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## The Fair Credit Reporting Act: Is It Fair for Consumers?

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# The Fair Credit Reporting Act: Is It Fair for Consumers?

by Albert S. Jacquez  
and Amy S. Friend

## I. INTRODUCTION

Congress enacted the Fair Credit Reporting Act ("FCRA")<sup>1</sup> to ensure the confidentiality, accuracy, and currency of consumer credit information.<sup>2</sup> Its authors could not have imagined that in the twenty-three years since its passage, technological advances would have enabled consumer reporting agencies to store, disseminate, and manipulate personal and financial data on millions of consumers.<sup>3</sup> When the FCRA was passed, the largest credit bureau had 27 million consumer files on computer tape.<sup>4</sup> Today, each of the three largest bureaus has between 170 and 190 million consumer files.<sup>5</sup> When Congress considered the FCRA, American consumers owed about \$105 billion.<sup>6</sup> In 1992, consumer debt exceeded \$700 billion.<sup>7</sup> In 1970, the state of computer technology merely suggested the development of a nationwide data bank on consumers.<sup>8</sup> Today, that possibility has been realized. The law has failed to keep pace with this technological explosion and no longer meets the authors' stated objectives.

The credit reporting industry in this country is a multi-billion dollar industry that involves the sale and use of personal and financial data on millions of Americans. Consumer reports<sup>9</sup> are routinely used to make decisions about whether to offer a job or lease an apartment, whether to extend a mortgage or issue a credit card, or whether to underwrite insurance or provide a checking account.<sup>10</sup> Where the ability of an individual to obtain a job, a mortgage, or insurance can turn on the contents of his or her consumer report, it is essential that consumer reports be reasonably free of errors, that consumer reporting agencies be responsive to consumer complaints about mistakes,

*It is essential that consumer reports be reasonably free of errors, that consumer reporting agencies be responsive to consumer complaints about mistakes, and that consumers have some control over the use of their confidential information.*

and that consumers have some control over the use of their confidential information. This article will show why the FCRA meets none of these objectives.

First, the article will give a background of the FCRA and a description of the evolution of the credit reporting industry since the law's enactment. It will then describe industry problems facing consumers and review how state and federal law enforcement agencies, as well as state legislatures and the 102d Congress have responded to abuses of the industry. Finally, the article will propose legislative reforms to enable the FCRA to meet its original objectives.

## II. BACKGROUND

### A. Legislative History

Congress enacted the FCRA in response to growing public concern about the rights of consumers and the expanding use of credit in society. During the late 1960s Congress considered a broad range of consumer protection legislation that sought to protect consumers from abuses related to consumer credit transactions.<sup>11</sup> For example, the Truth in Lending Act<sup>12</sup> established uniform disclosures of consumer credit terms and provided for private enforcement of the Act. The protection of privacy was also a major concern. The expanding use of com-

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puters to collect and disseminate vast amounts of sensitive personal and financial information disturbed many Americans who felt this technology violated their right to privacy.<sup>13</sup>

Much of the information collected related to consumer credit transactions. The consumer credit industry experienced phenomenal growth after World War II. During this time, consumer debt grew almost twenty-fold.<sup>14</sup> The credit reporting industry grew in proportion to the increased use of credit.<sup>15</sup> Creditors more frequently turned to credit bureaus for information regarding the credit histories of consumers. Automated companies operating on a national scale replaced the small independent credit bureaus that once kept records on consumers and manually communicated the information to local merchants. These financial and technological trends hinted at the development of a nationwide data bank which would contain information on every citizen.<sup>16</sup>

With the growth in size and scope of the credit reporting industry came an increase in the number of complaints regarding industry practices and the problems associated with them.<sup>17</sup> Apart from the vast amount of sensitive information stored in credit bureau files, consumers complained about the accuracy of credit reports and the confidentiality of the reports.<sup>18</sup> Consumers further complained of the inability to examine their own reports which prevented them from correcting any errors or even knowing whether their own reports contained any damaging information.<sup>19</sup>

In 1968, Congress responded by considering legislation designed to address the problems in the credit reporting industry. Congresswoman Leonor Sullivan and Senator William Proxmire generally receive credit for sponsoring the first comprehensive credit reporting legislation. The bill Senator Proxmire introduced eventually became law.<sup>20</sup> The Proxmire bill attempted to address three basic problems: first, the problem of inaccurate or misleading

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information contained in consumer credit files; second, the problem of irrelevant or outdated information; and third, the problem of maintaining confidentiality of consumer credit information.<sup>21</sup> While many of the bill's proposed solutions to these problems later changed, the central thrust of the FCRA revolves around these basic issues.

### ***B. Major Provisions***

#### ***1. Accuracy of Reports***

Congressional reformers believed that the most serious problem in the credit reporting industry was the existence of inaccurate and misleading information in consumer credit files.<sup>22</sup> While no definitive studies indicated the level of accuracy in credit files, many believed that the large volume of information collected by credit bureaus and the inherent changes in consumer credit histories produced an unacceptable rate of errors in consumer credit reports.<sup>23</sup> The FCRA addresses this problem in a number of ways. It requires credit bureaus to establish "reasonable procedures to ensure maximum possible accuracy."<sup>24</sup> Consumers are guaranteed access to their credit files<sup>25</sup> and provided the opportunity to correct inaccurate or incomplete information in those files.<sup>26</sup> Finally, whenever a consumer is rejected for an extension of credit, employment, or insurance, the consumer must be in-

***Many in Congress felt it was unfair to base credit decisions on minor delinquencies that occurred in the distant past<sup>29</sup> or on extraneous and inappropriate personal information.***

formed of the name and address of the credit bureau that furnished the credit report used in making the decision.<sup>27</sup>

#### ***2. Relevancy of Reports***

While Congress supported the right of creditors to know how a consumer handled past credit obligations, legislators did not believe that outdated or irrelevant information should determine a consumer's creditworthiness.<sup>28</sup> Many in Congress felt it was unfair to base credit decisions on minor delinquencies that occurred in the distant past<sup>29</sup> or on extraneous and inappropriate personal information.<sup>30</sup> Investigative consumer reports, which include "information on a consumer's character, general reputation, personal characteristics or mode of living . . . obtained through personal interviews with the consumer's neighbors, friends or associates"<sup>31</sup> were criticized for including information that was only marginally related to creditworthiness.<sup>32</sup> The FCRA addresses the problem of irrelevant and outdated information by prohibiting the reporting of adverse information older than seven years or bankruptcies older than ten years.<sup>33</sup> The FCRA also requires those who order investigative consumer reports to inform the consumer who is the subject of the report within three days of the report order date.<sup>34</sup>

