SUMMARY OF KEY PROVISIONS
"COMPREHENSIVE CONSUMER CREDIT REPORTING REFORM ACT OF 2016"

TITLE I - FIXING THE DISPUTE PROCESS

Problem: Academic research and government findings show consumers continue to be plagued by inaccurate information on their consumer reports and are frequently confused by and frustrated with the deeply flawed process to dispute errors.

• A 2012 Federal Trade Commission (FTC) study found that one out of every five consumers has a verified error on one or more of their consumer reports and 5 percent had errors serious enough to result in them being denied credit or paying more for mortgages, auto loans, insurance policies, and other financial obligations. Despite industry's view that the overall number of errors and their impact on consumers' creditworthiness is small, even a 5 percent error rate can adversely impact a staggering number of consumers because the three nationwide consumer reporting agencies (CRAs) maintain files for about 200 million consumers. The FTC's finding means that 40 million Americans may have a mistake on one or more of their reports and 10 million Americans may have significant errors that can lead to them being overcharged for credit.

• CRAs often fail to abide by their statutory obligation under the federal Fair Credit Reporting Act (FCRA) to conduct reasonable investigations of consumers' disputes. Instead, as seen in the *60 Minutes* "40 Million Mistakes" segment and the *Columbus Dispatch* "Credit Scars" series, CRAs have rubberstamped furnishers' verifications that the disputed information is accurate. While consumer access to credit depends on the agencies' accuracy in documenting their credit history, credit grantors – not consumers – are the CRAs' customers. Consumers dissatisfied with CRAs' refusal to fix mistakes cannot "vote with their feet" and have been left powerless with few options. A 2015 FTC survey confirmed that, even though over half of the consumers who tried to fix errors still believed that their reports contained inaccurate information after the CRAs' investigations had been completed, a majority of them abandoned attempts to try to clear their records.

Solution: The bill establishes a new consumer right to appeal the results of initial reviews of disputed items that are conducted by CRAs and furnishers by:

• Giving consumers the right to appeal the results of the initial reviews, conducted by either CRAs or firms that furnish consumers' information to CRAs, about the accuracy or completeness of disputed items if submitted within 120 days.

• Requiring CRAs and furnishers to dedicate sufficient resources and provide well-trained personnel to handle consumers' appeals. Appeals staff must also have the direct authority to resolve claims and meet minimum training and on-going certification requirements set by the Consumer Financial Protection Bureau (CFPB).

• Barring appeals staff involvement in the initial reviews and the tying of any of their compensation to quotas.

Problem: Consumers are often unaware when negative information can be and is in fact reported about them to credit bureaus.

• Only financial institutions that regularly extend credit must currently notify their customers that they may furnish negative information about their account to the nationwide CRAs under the FCRA. This one-time general notice may be included as part of the institutions' other account disclosures and is easily overlooked. As such, consumers today are not contacted when negative information has actually been sent to CRAs by financial institutions about them and may also not realize the wide range of businesses, besides banks, that regularly send adverse information to CRAs.

Solution: The bill provides consumers notice of negative items being reported by:

- Requiring any person regularly furnishing negative information to a nationwide CRA (e.g., Equifax, Experian and TransUnion) or nationwide specialty CRA (e.g., ChexSystems, C.L.U.E. Inc. and Medical Information Bureau, Inc.) to disclose to their customers that they may report negative information about account or transaction activities to these CRAs at least 90 days before they do so and, the first time that they actually send negative information about a particular customer, to inform that customer within five business days. These two new notices ensure that all consumers are aware of which types of entities routinely provide negative information to CRAs and are alerted the first time a business actually furnishes negative information about them.

Problem: Consumers are confused about how to dispute errors on their reports.

- A 2005 Government Accountability Office (GAO) report found that over half of consumers did not fully understand their rights to dispute information on their consumer reports or the responsibilities of CRAs to conduct investigations of disputed items. The report found only about one-third of consumers realized that CRAs must conduct dispute investigations for free.

- The top three companies about which the CFPB received the most consumer complaints between November 2015 and January 2016 were the three largest nationwide CRAs. The volume and type of consumers' complaints about credit reporting practices to the CFPB underscores the need for more transparency and accountability in the dispute resolution process. In its February 2014 "Credit Reporting Complaint Snapshot," the CFPB noted consumers' uncertainty about the depth and validity of investigations performed about disputed items and frustration that, even though they had provided supporting materials that they believed demonstrated the inaccuracy of the information provided by furnishers, the CRAs failed to remove errors on their reports.

- The need for materials about consumers' credit reporting rights to be free of aggressive marketing is also underscored by the fact that the big three nationwide CRAs were apparently promoting paid products when consumers called them to submit a dispute, and these bureaus only recently agreed in a settlement with 31 state Attorneys General to, at least wait until the dispute portion of the telephone call is over, before engaging in this type of marketing.

Solution: The bill increases consumers' awareness of how to dispute errors by:

- Requiring nationwide CRAs and nationwide specialty CRAs to establish dedicated "dispute" webpages on their websites that are free of aggressive marketing ploys containing concise and clear information about how consumers can dispute errors for free and the process that these bureaus will undertake for reviewing consumers' disputes.

- Mandating consumers receive written detailed notifications providing the results of investigations about disputed items, including the specific reasons for the decisions made and copies of all documents used by the CRAs or furnishers to verify the accuracy or completeness of disputed items.

Problem: Consumer reports contain unacceptably high levels of inaccurate and incomplete information and despite their best efforts consumers are frequently unable to fix these errors on their reports.

• The FCRA requires that CRAs use reasonable procedures to ensure maximum possible accuracy of the information in reports. Although CFPB examiners have seen some progress from the largest CRAs in complying with their dispute handling obligations under the FCRA, recent reviews identified not all of these flaws had been resolved. Thus, despite CRAs' existing statutory mandate, numerous studies, the high volume of consumer complaints submitted to both federal and state agencies about inaccurate reporting, and results of CFPB examinations of industry practices, demonstrate that CRAs continue to skirt their existing obligations under the law.

