



***STATEMENT OF***

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WASHINGTON, D.C.

***BEFORE THE***

Committee on Banking, Housing and Urban Affairs

United States Senate

***ON***

The Growing Problem of Identity Theft and  
Its Relationship to the Fair Credit Reporting Act

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Chairman Shelby, Senator Sarbanes and members of the Committee, thank you for this opportunity to appear before the Committee on Banking, Housing and Urban Affairs. For the record, I am Stuart Pratt, president and CEO for the Consumer Data Industry Association.

CDIA, as we are commonly known, is an international trade association representing approximately 500 consumer information companies that are the nation's leading institutions in credit and mortgage reporting services, fraud prevention and risk management technologies, tenant and employment screening services, check fraud prevention and verification products, and collection services.

We commend you for holding this hearing on the crime of identity fraud and its relationship to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 *et seq.*). Identity fraud is an equal-opportunity crime that can affect any of us. This crime is a particularly invasive form of fraud where consumers, consumer reporting agencies and creditors must untangle the snarl of fraudulent accounts and information resulting from a criminal's actions. The task can be frustrating, and, in severe cases, time-consuming for all concerned.

The Committee has asked us to comment on the crime itself and on its relationship to the FCRA.

In this regard, let me focus on three points:

- The FCRA provides the essential framework of duties for consumer reporting agencies and data furnishers and key rights of which all consumers can avail themselves, including victims of identity theft;
- CDIA members have been at the forefront of efforts to understand the nature of this crime for years and they have established victim assistance procedures, which go beyond the requirements of any law; and
- Consumer education is a mainstay of any successful campaign to reduce the incidence of identity fraud. Though preliminary, some data indicate that industry and governmental efforts to reach consumers is working.

### **The FCRA as an Essential Framework of Duties and Rights**

Amended materially in 1996, the FCRA now has a well-balanced set of rights and protections for consumers. In particular, the 1996 amendments focused on reinvestigations and service to consumers. For example, the amendments included codification of timeframes for the completion of a consumer's dispute, which apply to both data furnishers and to consumer reporting agencies. The law now "defaults" in favor of the consumer where a furnisher of information is unable to respond to a dispute by requiring the consumer reporting agency to delete the disputed information at the close of the thirty-day reinvestigation period. Following is a summary of many key provisions of the FCRA that benefit consumers and victims of identity theft.

#### **Can anyone see a consumer's report?**

No. Consumer reports may be provided and used for only the following permissible purposes: credit transactions involving the extension of credit or collection of an existing account; account reviews (for safety and soundness); employment purposes; insurance underwriting; license eligibility; child support and limited judicial inquiries. Users of consumer reports are required to identify themselves, certify the purposes for which the report is sought, and certify that it will be used for no other purposes. Criminal sanctions result from fraud and misuse.

Consumers can opt-out of prescreened offers of credit with a toll-free call. The FCRA codified the practice of direct mail offers of credit and insurance in the 1996 amendments. However, recognizing consumers' privacy interests, the Act provides consumers a single toll-free number for all nationwide credit reporting systems to opt-out of all prescreened offers of credit or insurance for either two years or permanently (888-opt out or 888-567-8688)

### **How is data accuracy ensured?**

Credit reporting agencies are subject to liability unless they follow reasonable procedures to assure the maximum possible accuracy of the information regarding the consumer. Also, competitive marketplace forces among the consumer reporting agencies provide a strong institutional incentive to maximize accuracy.

### **Consumers always have a right to their file.**

At any time, a consumer may obtain a copy of his or her entire file from an agency. The report must be provided at a low cost capped by the FCRA (at time of enactment, \$8.00, currently, based upon CPI indexing, \$9.00). The agency must include in such a disclosure a summary of the extensive consumer's rights under the FCRA. Consumers also always have a right to be notified of all persons who have requested a copy of their files. Note that consumers who are victims of fraud and suspect that fraudulent data is on their file are entitled to a free disclosure.

### **What happens when a user of a report takes an adverse action based on the report?**

If any adverse action is taken with respect to a consumer based upon a consumer report (*e.g.*, a denial of credit or employment), the person taking the action must notify the consumer and identify the name, address and toll-free telephone number of the agency that issued the report. If there is an adverse action, the consumer is entitled, upon request, to a free consumer report from the agency that issued the report.

### **What happens when a consumer feels information in a report is inaccurate?**

Any time a consumer disputes the accuracy of any information contained in the agency's file, the agency must within 30 days either reinvestigate the information free of charge and note the dispute in the file or delete the information from the file. The agency must give the consumer notice of the results of the investigation within 5 days of its conclusion. If the agency finds that the information is either inaccurate or not verifiable after the reinvestigation, it must delete the information from the file.