#### ***3. Confidentiality of Reports***

The right to privacy and confidentiality of consumer credit information was also a major issue.<sup>35</sup> Because many credit bureaus had virtually no policies regarding to whom they could furnish information, almost anyone could obtain a consumer credit report.<sup>36</sup> Credit bureaus collected information for one purpose and often furnished it to creditors for a different purpose, without the consumer's knowledge or consent.<sup>37</sup> In addition, many credit bureaus did not have internal security procedures to ensure the confidentiality of the information they collected.<sup>38</sup> Finally, there was concern over the dissemination of credit reports to government agencies.<sup>39</sup>

While some consumer reporting agencies furnished reports to government agencies pursuant only to a legal process, other agencies made the information readily available to government agencies.<sup>40</sup> This raised serious concerns about the willingness of consumer reporting agencies to protect consumer's sensitive financial information.

The FCRA addresses the problems related to privacy and confidentiality

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in a number of ways. Credit bureaus must maintain procedures to ensure the confidentiality of the information in their files.<sup>41</sup> Unless the consumer consents in writing, credit bureaus are prohibited from furnishing the consumer's credit report to anyone without a legitimate business need or to anyone who does not intend to use the information in connection with the extension of credit, insurance, or employment.<sup>42</sup> Lastly, the FCRA protects the confidentiality of consumer reports by providing criminal penalties for obtaining information on a consumer from a credit bureau under false pretenses.<sup>43</sup> In addition, employees or officers of a consumer reporting agency who disclose such information to a person who is unauthorized to receive the information are subject to these criminal penalties.<sup>44</sup>

### III. DISCUSSION

#### A. *The Need For Reform*

The purpose of the FCRA was to ensure that the nation's credit reporting system functioned fairly, accurately, and without undue intrusion into the privacy rights of consumers.<sup>45</sup> The FCRA sought to achieve a balance

between the legitimate business need of creditors to obtain the necessary information on which to base credit decisions and the right of consumers to protect the accuracy and confidentiality of their personal and financial records.<sup>46</sup> The success of the FCRA in achieving these goals is the subject of growing debate. This article argues that the law fails to fulfill the objectives advocated by its authors. Advances in technology and the volume of consumer credit transactions have rendered the FCRA dangerously ill-equipped to meet the needs of today's consumers.

In determining the success of the FCRA, one must assess its effectiveness in ensuring the accuracy, confidentiality, and relevancy of the information contained in consumer reports. The findings of recent Congressional hearings,<sup>47</sup> independent studies,<sup>48</sup> and federal and state enforcement agency experiences<sup>49</sup> with the credit reporting industry cast serious doubt on the effectiveness of the law in achieving these basic goals. Under current law, information about consumers' lives is too easily accessible. Sensitive personal and financial information on consumers is collected and disseminated with little or no regard for consumers' right to privacy. Errors riddle consumer reports that are difficult to correct.

#### 1. Accuracy of Reports

As stated previously, the authors of the FCRA believed that the lack of accuracy was the most serious problem plaguing the credit reporting industry. Today, this same problem appears to be the single greatest failure of the FCRA. Recent congressional oversight hearings on the effectiveness of the FCRA revealed that consumer report errors were a growing problem.<sup>50</sup> The Federal Trade Commission ("FTC") testified that complaints about errors in consumer reports were a major source of all consumer inquiries made to the FTC.<sup>51</sup> In 1991, more than 10,000 consumers complained to the FTC about

the inaccuracy of consumer reports.<sup>52</sup> Last year, almost 1,400 taxpayers in Norwich, Vermont were erroneously recorded delinquent in their taxes because of an error by TRW, one of the nation's three largest credit bureaus.<sup>53</sup> The residents of south Middlesex County, Massachusetts suffered the same nightmarish fate a few months later.<sup>54</sup>

A number of recent independent studies also have uncovered problems

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with the accuracy of consumer reports. A study conducted in 1989 by James Williams surveyed 1,500 consumer reports and found a serious error rate of 43 percent.<sup>55</sup> A more recent 1991 study conducted by Consumers Union surveyed 161 consumer reports and found that 48 percent of all reports contained errors, while 19 percent contained serious errors that could hinder a consumer's credit eligibility.<sup>56</sup> Both studies defined serious errors to mean those that could, or did, cause the denial of credit, employment, or insurance.

The difficulty involved in correcting inaccurate or incomplete information contained in a consumer's file compounds the problem of inaccurate consumer reports. Another recent study by U.S. Public Interest Research Group ("PIRG") revealed that the average duration of a complaint against a consumer reporting agency was 22.5 weeks, or almost 6 months.<sup>57</sup> The 1991 study surveyed 155 consumer report complaints on file at the FTC. The study further concluded that 79 percent of the complaints against consumer reporting agencies alleged the denial of credit was due to errors in consumer reports.<sup>58</sup> Clearly, the rate of errors contained in

consumer reports is unacceptably high and the consumer's ability to promptly correct those errors is almost nonexistent.

These high rates of errors and consumer frustration with the credit bureaus' unresponsiveness to their complaints has led to the growth of an industry that offers quick fixes. Unfortunately, this industry often accomplishes these remedies through the use of unscrupulous methods. The credit repair business involves the marketing of credit repair services to consumers whose reports contain adverse information that interferes with the consumer's ability to obtain credit. These entities often promise or imply that they can have damaging credit information removed from the consumer's file, even though the information may be accurate and current,<sup>59</sup> and thus the FCRA does not require its removal.<sup>60</sup> Often, credit repair organizations either cannot deliver on their promises for which they have collected hefty fees, or they do deliver, but often by employing questionable methods.<sup>61</sup> Where credit repair services succeed in removing accurate and current adverse information, this may deprive creditors of information that could be essential in making credit determinations. The practices of these companies injure the general public and cheat individual consumers.<sup>62</sup>

### 2. Relevancy of Reports

Another problem that the authors of the FCRA sought to remedy was the collection and maintenance of irrelevant or outdated information in a consumer's file. While consumer complaints about the appearance of outdated information continue to plague the credit reporting industry, a more serious problem appears to be the collection of irrelevant information by consumer reporting agencies. Equifax, one of three national consumer reporting agencies, recently entered into an agreement with the New York State Attorney General's office to discontinue certain of its procedures for com-

piling investigative consumer reports.<sup>63</sup> Those procedures had resulted in the collection of highly questionable information on thousands of consumers in New York.