• One of the most devastating and common credit reporting problems is mixed or merged credit files, which occurs when CRAs merge the records of two separate people who have similar names or identifying information. Consumers may face years, if not decades, trying to fix these errors. This problem is largely caused by the use of over-inclusive criteria to match furnishers' information to consumers' files.

• CFPB examiners found deficiencies in CRAs' procedures to update public record information, which led to errors in the updating of consumers' files after investigations and in the reporting of dispute results to consumers.

• Consumers' complaints about shoddy reporting practices triggered an investigation by New York State Attorney General Schneiderman that resulted in a settlement agreement with New York. An investigation led by the Ohio State Attorney General DeWine resulted in a second settlement with 31 states. Both settlement agreements are intended to improve the accuracy of reporting by the major CRAs. While these voluntary agreements are a good first step, there is no legal requirement on the nationwide CRAs to apply these enhanced procedures to all American consumers.

Solution: The bill enhances accuracy and completeness duties for CRAs and furnishers by:

• Directing the CFPB to develop accuracy guidelines and regulations for CRAs addressing, among other things, the process for monitoring furnishers' performance in fulfilling their obligation to report only accurate and complete information to CRAs; standards for matching the personally identifiable information in consumers' files with the identifying information provided by furnishers; rigorous vetting procedures for public record information; and requirements to include the source from and the data on which any public record information was obtained.

• Creating accountability measures for furnishers that repeatedly fail to report accurate, complete, and verifiable information to CRAs, such as compulsory retraining of the furnishers' staff and, in some instances, temporary restrictions from their ability to report information to CRAs. Mandating CRAs remove adverse information that had been submitted by habitually poor data furnishers.

Problem: Furnishers frequently do not retain records of debts or payment histories for a long enough time period to have access to the documents needed to verify the integrity of information that consumers have disputed on their reports.

• Currently, federal requirements vary widely in their record retention requirements, with some time periods being as short as two years, and furnishers, who are debt collectors, are not subject to most of these retention requirements.

Solution: The bill requires furnishers to maintain records necessary to verify accuracy of disputes by:

- Mandating furnishers retain or have access to all relevant account information, including records of payment history and documents establishing the liability for and terms and conditions of credit extended to consumers, for the same amount of time that negative credit information remains on consumer reports.

- Requiring that if the ownership of the business that previously furnished the information is transferred to a new entity, the responsibility for maintaining records substantiating the consumers' liabilities must also be transferred to and maintained by the new entity for as long as that information appears on consumer reports.

TITLE II – RESTRICTING THE USE OF CREDIT CHECKS FOR EMPLOYMENT DECISIONS

Problem: Despite the fact that credit history has not been proven to predict job performance, credit information is increasingly used by employers to make hiring, promotion and retention decisions. This practice creates obstacles for upward mobility and can invade consumers' privacy.

- The widespread use of credit reports to screen job applicants is particularly troubling because there is no reliable data demonstrating a correlation between credit history and job performance. A 2013 Demos survey of low- to middle-income households with credit card debt found that one in seven respondents who were unemployed had been told by a prospective employer that their credit history contributed to an adverse employment decision.

- This practice creates a "catch-22" dilemma is created when people, who have been unemployed for an extended period of time and whose credit standing has been damaged because they were unable to pay their bills, cannot find a new job to end their period of financial distress because prospective employers conduct credit checks as part of an application process.

- The Federal Reserve found in 2007 that different demographic groups have substantially different credit scores, with blacks and Hispanics having lower credit scores than non-Hispanic whites and Asians and individuals younger than age 30 having lower credit scores than older individuals. Similarly, a 2006 Brookings Institution study found that counties with a higher proportion of racial and ethnic minorities tended to have lower credit scores.

- A 2016 Demos report found that the use of credit reports unnecessarily exposes consumers' financial information and potentially puts existing employees and job applicants in an uncomfortable position of having to discuss private matters, such as divorce, domestic abuse or health/genetic conditions, to explain their impaired credit history.

Solution: The bill bans the use of credit information for most employment decisions by:

- Prohibiting current and prospective employers from using credit reports for employment decisions, except for two narrow exemptions: when required by local, state, or federal law or for a national security clearance.

- Barring hiring managers from asking questions about credit history like past defaults or bankruptcies during a job interview or including questions about credit history on job applications.

- Forbidding employers from passing on the cost of obtaining credit reports onto existing employees or prospective applicants.

TITLE III – REHABILITATING THE CREDIT STANDING OF STRUGGLING PRIVATE EDUCATION LOAN BORROWERS

Problem: Given increasing tuition costs, those who need loans to pay for higher education are incurring increasingly larger private education loan debts. However, unlike federal student loans, private education loans are not required to offer borrowers flexible repayment options, which has resulted in high defaults and delinquencies on these loans, which impairs consumers' credit histories.

- According to the CFPB, student loan debt exceeds $1 trillion, which creates a drag on our country's economy by hindering borrowers' ability to qualify for mortgage and auto loans, pursue entrepreneurial ventures, build wealth, save for retirement, and pursue certain careers including civic-minded jobs. The bill's reforms provide a needed boost to our economy by allowing distressed private education loan borrowers, who fulfill their payment obligations during the rehabilitation period, a chance to restore their creditworthiness.

- Federal student loan borrowers have many repayment options that are not required to be provided to private education loan borrowers, such as Income-Based Repayment, Pay as You Earn, and unemployment deferments. These federal loans also offer forbearance without fees and discharges of debt in certain circumstances such as when students become permanently disabled.

- The CFPB noted in its October 2014 "Annual Report of the CFPB Student Loan Ombudsman" that many struggling private education loan borrowers are unable to negotiate modified repayments when experiencing financial hardships, which is exacerbated by the lack of transparent and clear information provided to them by private education loan holders about how to avoid defaulting on these obligations.

