stated that the couple had filed a bankruptcy petition, but did not mention that the petition had been withdrawn and dismissed within two months of its filing. As a result of the bankruptcy filing appearing on the report, the couple was denied a mortgage even though they had paid off the debts that had led them to file the petition. In filing suit, the plaintiff contended the report violated the FCRA and argued the omission of the withdrawal made the report inaccurate, incomplete and misleading. In deciding the case, the court concluded that, although the fact that the bankruptcy petition had been withdrawn may have made the report more accurate, this section of the FCRA did not require completeness and that to require an agency to independently update information after its initial receipt and verification would burden commercial exchange beyond legislative intent.

Although the burden of requiring credit bureaus to independently review and update the credit files of millions of consumers would be immense, the necessity for doing so can be found for two distinct reasons. First, one must look to the legislative intent behind the passage of FCRA. The FCRA was created “to protect consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report.” During Congressional debate over the passage of the FCRA, Senator Proxmire noted that “perhaps the most serious problem in the credit reporting industry is the problem of inaccurate or misleading information.” As a result of this concern, Congress declared

\[\text{177. 468 F. Supp. 494 (D.Conn. 1978).} \]
\[\text{178. See id. at 495.} \]
\[\text{179. See id.} \]
\[\text{180. See id. at 497.} \]
\[\text{"The purpose of the Fair Credit Reporting Act is to require consumer reporting agencies to adopt reasonable procedures to meet the needs of commerce for consumer credit, personnel, insurance, and other information in a manner that is fair to consumers." Id.} \]
\[\text{183. 115 Cong. Rec. 2441 (1969).} \]
that reasonable procedures would be required to assure a credit report's "maximum accuracy." As shown by the cases mentioned, however, the court system has typically failed to hold credit bureaus to this lofty standard. One court did note, however, that "reports containing factually correct information that nonetheless mislead their readers are neither maximally accurate nor fair to the consumer who is the subject of the reports." Thus, when interpreting the FCRA, the court should look at the legislative intent of Congress which was clearly more concerned with the rights of private consumers and their credit information than with placing a burden on credit bureaus to assure the information they disseminate is accurate.

Second, since the courts have construed the FCRA's accuracy requirements somewhat liberally, credit bureaus in the past had little incentive to correct mistakes that may have adversely affected a consumer's credit score. As a result, consumers have often been left with little remedy when problems are left uncorrected. For example, in 1991, the United States Public Interest Research Group analyzed credit bureau complaints that had been filed with the Federal Trade Commission (FTC). The results of this and subsequent surveys provide informative data.

Consumers who had finally taken their complaints to the FTC had already complained to the credit bureau, without satisfaction, for an average of twenty-three weeks. In 1993, the results were no better as consumers who complained to the FTC, had complained to the credit bureau for an average of thirty-one weeks.

From 1990-1993, complaints regarding credit bureaus led all others at the FTC, each year and for the four year period. In fact, the FTC testified to Congress in 1991 that credit bureau complaints were the largest, and fastest growing category in its

186. See Mierzwinski, supra note 60, at 1.
187. See id.
188. See id.
189. See id.
Sixty-one percent of the complainants had been denied credit, housing, or jobs due to the mistakes in their reports. Forty-four percent of these disgruntled consumers had someone else’s negative credit on their reports. Sixty-four percent of the false information found in complainants’ reports belonged to total strangers while twenty-three percent belonged to relatives, and thirteen percent belonged to ex-spouses.

In 1994, a bill was proposed in the House of Representatives that would establish increased duties on credit bureaus to conduct re-investigations of errors and remove information that could not be verified. The proposal would also require that any such re-investigation of an alleged error be completed within thirty days, and that banks and other creditors be required to use reasonable procedures to avoid errors. These proposals, however, were not passed by the 103rd Congress, and lay dormant until resurrected and passed along with several other provisions in September, 1996. Though certainly a step in the right direction, several of the amendments made to the FCRA could still be augmented.