Last year, Equifax furnished at least 3,300 investigative reports on New York residents.<sup>64</sup> In compiling these reports, Equifax solicited information about job applicants that included questions regarding possible psychological problems or disabilities, physical prob-

***Sensitive personal and financial information on consumers is collected and disseminated with little or no regard for consumers' right to privacy.***

lems or disabilities, use of drugs, excessive use of alcohol, arrests, and activity in community service organizations.<sup>65</sup> According to New York State Attorney General Robert Abrams, these inquiries, with the exception of those pertaining to pending criminal cases, may have aided Equifax's employer-clients in violating New York State anti-discrimination laws.<sup>66</sup> Equifax has agreed to change its questionnaire on a national basis and to furnish to individuals, upon request, complete copies of their investigative reports and the interview worksheet used in compiling them.<sup>67</sup>

### 3. Confidentiality of Reports

The issues of privacy and confidentiality of consumer reports were also significant concerns of the FCRA's authors. With the continued evolution of technology and the capability of the credit reporting industry to retrieve, manipulate, and disseminate vast amounts of data on virtually every aspect of an individual's life, these concerns have only grown.<sup>68</sup> Moreover, the provision in the FCRA that permits anyone with "a legitimate business need" to obtain a consumer report<sup>69</sup> has proven to be a broad loophole

through which sensitive personal and financial information is released for questionable purposes. This loophole allows rental agents, check guarantee companies, automobile salesmen, and even dating services to legitimately obtain consumer reports.

Unfortunately, it is sometimes just as easy to obtain consumer reports for fraudulent purposes. The City of New York's Department of Consumer Affairs recently revealed that 35 percent of the consumer reporting agencies listed in New York City telephone books were willing to sell consumer reports without adhering to the security procedures required by either the federal or state FCRA.<sup>70</sup> The investigation found that six of the seventeen credit bureaus advertising in the city were willing to provide credit reports without verifying the identity of the user of the report or the purposes for which the information would be used.<sup>71</sup>

Advances in computer technology have led to other privacy abuses. For example, credit bureaus often retrieve information from public records, census data, payment records, automobile registrations, and purchases made by an individual. The information is then processed and segmented based on specific criteria and sold to merchants and others for direct marketing purposes without the consumer's knowledge or consent. It is obvious, then, that the fears expressed by the authors of the FCRA regarding the automation of the credit reporting industry have been realized.

## ***B. Efforts to Reform***

### ***1. State Efforts***

The failure of the FCRA to achieve its intended purposes to ensure the accuracy, relevancy, and confidentiality of consumer reports has never been more apparent. Widespread public support for reform of the law continues to grow with each new revelation of abuse involving the credit reporting industry.<sup>72</sup> The response to this clamor for reform has come from both state and federal governments. A number of

states have considered legislation to enact new state laws regulating credit reporting or to strengthen existing state statutes in this area.<sup>73</sup> California, Maryland, and Vermont recently enacted legislation to protect their residents from credit reporting abuses.<sup>74</sup>

Also, state law enforcement agencies have taken significant actions to curb credit reporting abuses. Twenty Attorneys General reached a consent agreement with TRW, one of the largest consumer reporting agencies, to end numerous inaccuracies and abuses resulting from TRW's systems and procedures.<sup>75</sup> The FTC worked closely with the states in this multistate action.<sup>76</sup>

## 2. Federal Administrative Efforts

The FTC also recently resolved a number of independent enforcement actions. One notable action the FTC settled involved the failure of four companies to notify applicants that they were denied employment based on information in their consumer reports.<sup>77</sup> The four companies, McDonnell Douglas, Macy's, Kobacker, and Keystone Corporation also failed to inform these applicants of the name and address of the credit bureau that supplied the reports. The failure to notify the applicants of the use and origin of the credit reports violated the FCRA.<sup>78</sup>

Another significant FTC enforcement action involved a relatively new area of credit reporting abuse. The emergence of "information brokers" or "superbureaus"<sup>79</sup> has resulted in a number of questionable, if not fraudulent, credit reporting practices. Aided by advances in the electronic transmission of information, these superbureaus principally function as middlemen in the transmission of consumer reports. Superbureaus purchase large volumes of credit and other information about individual consumers at discounted rates and then resell the data. The problem that has arisen along with the emergence of this new industry is a glaring lack of safeguards to ensure the confi-

dentiality of a consumer's report.

In its recent investigation of three superbureaus, the FTC found that they failed to adequately ensure that their customers had a legally-permissible purpose for obtaining consumer reports.<sup>80</sup> The proposed settlement agreements reached by the FTC with I.R.S.C., CDB Infotek and Inter-Fact Inc. mandate specific steps the firms would be required to take, including periodic audits of "mixed-use customers." These

**Consumer reporting agencies routinely sell information from consumer files to direct marketers and creditors for the purpose of identifying individuals for solicitations.**

customers include attorneys, private investigators, or others who might have both legally-permissible and illegal purposes for obtaining consumer reports.<sup>81</sup>

## 3. Congressional Action

Congress has also responded to the growing clamor for reform of the FCRA. During the past two years, almost a dozen bills have been introduced to update and reform the FCRA.<sup>82</sup> The House Banking Subcommittee on Consumer Affairs and Coinage has held four oversight hearings on the FCRA.<sup>83</sup> The Senate Banking Subcommittee on Consumer and Regulatory Affairs also conducted a hearing on this issue last year.<sup>84</sup> The most significant federal legislative activity related to the FCRA occurred during the 102d Congress.