- Although some private education loan holders may allow student borrowers to postpone payments while they are enrolled in school full-time, this period is usually capped at 48 or 66 months. This can create a financial paradox for continuing education students, who may need additional time to finish an undergraduate degree, and for those who want to obtain a graduate degree but cannot afford to make loan payments while they are still in school. As such, even before some students graduate, their reports may contain negative information related to their private education loans.

Solution: The bill removes adverse information for certain defaulted or delinquent private education loan borrowers who demonstrate a history of timely loan repayments by:

- Requiring CRAs to remove delinquent or defaulted private education loan information from consumer reports, if a borrower makes nine out of ten consecutive monthly payments—similar to the credit rehabilitation available for some distressed federal student loan borrowers.

- Permitting reasonable interruptions in the consecutive repayment periods for those facing unique and extenuating life events, such as service members who are receiving imminent danger or other special pay duty when deployed and residents in federally-declared disaster areas.

TITLE IV – RESTORING THE IMPAIRED CREDIT OF VICTIMS OF PREDATORY ACTIVITIES AND UNFAIR CONSUMER REPORTING PRACTICES

Problem: Old negative information on consumers' reports can unfairly tarnish victims' credit standing and jeopardize their ability to obtain a job when employers review their entire consumer file.

- According to a leading credit scoring developer, depending on consumers' total credit profiles, the value of most negative information contained on reports, with the exception of bankruptcies, of predicting the likelihood a person will default or be late on a future payment gradually diminishes, and has relatively little impact on consumers' scores within two years. As such, maintaining adverse credit information on reports, long after its predictive value has expired, does little to improve creditors' evaluation of credit risks. However, the prolonged appearance of this negative information on reports may impede many consumers' ability to obtain a job or promotion, given that employers generally review consumers' files, as opposed to using a score, when conducting employment credit checks.

- The FCRA's lengthy time period for retaining adverse credit information is neither a universal nor international standard. According to the European Credit Research Institute, 14 European nations retain consumers' default information for shorter periods than the United States, with eight of these nations limiting the retention of default information to four years or less.

- An investigation into the origins of the seven year retention period for most negative credit information under the FCRA reveals that this time period was a subjective legislative choice. A series of hearings to review legislation (S. 823, H.R. 6071 and H.R. 16340) to enable consumers to protect themselves against arbitrary, erroneous, and malicious credit information was held by the Senate Subcommittee on Financial Institutions of the Senate Banking and Currency Committee in May 1969 and the House Subcommittee on Consumer Affairs of the Banking and Currency Committee in March and April 1970. Section 164(d) of S. 823 and its companion bill, H.R. 6071, provided for the destruction of information after it had become obsolete or after the expiration of a "reasonable period of time." H.R. 16340 provided for the removal of all information after three years, except for certain public information for seven years and bankruptcies for 14 years. During the Congressional hearings, several witnesses expressed concerns about having an ambiguous definition in S. 823 and H.R. 6071 and recommended replacing the "reasonable" period with specific time limitations. A witness for the Associated Credit Bureaus Inc. (ACB) noted that its recent guidelines issued to its members provided a general retention of seven years, except for bankruptcies. Another witness from a credit bureau that was not a member of ACB indicated that he considered information obsolete after five years. The Senate-passed S. 823 provided for the removal of all information (unless the governing statute for limitations was longer) after seven years and 14 years for bankruptcies.

- Congress later reduced the time period for how long bankruptcy information stays on reports from 14 to 10 years as part of the 1978 bankruptcy reform law (P.L. 95-598). The House passed an amendment offered by Congressman McKinney that would have adopted an even shorter retention period of seven years. During floor consideration, Congressman McKinney pointed out that an "exhaustive search of the legislative history of this provision has disclosed no compelling reason for the statute's unforgivingly lengthy memory." He also underscored that the FCRA's retention period resulted in an "excessive penalty" and "unnecessarily cruel burden" that undermined the beneficial effects of the bankruptcy laws by perverting rather than facilitating the unfortunate (but now solvent) debtor's right to a fresh start.

- The Federal Reserve Bank of Philadelphia (Fed) found that the net result from reduced negative retention periods is that borrowers have more access to credit. The Fed noted that some adverse information may not reflect borrowers' actual credit risk because it may have been caused by extenuating circumstances beyond the consumers' control. The Fed also indicated that the removal of negative information may give individuals a greater incentive to maintain their good credit scores and, therefore, may reduce the likelihood that these consumers will default or be delinquent on future payment obligations.

- In 2014, the CFPB found that there is no objective or enforceable standards that determine when a debt can or should be reported as a collection trade line. Furthermore, because debt buyers and collectors determine whether, when, and for how long to report collection accounts, there is only a limited relationship between the time period reported, the severity of a delinquency, and when or whether collection trade lines appear on reports.

Solution: The bill shortens the punitive time period most adverse credit information stays on consumer reports by:

- Reducing the unreasonably long statutory time periods of seven years (10 years for bankruptcies) that adverse credit information remains on to four years (seven years for bankruptcies).

Problem: Despite the fact that the latest credit scoring models exclude or nominally consider paid or settled debts, consumers continue to be harmed by the inclusion of this information on their reports when creditors use older, outdated models.

- Even though the latest credit scoring models recognize that fully paid or settled debts have little, if any, predictive value, many mortgage lenders continue to use older versions of credit scoring models that still consider this adverse information in evaluating prospective borrowers' creditworthiness. The latest VantageScore credit scoring model (VantageScore 3.0) excludes all paid collections and FICO's latest model (FICO 09) excludes any debt that has been paid or settled with a collection agency.

Solution: The bill mandates the expedited removal of paid or settled debt from consumer reports by:

- Requiring CRAs to remove a collection item from reports within 45 calendar days after it is paid or fully settled instead of continuing to keep paid collections on reports for seven years from the date from which the debt is reported.

Problem: Negative information on consumers' reports relating to medical debts are unfairly tarnishing victims' credit standing, which has devastating and wide-ranging impacts on their lives.