Those proclaiming the virtue of a stronger, amended FCRA will quickly point to the new provision that will allow the FTC to impose civil penalties for violations. Under the Act, a credit bureau can be assessed fines up to $1000 per violation if either they or a creditor are found to have willfully violated the FCRA. Although these types of penalties may have an effect on the diligence of credit bureaus in correcting errors, other new additions may in fact counteract the effectiveness of the fine provision. For instance, the FCRA now permits the filing of a counteraction by the credit bureau if the consumer brings a spurious
lawsuit against the lender. Thus, as the Act now reads, the credit bureau may have an incentive to maintain accurate information or face possible fines. There may be fewer suits brought by individual consumers, however, if they feel their cases may be deemed frivolous, forcing everyday consumers to compensate the credit bureau for their legal fees.

Though the credit bureaus have indeed caused their share of problems in conjunction with credit scoring, the lenders that employ them are not without blame. Apart from the problems with lenders selling customer information to third parties, problems have also arisen between lenders and credit bureaus in situations where financial institutions intentionally withheld certain customer information. For example, many national lenders such as Citigroup and Discover Financial Services routinely fail to report credit limit data to the three national credit bureaus. These companies claim that by doing so, they prevent other lending companies from attempting to steal their customers away with higher limits and lower interest rates. The problem that arises, however, is that by providing information to the credit bureaus on a selective basis, lenders are skewing any credit scores that individuals may receive when applying for other credit cards or loans. Thus, credit bureaus may now have a legitimate claim that this action by their main customers, the large lending institutions who continuously use their services, has been an obstacle in the credit bureau’s compliance with the FCRA.

This problem has become so serious that the Office of the Comptroller of Currency (OCC) has joined the Federal Trade

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199. See id. at § 1681(o)(b) (amended 1996).
200. See id.
202. See id.
203. See id.
204. See id. at 1. A study performed by Experian found that 35% of consumers received lower credit scores than they deserved based on lenders withholding information from bureaus. See id.
205. See id.
Commission (FTC) in an investigation into the practice of information withholding by lenders. The dilemma they have encountered, however, involves the wording of the FCRA in regard to the withholding of consumer data. Attorneys for the lender argue that their clients are only responsible for ensuring the information they provide to the bureaus is complete and accurate and that since a customer's credit balance is not something that bears on creditworthiness, the lender should be allowed to keep the information confidential. The government, on the other hand, contends the word "complete" in the language means just that, and that by denying credit bureaus information regarding their customers' credit limits, they are denying the borrower recognition for a good payment history. Regardless of which side is indeed correct, the accuracy of credit scores in the future will depend on how the issue is resolved. Since lenders are those who would benefit most from an accurate scoring system, the government's definition seems more likely to prevail either through new legislation or a new interpretation of the FCRA.

From a consumer privacy standpoint, Congress appears to have adequately addressed concerns regarding the use of credit scoring information for unauthorized purposes. Under the 1996 amendments, consumers requesting a copy of their credit report will notice the file will display any party who has used the information. Individuals may also request their names be removed from lists that credit bureaus provide to lenders for prescreening purposes. Therefore, many of the privacy problems mentioned can be alleviated as long as consumers are made aware of these new options.

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207. See id.
208. See id.
209. See id.
210. See Richard Downing, Jr., Changes to the Credit Reporting Act, MORTGAGE BANKING, April, 1998, at 82.
211. See id.
212. See id.
VIII. Conclusion

In summary, the growth of computer credit scoring is undeniable. Along with this newfound importance, however, has come a multitude of concerns regarding both how credit scoring operates and the ramifications it may have on consumers' lives. Since technological advances in computer credit scoring models will only continue to improve, consumers must accept that many financial transactions in which they take part will be determined at least in part electronically. As a tightening in governmental regulation might suggest, however, this acceptance of computer scoring does not have to coincide with a blind faith in the integrity of those institutions that provide this information. Consumers must take it upon themselves to know their rights under acts like the FCRA which provide protection against those seeking to use their financial data improperly. Those responsible for obtaining, storing, and manipulating credit scoring information must continue seeking methods of improving their services while complying with current regulations.

Finally, our court system must also recognize the intent of Congress in passing the FCRA and not interpret the Act in such a stringent manner that the consumers the Act was designed to protect are left without remedy. Thus, only when all these factors work in unison will a modern credit scoring system benefit all parties involved.

Kenneth G. Gunter