Under the leadership of Congressman Esteban E. Torres, legislation (H.R. 3596) to update and reform the FCRA received the most extensive consideration since 1969. As Chairman of the Subcommittee on Consumer Affairs and Coinage, Torres conducted hearings to determine the effectiveness of the FCRA.<sup>85</sup> The hearings also served to provide Congress with possible solutions to the many alleged

problems in the credit reporting industry.

H.R. 3596 was designed to strengthen the FCRA so that the Act would once again achieve the original purposes intended by its authors. Like the original authors of the FCRA, Torres sought to ensure the accuracy, relevancy, and confidentiality of consumer reports. Unfortunately, the bill died on the House floor in the final hours of the 102d Congress. A number of bills are now pending in the 103rd Congress to update and reform the FCRA.<sup>86</sup>

## IV. PROPOSED LEGISLATIVE REFORM

Congress has many options available to modify the FCRA to better achieve its initial goals, as well as to provide greater access to consumers to their reports.

### A. Confidentiality of Consumer Information

Congress should amend the FCRA to ensure that a consumer reporting agency may provide consumer reports only in those instances in which a consumer is seeking a benefit or the consumer consents to the use of the report.

### 1. Use of Consumer Reports for Direct Marketing and Prescreening

Consumer reporting agencies routinely sell information from consumer files to direct marketers and creditors for the purpose of identifying individuals for solicitations.<sup>87</sup> "Junk mail" lists are often generated by consumer reporting agencies in response to marketers' requests for consumers with particular demographic characteristics or purchasing patterns. Consumer reporting agencies also routinely perform prescreening for credit grantors. Prescreening entails the selection of creditworthy individuals who may be eligible to receive an offer of credit from the credit grantor.<sup>88</sup> The selling of information from consumers' files for these purposes is done without the

consumer's knowledge or consent.

Consumer report agencies should be banned from selling target mailing lists based on consumer information. The FTC has recently taken action challenging the legality of this practice.<sup>89</sup> Equifax recently terminated its target marketing business, citing consumers' concerns about the confidentiality and privacy of their personal information.<sup>90</sup> The consumer does not derive sufficient benefits from the receipt of junk mail to outweigh the invasion of his or her privacy.

On the other hand, prescreening which results in offers of credit to select individuals, does afford the consumer certain opportunities. Prescreening should be a permitted practice under the FCRA, but only when conducted within certain parameters. First and foremost, the consumer must be given the option to remove his or her name from prescreened lists. Each consumer reporting agency that sells consumer information for prescreened credit solicitations should establish a system through which a consumer can easily "opt-out" of prescreening. Additionally, the consumer should be informed by creditors in each prescreened solicitation about the manner in which the consumer was preselected for the offer and about the consumer's option to remove his or her name from future consideration for such solicitations. When prescreening is employed, the creditor must honor the offer of credit to the consumer provided the consumer continues to meet the original selection criteria at the time the consumer responds to the offer.<sup>91</sup>

### **2. Use of Consumer Reports for Employment**

Under current law, consumer reports can be used for evaluating a consumer for employment, promotion, reassignment or retention as an employee.<sup>92</sup> The prospective or existing employee has no legal right to know that his or her consumer report has been obtained for these purposes, and in

fact, a consumer reporting agency may even furnish reports for employment purposes over the specific objections of a consumer.<sup>93</sup> With the great number of serious errors in consumer reports that can potentially jeopardize employment opportunities the consumer should: 1) be informed that consumer reports may be obtained for employment purposes; 2) specifically consent to the use of the reports for these purposes; and 3) be given an opportunity to review and respond to harmful information in the report when the employer is considering denying an employment opportunity on the basis of such information.

### **3. Limits on "Legitimate Business Need"**

A consumer reporting agency may furnish a consumer report only under certain specific circumstances.<sup>94</sup> For the most part,<sup>95</sup> the report may be furnished only in those instances in which the consumer has consented or has initiated a transaction, such as seeking credit, insurance, employment, or certain government benefits. The FCRA also permits a consumer reporting agency to furnish a consumer report to a person who has a legitimate business need for the information in connection with a business transaction involving the consumer.<sup>96</sup> Because of the abuses in this area, it is important to limit the furnishing of reports to those instances in which the consumer actually initiated the transaction. For instance, a car dealer should not be able to obtain a customer's credit report simply because the customer walked into the dealership. Rather, the customer would actually have to apply for car financing, or enter into a contract to purchase a car, before the dealer could obtain the customer's consumer report.

### **4. Limits on Resellers of Information**

The FCRA does not specifically address superbureaus, i.e., entities in the business of reselling consumer reports. While superbureaus are by defi-

nition consumer reporting agencies and thus subject to the parameters of the FCRA, they do pose additional concerns that should be expressly addressed by the Act. In particular, FCRA should require resellers to disclose to the consumer reporting agency the identity of the ultimate end-user of the report and each permissible purpose for which the report is furnished to the end-user. A reseller should have in place procedures to ensure that the reports are sold only for permissible purposes under the FCRA and only to those authorized to receive such reports.

### **B. Accuracy of Information**

Modifying the process whereby consumer reporting agencies investigate information disputed by consumers (reinvestigation) is especially important if the FCRA is to meet the objectives of ensuring accurate and current consumer information. As stated earlier, the unacceptably high rates of errors and unresponsiveness of the credit bureaus to consumer complaints about mistakes demand reform.

#### **1. Imposing Affirmative Duties on Furnishers of Information**

A major source of errors in consumer reports is the furnishers of information for those reports.<sup>97</sup> Under current law, individuals and entities that provide consumer information to consumer reporting agencies have no duty to provide reliable information, to investigate disputed information properly, or to ensure that information they determine to be erroneous is not repeatedly submitted to consumer reporting agencies.

To staunch the flow of inaccurate information, it is important that a modified FCRA impose duties upon furnishers of information. Those should include: 1) an obligation not to provide any information that the person has reason to believe is incomplete or inaccurate; 2) a requirement to establish reasonable procedures to ensure the accuracy of information transmitted to consumer reporting agencies; 3) a duty

to correct and update information; and 4) a duty to investigate promptly any disputed information.