- In contrast to most consumer credit products or services that have contractual disclosures where pricing information is clearly disclosed ahead of time, consumers may not be fully informed in advance of what they may have to pay for a medical service before having the procedure done. Consumers needing emergency care, for example, rarely know or are provided with the cost of a medical treatment or procedure before the service is rendered. The CFPB found that the medical pricing, billing, and reimbursement process lacks transparency and is prone to consumer confusion, which can result in consumers delaying or withholding payments until they have adequate time to clarify or resolve disputes with their insurance companies or medical service providers about what they actually owe. For this reason, establishing a grace period before medical debts can appear on reports gives consumers the necessary and appropriate time to resolve any disputes before a collection damages their credit standing.

- Millions of American consumers are adversely impacted by medical debts on their consumer reports. About 64.3 million consumers, or one in five Americans with a consumer report, had a medical debt collection on their Experian report as of July 2014. Over half of collection items on consumer reports consist of medical debt.

- Medical debt collections do not aid credit underwriting and, therefore, the retention of this adverse information on reports results in consumers unfairly paying more for credit. The CFPB concluded that medical debt collections may underestimate consumers' creditworthiness by 10 points and, even after the debt is paid, may still underestimate creditworthiness by up to 22 points. A 10- to 22-point difference in consumers' credit scores can result in consumers having to unnecessarily pay tens of thousands of dollars over the life of a loan for a large dollar purchase.

Solution: The bill imposes restrictions on the appearance of medical debts on consumer reports by:

- Prohibiting CRAs from including medical debt collections on consumer reports until 180 calendar days after the date of first delinquency and requires CRAs to remove medical debt collections from reports within 45 calendar days after they are paid or fully settled.

Problem: Negative information on consumers' reports relating to mortgages that consumers were deceived into obtaining because of predatory lending or servicing practices are unfairly tarnishing victims' credit standing, which has devastating and wide-ranging impacts on their lives.

- The Center for Responsible Lending concluded that families of color were three times as likely to be targeted with abusive subprime loans as other borrowers with the same credit record and that these lending abuses perpetuated and expanded the racial wealth gap.

- As noted by a 2011 *New York Times* article, although pricing discrimination — illegally charging racial and ethnic minority customers more for mortgage loans than similarly qualified whites are charged — has been a longstanding problem, these predatory practices increased during the housing boom. As such, large numbers of minority borrowers who were eligible for safe and affordable loans were inappropriately steered toward high-priced subprime loans with ruinous features, which ultimately tarnished their creditworthiness.

- According to FICO, from 2008 to 2009, about 50 million people experienced a 20 point drop in their credit scores and about 21 million people had their scores decline by more than 50 points.

Solution: The bill provides credit restoration for victims of predatory mortgage lending or servicing practices by:

- Requiring CRAs to remove adverse information from reports that is related to a residential mortgage loan that is found to have resulted from an unfair, deceptive, or abusive act or practice, or a fraudulent, discriminatory, or illegal activity of a financial institution, as determined by the CFPB or a court.

Problem: Tens of thousands of private education loan borrowers, many of whom have been cheated out of an education and had their credit ruined by deceptive, for- profit colleges, desperately need help restoring their credit standing and rebuilding their lives.

- Instead of providing students with quality education that leads to good job opportunities, some unscrupulous career education programs have taken advantage of students, leaving them with large debts but few job prospects. In October 2014, the Department of Education (DOE) noted that, "[t]oo often, students at career colleges—including thousands of veterans—are charged excessive costs, but don't get the education they paid for. Instead, students in such programs are provided with poor quality training, often for low-wage jobs or in occupations where there are simply no job opportunities. They find themselves with large amounts of debt and, too often, end up in default. In many cases, students are drawn into these programs with confusing or misleading information." The DOE, for example, found Corinthian Colleges Inc. (known under the brand names Heald, WyoTech, and Everest) misrepresented job placement rates to students for a majority of programs at its Heald College campuses between 2010 and 2015.

- It is unfair to allow innocent for-profit college students, who are struggling with large amounts of private education loan debt because they were duped by the unscrupulous practices of for-profit colleges, to suffer the consequences of having impaired credit. While federal law allows defrauded for-profit college students to have the debt from their federal student loans discharged and any negative information about these loans removed from their consumer reports, as the DOE has said it will do for certain Corinthian College students, no similar debt or credit relief currently exists for these students' private education loans.

- Attending a two-year, for-profit college costs, on average, four times as much as attending a community college. Students at for-profit colleges represent only about 11 percent of the total higher education population but a startling 44 percent of all federal student loan defaults, according to the DOE.

Solution: The bill provides credit relief for private education loan borrowers, who were defrauded or misled by a proprietary education institution or career education provider, by:

- Directing the CFPB to develop and implement a program to remove adverse information related to defaulted or delinquent private education loans from consumer reports in instances when borrowers are found, through a valid state or federal cause of action, to have been deceived by abusive acts or practices of for-profit colleges or career education programs, including misrepresentations from these colleges about graduation or gainful employment rates or their failures to offer necessary coursework to complete a professional or certification degree.

Problem: It is unnecessarily difficult for victims to have adverse credit information related to fraud committed by a family member, caregiver or abusive partner removed from their consumer reports.

- According to Javelin Research and Strategy's Identity Fraud study, about 847,000 adults were victims of fraud committed by family members in 2013.

- While some may think it would be simple to expunge familiar fraud from consumer reports because it is so obviously fraudulent, in practice it can be difficult, if not impossible to have this information removed from victims' consumer reports. According to the Empire Justice Center, proving identity theft raises safety and other non-credit concerns. Victims seeking to remove this information are also likely to face skepticism because of assumptions that they were aware of and complicit in the fraudulent activity committed by a spouse or family member.

Solution: The bill gives victims of financial abuse the right to have adverse information associated with an abuser's fraudulent activity removed from their reports by:

- Allowing victims, who know the person responsible for the fraud or identity theft but who did not participate in or agree to that thieves' criminal behavior, to obtain court orders requiring the removal of any adverse information from their consumer reports related to the bad actors' illicit activities.

TITLE V – MONITORING THE DEVELOPMENT AND USE OF CREDIT SCORES

Problem: The absence of federal government oversight of the development of credit scoring models hurts consumers' access to credit and impairs creditors' ability to underwrite loans accurately and manage credit risks.

- Although federal prudential regulators review the performance of the use of credit scoring models by lenders as part of their safety and soundness assessments, no federal regulator is currently tasked with the explicit authority to monitor the initial development and ongoing validation of these models.

Solution: The bill establishes clear federal oversight of the development of credit scoring models by:

- Directing the CFPB to set standards for validating the accuracy and predictive value of credit scoring models, both before their initial use by creditors and at regular intervals thereafter, for as long as the models are being used for credit making decisions..

- Giving the CFPB authority, at least every two years, to prohibit credit scoring developers from weighing, considering or including certain factors or making available for purchase or use certain outdated credit scoring models or versions that may create misleading and false determinations of consumers' creditworthiness.

Problem: The reference to a singular, outdated scoring model in the Government-Sponsored Enterprises' (GSEs) seller-servicer guides may disadvantage certain mortgage borrowers and impair lenders' ability to manage credit risks.

- Although the major credit scoring developers have made changes to their credit scoring models in recent years to reflect current consumer behavior analytics, some creditors continue to use older scoring models that consider paid or settled collections (medical or otherwise) and other non-predictive information in evaluating consumers' eligibility for credit. In these situations, consumers may be unfairly denied credit or offered credit on less favorable terms and conditions than they would otherwise qualify for because of the use of outdated less predictive scoring models.

- Many residential mortgage lenders, for example, adhere to the underwriting guides approved by FHFA to ensure that the loans that they originate are eligible for purchase by Fannie Mae and Freddie Mac. Because these guides reference the Classic FICO credit scoring model developed in 2004, mortgage loan borrowers are disadvantaged by the continued use of the outdated model, as it does not incorporate the most recent analytics.

Solution: The bill mandates an ongoing review of whether to allow GSEs to use additional, alternative, or updated credit scoring models by:

- Directing the Federal Housing Finance Agency (FHFA), in consultation with the CFPB, to review the merits of using additional, alternative or updated credit scoring models in setting the eligibility requirements for mortgage loans eligible for purchase by Fannie Mae and Freddie Mac within 18 months, and following that, review this matter at least every two years.

Problem: Millions of renters, non-banked individuals and others with thin or non-existent credit files may be able to manage credit responsibly but are unable to access credit because they lack traditional credit history.

- The CFPB estimated that one in every 10 adults has no credit history with a nationwide CRA and blacks, Hispanics, and consumers in low-income neighborhoods are more likely to have no credit records or not enough current credit history to produce a credit score. These "credit invisibles" have difficulties accessing credit, even if they are regularly paying their financial obligations on-time and may pose low credit risks.

- Some stakeholders point to the benefits of using alternative payment data, such as utility, rental and telecommunications payment histories, to improve creditors' ability to differentiate between high- and low-risk profiles of consumers with no or thin credit files, which, presumably, would also expand access to credit for "credit invisibles."

• Some stakeholders, however, have warned that the consideration of certain non-traditional data (e.g., utility, rental, and telecommunications information) to evaluate consumers' creditworthiness may cause more harm for some consumers than good. These advocates have advised evaluating the unique benefits of and risks of increasing the reporting of different types of alternative data associated to the nationwide CRAs and the consideration of the data in scoring models.

• A CFPB study on remittances transfers—one type of non-traditional data—found that the use of this payment information is unlikely to increase the credit scores of consumers who send remittances because remittance histories are positively correlated with delinquencies.

• Some delinquent rental payment information may also not accurately reflect consumers' likelihood to default on future credit obligations, given that multiple parties on leases are held accountable for failing to pay rent when one party pays their portion of the rent late even though the other parties have made timely rental payments.

• Consumer advocates have also expressed concerns about the increased full reporting of utility payments because of the significant disparities between states in the stringency of customer service rules, the level of home energy prices, the availability of low-income energy assistance programs, consumers' privacy protections, and seasonal or temperature-based disconnection limitations. The advocates argue that each of these factors raises unique considerations about how full reporting of utility information to nationwide CRAs may impact consumers.

Solution: The bill requires a study on the impact of increasing the use of non-traditional data by:

• Directing the CFPB to study the impact of having more non-traditional data on consumer reports on consumers' access to, and the affordability of, consumer products and services, including a review of the impact on consumers with limited traditional credit histories and minorities.

TITLE VI – PROVIDING GREATER CONSUMER ACCESS TO AND UNDERSTANDING OF CONSUMER REPORTS AND CREDIT SCORES

Problem: While current law provides consumers with free annual consumer reports from each of the largest CRAs, consumers do not receive their credit scores as part of that free disclosure and must instead buy them.

• According to the CFPB, many consumers believe consumer reports are "hard to get and hard to understand." Providing all consumers with free credit scores along with their free annual consumer reports will ensure that all American consumers, regardless of their income, have access to a useful tool—a credit score-- to enable them to better understand their credit information.

• Consumers are generally not entitled under federal law to free credit scores, except in the limited circumstances of a score that mortgage lenders are required to provide a borrower and a score disclosure included as part of adverse action and risk-based pricing notices that are sent by creditors that have denied credit to a consumer or offered it on materially less favorable terms.

• Although several large credit card issuers have started to offer their customers access to free scores, not all of these companies are sharing the scores that they actually use. Furthermore, not all consumers qualify for one of the types of credit cards that currently provide this free benefit.

• A February 2011 survey conducted by the Consumer Federation of America and VantageScore found that the general public lacks a clear understanding of what credit scores represent. The study also found that many consumers did not know what numerical range constitutes excellent credit standing or the financial implications of having a low credit score.