## 2. Reinvestigation of Disputed Information

With respect to correcting errors in consumer reports, new reinvestigation procedures must be established to reduce the delays in deleting inaccurate or incomplete information. The FCRA now requires only that reinvestigations be conducted within a reasonable period of time.<sup>98</sup> The law should require that consumer reporting agencies complete reinvestigations within thirty days of receiving notice of the dispute from the consumer and promptly delete inaccurate or incomplete information from a consumer's file. Further, the law should mandate that appropriate procedures be in place to prevent the reappearance of deleted information.

The FCRA should require that the consumer reporting agency promptly inform the consumer about the results of the reinvestigation, including providing the consumer, free of charge, a revised consumer report when changes have been made to the consumer's file. This latter requirement would help the consumer better understand the changes made in his or her file.

### C. Access to Consumer Reports

#### 1. Charges for Consumer Reports

The FCRA requires only that charges for consumers to obtain copies of their reports be "reasonable."<sup>99</sup> Many consumers do not obtain copies of their reports and, therefore, cannot effectively police the contents for errors. Consumers should be encouraged to monitor their reports for inaccurate and incomplete information regularly. There is probably no more effective way to ensure the accuracy of reports than to give the consumer unfettered access to his or her report. One way to do this is to require that consumer reporting agencies furnish consumers with an annual free copy of their report

upon request.

TRW recently announced that it would implement such a policy of free annual reports.<sup>100</sup> Additionally, some states, like Vermont and Maryland,<sup>101</sup> provide reports free of charge while other states, such as Maine,<sup>102</sup> limit the costs of reports. There is a general sentiment in these states, expressed by some members of Congress, that information in consumer reports belongs to the consumer.<sup>103</sup> Further, the need for the consumer to have access to this information greatly outweighs the costs to the consumer reporting agencies of furnishing reports free of charge.<sup>104</sup>

#### 2. Adverse Action

Congress should modify the FCRA to encourage users of consumer reports to share those reports whenever they contemplate taking adverse action because of information in the reports. Furnishing such access to consumers may alleviate the denial of important benefits to consumers caused by errors in the consumer report. Particularly in the area of employment, where the consumer has so much at stake, the law should require that prior to denying an employment opportunity based on a consumer report, the employer must provide the consumer with a copy of the report and a reasonable chance to respond to adverse information in the report.

#### 3. Standardization of Reports

Consumer reports are often difficult to decipher. Each of the three major reporting agencies produces a different product, with varying degrees of readability. The FCRA should require the FTC to prescribe the form in which consumer reporting agencies make disclosures to maximize the comprehensibility and standardization of reports. This would not entail the FTC's devising one standardized format for disclosures, but would require the FTC to prescribe a model format which agencies could use as a basis for developing a simplified disclosure.

#### 4. Increased Disclosures

Consumers should have access to everything consumer reporting agencies maintain in the consumer's file.<sup>105</sup> Additionally, consumer reporting agencies should provide consumers with information fully identifying all persons who accessed their files, including for what purpose the accessor used the information. The FCRA only requires that consumer reporting agencies to ensure that consumer reports are obtained for a permissible purpose, but does not require the agency to reveal that purpose to the consumer whose report was accessed.<sup>106</sup>

Often, regular customers of a consumer reporting agency will provide a blanket certification to the agency identifying the permissible purposes under the FCRA for which they intend to obtain consumer reports.<sup>107</sup> Consequently, the consumer reporting agency cannot identify the permissible purpose for which the entity obtained any particular report. Blanket certification cannot safeguard adequately against abuses of the credit reporting system given the greater and instant access to consumer reports through computers. Therefore, the consumer reporting agency should be responsible for ascertaining the permissible purpose each time a report is accessed, electronically or otherwise, and for reporting that purpose to the consumer whose file was involved.

#### D. Credit Repair Organizations

Any reform of the credit reporting industry should include strictures on credit repair businesses that often operate through scams. The industry frequently preys on individuals, many of whom have low incomes, are desperate to clean up their credit records or have simply grown frustrated with the unresponsiveness of credit bureaus to complaints about mistakes. The FCRA should regulate this industry to ensure that consumers are provided with necessary information about credit repair organizations to make informed decisions regarding the purchase of their



services, and to protect the public from unfair and deceptive advertising and business practices.

While disclosures are important to inform the consumer and should be mandated,<sup>108</sup> one of the most effective ways to police this industry would be to prohibit payment in advance of the time that the organization fully performs the services. Tennessee and New York have implemented such legislation and have been very successful in cracking down on illegitimate credit repair businesses.

### V. CONCLUSION

Over two decades ago, Congress enacted the FCRA to regulate a growing industry that revolved around the collection and dissemination of personal and financial data on millions of American consumers. Congress acted in response to public concern about the loss of privacy regarding sensitive consumer information and the inaccuracy of that information which formed the basis for such critical decisions as whether to extend a mortgage or offer someone a job. While the FCRA's goal was to enhance the accuracy, relevancy, and confidentiality of consumer reports, the FCRA no longer meets these objectives.

Public confidence in the consumer reporting industry is no greater today than it was in 1970. The tremendous ease with which computers allow for the collection, storage, manipulation, and dissemination of data has generated a new outcry for reform of the industry. The original objectives of the FCRA are still apt today, but legislative reforms are necessary to accomplish those goals. ♦

### ENDNOTES

- <sup>1</sup> 15 U.S.C.A. § 1681 (West 1982).
- <sup>2</sup> 114 CONG. REC. 24,903 (1968) (statement of Sen. William Proxmire)
- <sup>3</sup> "Consumer reporting agency" is a term

defined in 15 U.S.C.A. §1681a(f) (West 1982) as "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." In this article, the term "credit bureau" is used interchangeably with "consumer reporting agency."