Solution: The bill provides consumers with free credit scores with their free annual consumer reports by:

• Requiring nationwide CRAs and nationwide specialty CRAs to give consumers free copies of their credit scores that are actually used by creditors in making credit decisions, as determined by the CFPB, or if not practicable, educational credit scores whenever consumers obtain their free annual consumer reports.

Problem: When consumers are denied credit or offered credit on less than materially less favorable terms they are entitled to receive a free copy of their report relied on by the creditor, but to do so, they must go through the hassle of requesting that the bureau send them a copy of the report.

• The CFPB estimated that only 15.9 million credit-active adults receive their free reports from one or more of the largest CRAs through www.AnnualCreditReport.com, which means that only 10 percent of the eligible population takes advantage of this free benefit that requires consumers to request disclosures.

Solution: The bill creates instances when consumers automatically receive free consumer reports and scores by:

• Requiring nationwide CRAs and nationwide specialty CRAs to include free credit scores with reports when consumers exercise their rights to free consumer reports under existing law, such as when individuals are unemployed, receiving public assistance, or believe they may be or have been victims of fraud. Under the newly created rights in the bill, it would also apply when individuals submit disputes and file appeals.

• Eliminating time-consuming, procedural burdens for consumers of having to request free disclosures by instead mandating that, in specific instances, nationwide CRAs and nationwide specialty CRAs send consumers these free disclosures automatically.

Problem: When consumers apply for credit, they often do so without having critical information about their creditworthiness that would allow them to make informed credit decisions.

• In 2011, the CFPB confirmed in its report titled "The Impact of Differences between Consumer-and Creditor-Purchased Credit Scores" that consumers with accurate perceptions of their credit standing may be better equipped to shop for favorable credit terms. Free consumer reports and credit scores given to prospective borrowers, therefore, will increase consumers' awareness about their credit standing to empower them to negotiate for the best deals on large dollar loans, yet does not impede same-day shopping and buying for cars because indirect auto dealers and auto lenders satisfy the requirement as long as they provide prospective borrowers the disclosures on separate documents from the leases or purchase contracts.

• Equifax recently announced the Black Book Activator e-credit project with several dealerships that allows prospective car buyers free access to their educational credit scores online, citing the company's testing and consumer feedback showing car shoppers want access to their credit scores when they are making buying decisions. Despite the CRAs' acknowledgment that consumers want and will benefit from having their credit scores, this project does not provide consumers with the scores that lenders actually use for underwriting.

• California's "Car Buyer's Bill of Rights" requires car dealers, who finance a sale, to disclose to consumers before the purchase or lease of a vehicle, the credit score that they obtained and used, the name and address of the CRA providing the score, the range of possible credit scores and a written notice regarding credit scores. The legislative history from 2005 – 2006 notes that, based on an analysis of records from General Motors Acceptance Corp. transactions in CA, some consumers were charged between $8,237 and $19,577 in hidden dealer kickbacks on auto loans – despite having excellent or very good credit. These practices were also shown to have a discriminatory impact on African American and Latino purchasers, even when they had earned the same credit scores as comparable white consumers. The vehicle credit score disclosure under the state law was intended to help combat predatory and discriminatory financing practices by making it easier for consumers to comparison shop for credit and harder for dealers to deceive consumers about their creditworthiness in order to justify charging exorbitant interest rates.

• In 2013, Barclaycard was the first top ten credit card issuer in this country to partner with FICO to provide its customers with free access to the credit score that they use-- the FICO 08 credit score. Barclaycard was initially concerned that providing this free credit score disclosure could result in costly increased operational expenses. However, Barclaycard found that the costs have been minimal and it has produced the positive benefit of increasing customers' loyalty to the company.

Solution: The bill requires certain lenders to provide consumers with free copies of any reports and scores that they actually used for underwriting, before consumers take out large dollar loans by:

• Requiring mortgage and private education lenders to provide prospective borrowers copies of any reports and credit scores that they obtained and relied on in making or arranging loans without charge, no later than three business days after acquiring these materials.

• Mandating that indirect auto dealers and auto lenders also must give prospective borrowers free copies of any consumer reports and scores used in the credit-making decisions before the consumer signs any lease or purchase agreement.

Problem: Too many consumers do not understand how credit scores are calculated and what actions that they can take to improve their credit standing.

• A 2015 CFPB survey found that consumers had questions about what actions to take to improve their scores once they had seen them, suggesting that additional disclosures and educational content is necessary. The CFPB found that consumers were commonly confused by conflicting advice on how to improve their scores.

Solution: The bill expands the explanatory information given to consumers about how scores are calculated by:

• Enhancing the contextual information that accompanies numerical scores to include both negative and positive factors that impacted their score. Doing so will help reduce consumers' confusion about how to improve their scores by providing information on how positive they take improve their scores instead of the existing practice of merely telling consumers about the top four factors that negatively impacted their credit scores. The increased information will enhance available tools for consumers to improve their credit standing and financial well-being.

TITLE VII – BANNING MISLEADING AND DECEPTIVE MARKETING AND OTHER UNFAIR CONSUMER REPORTING AND CREDIT SCORING PRACTICES

Problem: CRAs frequently market consumer reporting products and services as "free" when they are actually paid-subscription services that automatically convert after a trial period.

- Vulnerable consumers, who have concerns about the security of their personal and financial information, deserve clear, accurate, and transparent information about products and services that may be available to them and the costs associated with such tools.

- Given the ubiquitous use of credit information in consumers' lives today and the fact that consumers' participation in the credit reporting system is involuntary, CRAs should prioritize providing consumers with the effective means to safeguard their personal and financial information and improve their credit standing, rather than employ confusing and misleading marketing tactics that are designed to exploit consumers' legitimate concerns for financial gain.