- <sup>4</sup> 115 CONG. REC. 33,408, 33,409 (1969).
- <sup>5</sup> This figure was provided by the Associated Credit Bureaus, the trade association that represents about 800 credit bureaus, including the three major bureaus.
- <sup>6</sup> *Annual Statistical Digest, 1970-79*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, 287-288 (March 1981).
- <sup>7</sup> *Federal Reserve Bulletin, Board of Governors of the Federal Reserve System* (October 1992).
- <sup>8</sup> 115 CONG. REC. 33,408 (1969).
- <sup>9</sup> "Consumer report" is defined in 15 U.S.C.A. §1681a(d) (West 1982) to mean "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title." The definition also contains certain exceptions to the term "consumer report."
- <sup>10</sup> 15 U.S.C.A. § 1681b (West 1982) establishes the permissible purposes for which consumer reporting agencies may furnish consumer reports.
- <sup>11</sup> 115 CONG. REC. 2,411 (1969).
- <sup>12</sup> 15 U.S.C.A. § 1601 (West 1982).
- <sup>13</sup> *Hearings Before Special Subcomm. on Invasion of Privacy of the Comm. on Government Operations, House of Representatives*, 89th Cong., 2d Sess. 1-4 (1966) (statement of Rep. Gallagher); See also 113 CONG. REC. 29,589, *et. seq.* (1967) (Reprint of speech by Rep. Gallagher on Privacy.)
- <sup>14</sup> 115 CONG. REC. 33,408 (1969). Senator Proxmire cited a consumer debt increase of \$6 billion in 1945 to \$116 billion in 1969.
- <sup>15</sup> *Id.*

- <sup>16</sup> *Id.*
- <sup>17</sup> *Id.* at 33,409.
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> Pub. L. No. 91-508 (1970).
- <sup>21</sup> 115 CONG. REC. 2,411 (1969).
- <sup>22</sup> *Id.*
- <sup>23</sup> *Id.*
- <sup>24</sup> 15 U.S.C.A. § 1681e(b) (West 1982).
- <sup>25</sup> 15 U.S.C.A. § 1681g(a) (West 1982)
- <sup>26</sup> 15 U.S.C.A. § 1681i (West 1982).
- <sup>27</sup> 15 U.S.C.A. § 1681m(a) (West 1982).
- <sup>28</sup> 115 CONG. REC. 33,408, 33,410 (1969).
- <sup>29</sup> *Id.*
- <sup>30</sup> *Id.*
- <sup>31</sup> 15 U.S.C.A. § 1681a(e) (West 1982).
- <sup>32</sup> 115 CONG. REC. 33,408, 33,409 (1969).
- <sup>33</sup> 15 U.S.C.A. § 1681c(a) (West 1982).
- <sup>34</sup> 15 U.S.C.A. § 1681d(a)(1) (West 1982).
- <sup>35</sup> 115 CONG. REC. 2,413 (1969).
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.*
- <sup>39</sup> *Id.*
- <sup>40</sup> *Id.*
- <sup>41</sup> 15 U.S.C.A. § 1681e(a) (West 1982).
- <sup>42</sup> 15 U.S.C.A. § 1681b (West 1982).
- <sup>43</sup> 15 U.S.C.A. § 1681q (West 1982).
- <sup>44</sup> 15 U.S.C.A. § 1681r (West 1982).
- <sup>45</sup> 15 U.S.C.A. § 1681b (West 1982).
- <sup>46</sup> 115 CONG. REC. 2,411 (1969).
- <sup>47</sup> See *Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance and Urban Affairs, House of Representatives*, 101st Cong., 1st Sess. (1989); *Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance and Urban Affairs, House of Representatives*, 101st Cong., 2d Sess. (1990); *Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance and Urban Affairs, House of Representatives*, 102d Cong., 1st Sess. (1991); *Hearing Before the Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance and Urban Affairs, House of Representatives* 102d Cong., 1st Sess. (1991) [hereinafter *Subcomm. Hearings on the FCRA*].
- <sup>48</sup> See James R. Williams, *Credit File Errors, A Report*, CONSOLIDATED INFORMATION SERVICES (CIS) (August 7, 1989); *What Are They Saying About Me? The Results of a Review of 161 Credit Reports from the Three Major Credit Bureaus*, CONSUMERS UNION (April 29, 1991); *Don't Call; Don't Write; We Don't Care, A Survey of Complaints About Credit Bureaus*, U.S. PIRG (June 1991); Lou Harris and Associates and Dr. Alan F. Westin, *Harris-Equifax Privacy Survey 1992*, Columbia University (November 1992).