Solution: The bill bans deceptive promotional marketing of consumer reporting products and services by:

- Directing CRAs to provide consumers with meaningful and clear information about credit scoring products and credit monitoring services to prevent them from unknowingly purchasing expensive products and services, such as identity theft services, that they may not fully understand or need.

- Prohibiting CRAs from misleading consumers by describing certain products and services as "free" that are, in truth, provided at no charge only for a limited trial period before automatically converting into a paid subscription service.

Problem: It can be confusing and time-consuming for consumers to purchase just a report or a score from CRAs and CRAs are being rewarded with huge profits from direct-to-consumer sales driven, in part, by consumers' concerns about the industry's ongoing failures to comply with requirements to adopt procedures to ensure reports contain accurate information.

- The dollar amount that CRAs can charge consumers for a copy of a credit report is set under the FCRA. The FTC was directed in the FACT Act to set a fair and reasonable amount that CRAs could charge consumers to buy their credit scores. Despite these statutory provisions, it can still be difficult and time-consuming for consumers to purchase a report or score from CRAs without having to sign up for paid, monthly credit monitoring services or a bundled package of a report and a score. This problem is discussed in an article titled "In Search of the Elusive $11 Credit Report."

- Direct-to-consumer sales for CRAs exploded in the early 2000s after legislation was enacted at both the state and federal levels requiring nationwide CRAs and nationwide specialty CRAs to disclose credit information, including scores, to consumers and to provide consumers with free annual reports. When consumers obtain their free reports online, all of the big three CRAs offer fee-based products at the same time, ranging from paid subscriptions for monthly credit monitoring services to scores. In 2011, these CRAs generated revenues of about $4 billion in the United States.

- The CFPB is the first federal agency to exercise direct supervisory and examination authority over the largest CRAs and, for this reason, is well-positioned with the necessary expertise to determine whether CRAs' market prices of products and services sold to consumers are exorbitantly excessive.

• As discussed in an *American Banker* article titled "Can the Credit Bureaus Finally Be Tamed?" consumers' concerns about credit reporting errors and insecurity about stolen credit information and identity theft have driven the direct-to-consumer sales of credit monitoring and education products by the nationwide CRAs, which ironically has allowed the industry to profit from their own shoddy practices.

Solution: The bill gives CFPB the discretion to cap excessive fees charged to consumers for credit reporting products and services sold by CRAs by:

• Giving the CFPB discretion to set a fair and reasonable amount for credit reporting products and services sold by the CRAs to consumers.

Problem: Consumers with limited English proficiency have inadequate access to critical information related to their consumer reports and scores.

• In 2010, GAO found that the number of people in the United States who speak a language other than English at home has nearly tripled over the past three decades, with 37.6 million speaking Spanish and 2.9 million speaking Chinese. Besides these two languages, the use of Vietnamese, Russian, Persian, Armenian, Korean and Tagalog has doubled in the last 30 years.

• GAO also found that non-English speakers are more vulnerable to fraud and translation confusion. Written financial information and documents tend to be complex and translations may not be clear if not written using colloquial or culturally appropriate language. For example, many English financial terms have no equivalent in Spanish, such as "401(k)," "balloon payment" and "subprime."

Solution: The bill enhances access to credit reporting and scoring information for consumers with limited English proficiency, vision and hearing impairments to enable all consumers the ability to understand their credit information and exercise rights provided under the FCRA by:

• Directing the CFPB to issue a rule to ensure fair access for all American consumers by requiring CRAs and furnishers, to the maximum extent possible, to provide materials in and hire dispute and appeals staff who speak the 10 most commonly spoken languages in the United States other than English and in formats accessible to those with hearing or vision impairments.

Problem: Consumers, who responsibly shop around for the best rates and terns for large dollar loans, risk reducing their credit standing by doing so.

• Hard inquiries occur when a creditor pulls consumers' reports to determine their eligibility. This information typically remains on a credit report for two years and adversely factors into credit scores. As such, loan shopping for the best rate and terms on new lines of credit could lower consumers' credit scores. While most credit scoring models treat multiple hard inquiries as a single inquiry when they occur within a certain time period, the time span varies from 14 to 45 days.

• VantageScore treats each multiple major credit inquiry as a single inquiry within a 14-day window, and excludes utility inquiries entirely. Beginning with its FICO 08 score, FICO provides a 45-day window during which time multiple inquiries for mortgages, auto loans and student loans are treated as a single inquiry for each of these specific types of loans. However, prior to this recent change, FICO scoring models, including the Classic FICO score referenced in the GSE's seller-servicer guides, contained the same 14-day de-duplication window as VantageScore models. These short time spans may unduly inhibit consumers' ability and likelihood to comparison shop for the best deals for large dollar loans, particularly for people with thin files or with credit scores below 760.

• CFPB found that consumers may opt not to review their reports for errors because of their mistaken fear that doing so may lower their credit scores. In addition, consumers' concern about the impact of hard inquiries may also drive them to avoid shopping for the best credit terms for loans. According to the CFPB, nearly half of mortgage borrowers do not shop for loans when they buy a home.

Solution: The bill establishes consumers' right to shop for the best deal on certain large dollar loans without harming their credit standing by:

• Requiring credit scoring models to treat multiple hard inquiries for a mortgage, auto or private education loan as a single inquiry for each of these types of loans, if it is conducted within the a 120-day window.

TITLE VIII – EXPANDING ACCESS TO TOOLS TO PROTECT VULNERABLE CONSUMERS FROM IDENTITY THEFT, FRAUD, OR A RELATED CRIME, AND PROTECT VICTIMS FROM FURTHER HARM

Problem: As incidences of identity theft continue to rise, consumers continue to experience significant financial loss and emotional distress from their inability to effectively and inexpensively safeguard their credit information from bad actors.