- <sup>49</sup> See *In Re McDonnell Douglas Corp.*, before the U.S. Federal Trade Commission, File No. 912-3099, Consent Order to Cease and Desist (July 12, 1991) [hereinafter *McDonnell Douglas Consent Order*]; *In the Matter of Macy's Northeast, Inc. et al.*, before the U.S. Federal Trade Commission, File No. 912-3166, Consent Order to Cease and Desist (June 17, 1991) [hereinafter *Macy's Consent Order*]; *In the Matter of the Kobacker Company*, before the U.S. Federal Trade Commission, File No. 912-3221, Consent Order to Cease and Desist (June 26, 1991) [hereinafter *Macy's Consent Order*]; *In the Matter of Robacker Consent Order*; *In the Matter of Keystone Carbon Company* before the U.S. Federal Trade Commission, File No. 912-3102, Consent Order to Cease and Desist (June 10, 1991) [hereinafter *Keystone Carbon Consent Order*]; *In the Matter of Inter-Fact Inc., et al.*, before the U.S. Federal Trade Commission, File No. 902-3031, Consent Order to Cease and Desist (Dec. 16, 1991) [hereinafter *Inter-Fact Consent Order*]; *In the Matter of CDB Infotek, et. ux.*, before the U.S. Federal Trade Commission, File No. 902-3100, Consent Order to Cease and Desist (Dec. 17, 1991) [hereinafter *CDB Infotek Consent Order*]; *In the Matter of I.R.S.C., Inc. et al.*, before the U.S. Federal Trade Commission, File No. 902-3030, Consent Order to Cease and Desist (Dec. 20, 1991) [hereinafter *I.R.S.C. Consent Order*]; *FTC v. TRW, Inc.*, 784 F.Supp. 161 (N.D.Tex. 1991); *TRW Inc. v. Dan Morales, Attorney General of the State of Texas, et al.*, Civ. Act. No. 3-91-1340-H, Consent Order (N.D. Tex., Dec. 16, 1991) [hereinafter *TRW Consent Order*]; *Agreement of Assurances between Equifax and Daniel E. Lungren, Attorney General of the State of California, et al.* (June 22, 1992) [hereinafter *Equifax Agreement of Assurance*]; *State of Alabama, et al. v. Trans Union Corp.*, Civ. Act. No. 92 C 7101, Consent Order (N.D. Ill., Oct. 26, 1992) [hereinafter *Trans Union Consent Order*].
- <sup>50</sup> *Consumer Reporting Reform Act of 1992, Comm. on Banking, Finance and Urban Affairs*, H.R. REP. No. 102-692, 102d Cong., 2d Sess., 32-33 (1992) (discussing findings of hearings).
- <sup>51</sup> *Subcomm. Hearings on the FCRA* (1991), *supra* note 47.
- <sup>52</sup> *Don't Wipe Out State Credit-Reporting Laws*, USA TODAY, Aug. 5, 1992, at 8A.
- <sup>53</sup> Michael W. Miller, *Rash of Errors Blemishes TRW Credit Reports*, WALL ST. J., Oct. 24, 1991, at B1.
- <sup>54</sup> *Don't Wipe Out State Credit-Reporting Laws*, *supra* note 52.
- <sup>55</sup> Williams, *supra* note 48, at 12.
- <sup>56</sup> *What Are They Saying About Me?*, *supra* note 48, at 3.
- <sup>57</sup> *Don't Call; Don't Write; We Don't Care, A Survey of Complaints About Credit Bureaus*, *supra* note 48, at 2.
- <sup>58</sup> *Id.*
- <sup>59</sup> Letter to Hon. Frank Annunzio from Daniel Oliver, Chairman, Federal Trade Commission 1-2 (May 11, 1987) (on file with the author).
- <sup>60</sup> Accurate adverse information may be reported for seven years, or in the case of bankruptcy, ten years. 15 U.S.C.A. §1681c (West 1982).
- <sup>61</sup> See letter from Daniel Oliver (May 11, 1987), *supra* note 59. These methods include abusing the reinvestigation process. The FCRA requires consumer reporting agencies to delete information that is found to be inaccurate or can no longer be verified. 15 U.S.C.A. §1681i (West 1982). Credit repair clinics take advantage of this provision by inundating consumer reporting agencies with so many challenges to consumer reports that the reinvestigation system breaks down, and agency deletes the adverse, but accurate information. Additionally, credit repair clinics may counsel consumers about how to alter their identities to prevent the disclosure of damaging information and to create new credit files.
- <sup>62</sup> See letter from Daniel Oliver, *supra* note 59, at 2.
- <sup>63</sup> *In the Matter of Equifax Services, Inc.* before the Attorney General of the State of New York, Bureau of Consumer Fraud and Protection, *Assurance of Discontinuance, Pursuant to Executive Law, Section 63(15)* (June 17, 1992).
- <sup>64</sup> *Id.* at 2.
- <sup>65</sup> *Id.* at 3.
- <sup>66</sup> *Id.* at 3-4.
- <sup>67</sup> *Id.* at 5.
- <sup>68</sup> 138 CONG. REC. 9,374 (1992) (remarks of Rep. Esteban E. Torres on the need to reform the FCRA).
- <sup>69</sup> 15 U.S.C.A. § 1681b(3)(E) (West 1982).
- <sup>70</sup> *Prying Eyes: An Investigation into Privacy Abuses by Credit Reporting Agencies*, City of New York, Dept. on Consumer Affairs, 6-10 (November 1991).
- <sup>71</sup> *Id.* at 7.
- <sup>72</sup> See Robert M. Garsson, *Credit Bureaus Come Under Fire, American Banker Consumer Survey* (1991); Chris Woodyard, *Losing Faith in Credit Files*, LOS ANGELES TIMES, July 22, 1991; Michael W. Miller, *Credit-Reporting Industry Will Launch Campaign to Forestall New Regulations*, WALL ST. J., June 5, 1991, at B1.
- <sup>73</sup> Letter From Jeffrey L. Amestoy, Attorney General of Vermont, President, National Association of Attorneys General, *et al.*, to Representative Esteban E. Torres (July 31, 1992) (on file with the author).
- <sup>74</sup> See 1992 Vt. Laws 246; 1992 Md. Laws 441; 1992 Cal. Adv. Legis. Serv. 1194 (Deering).
- <sup>75</sup> *TRW Consent Order*, *supra* note 49.
- <sup>76</sup> *Id.*
- <sup>77</sup> *McDonnell Douglas Consent Order; Macy's Consent Order; Robacker Consent Order; Keystone Carbon Consent Order*, *supra* note 49.
- <sup>78</sup> *Id.*
- <sup>79</sup> *I.R.S.C., CDB Infotek, and Inter-Fact Consent Orders*, *supra* note 49.
- <sup>80</sup> *Id.*
- <sup>81</sup> *Id.*
- <sup>82</sup> See 102d Congress: S. 1809 by Sen. Cranston; S. 2776 by Sen. Bryan; S. 2896 by Sen. Rockefeller; H.R. 194 by Rep. Lehman; H.R. 421 by Rep. Schumer; H.R. 663 by Rep. Volkmer; H.R. 670 by Rep. Rinaldo; H.R. 3596 by Rep. Torres; H.R. 4806 by Rep. Blackwell; and H.R. 5859 by Rep. Machtley.
- <sup>83</sup> See *Subcomm. Hearings on the FCRA*, *supra* note 47.
- <sup>84</sup> *Hearing Before Subcomm. on Consumer and Regulatory Affairs of the Comm. on Banking, Housing, and Urban Affairs, Senate*, 102d Cong., 1st Sess. (October 22, 1991).
- <sup>85</sup> See *Subcomm. Hearings on the FCRA* (June 6, 1991 and October 24, 1991), *supra* note 47.
- <sup>86</sup> H.R. 1015 introduced by Rep. Esteban E. Torres; H.R. 619, introduced by Rep. Alfred A. McCandles; and S. 783 introduced by Sen. Richard Bryan.
- <sup>87</sup> See *Subcommittee Hearings on the FCRA* (October 24, 1991) (testimony of the FTC).
- <sup>88</sup> See *id.* at 107. See also 55 Fed. Reg. 18804, 18815 (May 4, 1990) (Statement of General Policy of Interpretation. Commentary on the Fair Credit Reporting Act [hereinafter *FTC Commentary on the FCRA*]).
- <sup>89</sup> *FTC v. TRW, Inc.*, 784 F.Supp. 161 (N.D.Tex. 1991); *modified, FTC v. TRW, Inc.*, No. 3-91-CV-2661-H (N.D.Tex. Jan. 14, 1993) (order prohibiting TRW from selling lists of consumer names and addresses based on consumer reports); *FTC v. Trans Union*, No. D-9255 (D.D.C. filed Jan. 12, 1993) (The FTC filed a similar action against Trans Union to prohibit them from selling lists of consumer names and addresses).
- <sup>90</sup> See Equifax News Release, August 8, 1991.
- <sup>91</sup> See *FTC Commentary on the FCRA*, 55 Fed. Reg. 18815 (1990).
- <sup>92</sup> *Id.* at 18814.
- <sup>93</sup> *Id.* at 18817.
- <sup>94</sup> 15 U.S.C.A. § 1681b (West 1982) (establishes the permissible purposes for a con-

## Lead Articles

- sumer reporting agency to furnish reports).
- <sup>95</sup> 15 U.S.C.A. § 1681b also permits a consumer reporting agency to furnish reports pursuant to a court order or a federal grand jury subpoena.
- <sup>96</sup> 15 U.S.C.A. § 1681b (3)(E) (West 1982).
- <sup>97</sup> See *Subcomm. Hearings on the FCRA* (June 6, 1991)(testimony of Elgie Holstein, Director, Bank Card Holders of America) *supra* note 47, at 64 .
- <sup>98</sup> 15 U.S.C.A. § 1681i(a) (West 1982).
- <sup>99</sup> 15 U.S.C.A. § 1681j (West 1982).
- <sup>100</sup> See *Subcommittee Hearings on the FCRA*, (October 24, 1991) *supra* note 47, at 57 (testimony of D.V. Skilling, Executive Vice President, TRW).
- <sup>101</sup> VT. STAT. ANN. Tit. 9 § 1 (1992); MD. COMMERCIAL CODE ANN. § 14-201, *et. seq.* (1992).
- <sup>102</sup> ME. REV. STAT. ANN. tit. 10, § 1316 2-A (West 1991)(\$2 limit on charge for consumer reports to a consumer).
- <sup>103</sup> *Subcomm. on Consumer Affairs and Coinage of the Comm. on Banking, Finance, and Urban Affairs, U.S. House of Representatives*, Transcript of Markup of H.R. 3596, pp. 59-76 (March 5, 1992).

<sup>104</sup> *Id.*

<sup>105</sup> See 55 Fed. Reg. 4935 (1992) (FTC Commentary on the FCRA). See also *TRW Consent Order*, *supra* note 49, at 16 (TRW agrees to disclose to consumers risk scores with an explanation of those scores). In its commentary, the FTC ruled that consumer reporting agencies must disclose credit scores, which are statistical predictors of creditworthiness, because they are part of the consumer file. In the interest of full disclosure credit or risk scores provided by a consumer reporting agency about a consumer should be furnished to a consumer along with an explanation of that score. However, such disclosures may be difficult to execute. According to the major credit bureaus, they do not maintain credit scores in the consumer's file, but rather provide them to a creditor and then discard them. Furthermore, because a consumer's credit data is continuously changing, any particular score is accurate for only a short period of time. Additionally, a consumer reporting agency may provide a number of different scores to a creditor with respect

to a consumer, and further may provide many different scores to a host of creditors. However, the FTC is now working with the major credit bureaus to determine the best way for them to disclose credit scores.

<sup>106</sup> See 15 U.S.C.A. §§ 1681b, 1681e (West 1982).

<sup>107</sup> This practice does not appear to run afoul of the requirements of 15 U.S.C.A. § 1681e (West 1982).

<sup>108</sup> *Subcommittee Hearings on the FCRA* (October 24, 1991) *supra* note 47, at 124-125 (testimony of the FTC). Credit repair organizations should provide specific disclosures to consumers prior to entering into any contract with the consumer. The disclosures should include a statement informing consumers of their right to dispute inaccurate information by directly contacting consumer reporting agencies, as well as an explanation of the reinvestigation process. Consumers should be made aware that neither they nor the organization has the right to have accurate, current, and verifiable information removed from their files.

## Announcements

### Consumers Can Now Compare Alcoholic Content of Beer

Ending a practice in effect since Prohibition, a major beer brewer will start listing the alcoholic content of its beer on cans and labels, and other brewers are expected to follow soon. Up until recently, beer companies were prohibited from disclosing alcoholic content on the label or can, but after Adolph Coors Co. won a challenge to the law on constitutional grounds, the Bureau of Alcohol, Tobacco, and Firearms is revising its regulations. Consumers will be able to compare alcoholic content of beer the same way they now compare calories. The following is the alcoholic content by volume of the major brands: Budweiser, 5 percent; Miller High Life, Natural Lite, Miller Genuine Draft, Busch, 4.7 percent; Old Milwaukee, 4.5 percent; Coors Light, 4.4 percent; Milwaukee's Best, 4.3 percent; Bud Light and Miller Lite, 4.2 percent.

### Ozone Scofflaws

The Federal Government is offering up to a \$10,000 reward for information about people who release into the air ozone-depleting substances, such as the hydro-chlorofluorocarbons used in air-conditioners. Homeowners may be tipped off if an air-conditioning repairman shows up without vacuum recovery equipment or charges for new refrigerant instead of recycling the old. However, homeowners may have trouble recouping the \$10,000 award. To receive the money, the government must gain a conviction against the alleged violator and collect damages. The Environmental Protection Agency ("EPA") then has the discretion as to when and how much money to award. To date, no awards have been given, although the agency has received approximately 500 tips. To report a possible violation, call the EPA's Stratospheric Ozone Information Hotline at (800) 296-1996.

### Studies Question the Effectiveness of Mammograms for Women Under 50

The debate over whether mammograms can help detect breast cancer in women under fifty is one of the most controversial topics in medicine today. New data shows that women in their forties who had mammograms had the same death rate from breast cancer as those who did not have the procedure. Previously, women in their forties had been told that mammograms, which cost \$50 to \$150, could save their lives. In light of the new studies, most doctors and scientists are recommending that women wait until age fifty to have a mammogram. However, almost all experts agree that a mammogram is an effective tool in detecting breast cancer in older women.