• Identity theft consistently tops the FTC's ranking of consumer complaints and according to the Bureau of Justice Statistics has affected 7 percent of American adults in 2014. In addition to cases of identity theft, millions of consumers remain at risk due to the unauthorized disclosure of their sensitive personal and financial information. According to the Ponemon Institute, 47 percent of American adults had their personal information, including user names, debit or credit card numbers, phone numbers, security information, addresses and other types of information, exposed by hackers in 2014. Although the total number of hacked accounts reached 432 million in 2014, protections available to identity theft victims have not been extended to those who suffer any number of harms from the unauthorized disclosure of their financial or personally identifiable information under the FCRA.

• Despite its importance determining whether consumers can access key protections under the law, obtaining a police report that alleges identity theft is notoriously difficult if not impossible to obtain in certain jurisdictions. According to the FTC, police sometimes are reluctant to provide victims with a police report and, in some jurisdictions, officials may feel that they have higher priority matters to handle, or may not understand the importance of the police report in victim recovery. Moreover, some jurisdictions even prohibit the police from giving a victim a copy of the official report.

• Victims, and those who suspect they may be at risk of identity theft, have enough headaches to deal with without having to jump through unnecessary hurdles to document that they have been victimized or spend extreme amounts of time and diligence to constantly renew requests to place fraud alerts on their files.

Solution: The bill eliminates burdensome obstacles to enable consumers to safeguard their credit information by:

• Replacing the onerous requirement of having to obtain a police report as a prerequisite for exercising all the identity theft protections available under the FCRA with a new requirement to submit an affidavit developed by the CFPB.

• Expanding access to these tools beyond identity theft victims to cover all victims of fraud.

- Extending the period that fraud alerts stay on reports from 90 days to one year for an initial alert and from five to seven years for an extended fraud alert ends the existing burden on consumers to have to frequently request that these alerts be reinstated.

Problem: Fraud victims and vulnerable consumers lack consistent, affordable, hassle-free access to place, temporarily lift and fully remove credit freezes on their consumer reports.

- Credit freezes prohibit creditors from obtaining a consumer report for the purpose of determining eligibility for opening a new credit account, unless the consumer has provided express authorization. Because consumers are not entitled to obtain a credit freeze under federal law, access to and the cost of a credit freeze varies by state.

- While victims of identity theft generally have free access to credit freezes at the state level, the cost to place a credit freeze ranges, depending on state, from $3 to $15 at each of the largest CRAs for most non-identity theft victims. Although some states provide free credit freezes for certain vulnerable consumers, such as senior citizens, this is not a universal practice.

- Time requirements on when CRAs must place, lift and remove freezes also vary by state. According to the FTC, most states currently require CRAs to temporarily lift a freeze within three days of a written request. According to the National Consumer Law Center's Legal Practice Series on the Fair Credit Reporting Act, over half of all states require freezes to be temporarily lifted within 15 minutes of a request, if it is made by telephone or secure electronic means. Short time requirements for CRAs to lift a credit freeze benefits consumers by ensuring they are not discouraged from using this key protection and also ensures access to credit is not unduly restrained.

- Guaranteeing access to credit freezes, setting reasonable time periods for providing, temporarily lifting and removing such freezes and setting reasonable limits on the amounts that may be charged for such freezes ensures that all Americans have universal access to the best tool available to prevent new credit from being unlawfully extended in their name without their knowledge or consent, regardless of the state where they reside.

Solution: The bill provides free and timely access to credit freezes for fraud victims and vulnerable consumers and caps the cost for others by:

- Requiring nationwide CRAs to allow consumers to place a credit freeze on their consumer reports and setting the maximum amount that these CRAs can charge to place, temporarily lift or fully remove a credit freeze at $3, indexed for inflation.

- Giving both fraud victims and vulnerable consumers, such as senior citizens aged 65 years or older, active duty service members and people who have a good-faith suspicion that they have been or are about to be a victim of fraud because of the unauthorized exposure of their financial or personally identifiable information, the right to place a credit freeze on their consumer reports at each of the nationwide CRAs for free.

- Setting minimum time periods for nationwide CRAs to respond to credit freeze requests by requiring such CRAs to place, temporarily lift, and fully remove credit freezes within one business day, and providing for the expedited lifting of freezes for requests submitted to the nationwide CRAs either by telephone or secure electronic means.

Problem: Fraud victims and certain vulnerable consumers lack access to affordable credit-monitoring and identity theft protection services that they may wish to acquire in order to protect themselves against further harm or monitor activity on their consumer reports.

- According to Consumer Reports, roughly 50 million American consumers spent about $3.5 billion in 2010 to purchase products aimed at protecting their identity, with the annual cost of the services ranging from $120 to $300.

- Only two states, Connecticut and California, currently have laws ensuring consumers have access to appropriate identity theft prevention services. Connecticut requires that a business that owns or licenses personal computerized information that is the subject of a breach offer each resident identity theft prevention and mitigation services as appropriate, at no charge, and for a period of at least one year. In California, if the affected business offers these services to customers, then they are required to provide it for free for at least one year.

- Providing vulnerable consumers with free access to identity theft prevention services ensures that consumers have access to a wide range of identity theft and fraud prevention measures and therefore the ability to determine which tool, or combination of tools, is right for them.

- According to a 2015 MasterCard survey, a majority of consumers (77 percent) are very anxious about their financial information and Social Security numbers being stolen or compromised, with a shocking 55 percent of consumers indicating that they would rather have naked pictures of themselves leaked online than have their financial information stolen. Consumers' concerns about the online security of their financial information even outweighs fears about physical security dangers such as having their houses robbed (59 percent) or being pickpocketed (46 percent).

Solution: The bill provides free credit monitoring and identity theft protection services to vulnerable consumers and authorizes the CFPB to limit the fees for others by:

- Requiring the nationwide CRAs to provide consumers with credit monitoring and identity theft protection services for free for certain vulnerable consumers, including those who assert a good-faith suspicion that they are at risk of identity theft, fraud, or harm caused by the exposure of their personally identifiable or financial information; unemployed consumers; recipients of public assistance; active duty service members; senior citizens aged 65 or older; and other classes of consumers as determined by the CFPB.