### **Who has enforcement authority over the FCRA?**

The provisions of the FCRA are enforced vigorously by the Federal Trade Commission, federal banking regulators and the state attorneys general. Additionally, consumers have private rights of action against users, data furnishers and consumer reporting agencies for noncompliance with the Act (see below).

### **Consumers have private rights of action against users, data furnishers and consumer reporting agencies.**

A consumer has a right to sue users, furnishers and reporting agencies under the FCRA for noncompliance with the Act if reinvestigation procedures are violated. While a plaintiff can recover actual damages (including non-economic damages) as well as attorneys' fees, he or she

need not prove actual damages because the FCRA provides for liquidated damages in cases where there has been a violation.

### **CDIA Voluntary Victim Assistance Programs**

While the FCRA provides a robust framework, of protections for all consumers, including victims of identity theft, our members have long recognized that the crime presented unique problems for victims and to this end we have been actively pursuing progressive voluntary initiatives to ensure that victims of identity theft can recover from the crime and get on with their lives. Attached to this testimony is an appendix, which provides a short timeline of our efforts and which also includes the news release discussing our most recent initiative announced this past April 2003. Following is a discussion of some of our efforts:

In March of 2000, the CDIA issued a news release (included with this testimony), which outlined the credit reporting industry's six-point victim assistance program. Ours was the first industry to step forward and not merely educate its members about the problems consumers experienced, but to seek specific changes in business practices. These ID fraud victim assistance initiatives were the culmination of internal reviews of current processes by senior fraud personnel, interviews with law enforcement, victims and privacy advocates, and input from our Association's outside counsel on this effort, former Vermont Attorney General, Jerome M. Diamond. The industry's voluntary initiative became effective on January 1, 2001, and while our attached news release outlines all six initiatives, let me highlight a few for the Committee.

**Standardizing Security Alerts** – Prior to the CDIA's initiative, the three credit reporting systems were already voluntarily administering a system of security alerts, which are text

messages (often accompanied by a code) included in a consumer's credit report these alerts notify lenders and other users of the report of the fact that a consumer has contacted the credit reporting system and believes that he or she is a victim of identity fraud. The alerts contain, at the consumer's request, one or two telephone numbers for the lender to use in contacting the consumer to verify that he or she is truly seeking a new line of credit or other service.

The CDIA's initiative sought to improve the effectiveness of these alerts in two important ways:

- The text of the security alerts is now standardized with the goal of ensuring that the consumer's request is honored regardless of which credit reporting system is used by a lender; an
- The text message is now preceded by an alpha-numeric code that ensures that even in a computer-to-computer transmission, the fact that a security alert is part of a consumer's file is easily identified by the lender's system.

The security alert is transferred with any consumer credit report, whether it is a highly codified version, merely summarized or otherwise formatted for a particular lender's system.

**Standardizing the First Three Steps** – In our interviews with consumer victims, we learned that consistency of experience is important. When consumers learn that they are victims of identity fraud, they are often advised to order a copy of their file disclosure (i.e., credit report) from each of the three nationwide credit reporting systems. Under the CDIA initiative, when consumers call any one of the automated systems to order their file disclosures, they can now have confidence that the same three key steps will be taken:

- A security alert will be added to the consumer's file ensuring that if a criminal is still active, subsequent lenders will know that the consumer may be a victim of identity fraud;
- The consumer's file will be opted-out of any direct-mail offers of credit or insurance, thus ensuring that only where the consumer initiates a transaction will the consumer's file be accessed; and
- The consumer's file will be placed in the mail within three business days of the consumer's request.

**Following Up** – Consumer victims expressed frustration with the difficulty of knowing whether or not the crime was “over.” In an effort to help consumer victims stay actively involved with our members when ID fraud has occurred, CDIA's credit reporting members altered their practices. Specifically, after a consumer's file has been corrected and the fraudulent data has been removed through a traditional reinvestigation process, our members will then continue to send the ID fraud victim additional copies of his or her file for the next 90 days. With each file, the consumer will have a toll-free number, which provides access to live personnel and, thus, if the consumer spots additional problems with the file, he or she can contact our members quickly and have the problem resolved. This 90-day service extends beyond the requirements of the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 *et seq.*) and helps mitigate the effects of this longitudinal crime.

**New Victim Assistance Procedures and Police Reports** – Victims of identity fraud want to be believed when they claim that they are victims of the crime, and they want their situation addressed quickly. Our members looked for a safe and sound process to meet this need and as you can see in our attached letter to the Federal Trade Commission, our members have not only committed themselves to removing fraudulent data upon request of a victim who has a police

report, but we have coordinated this effort with the FTC's ID Theft Clearinghouse. Following are the comments of J. Howard Beales, III, Director of the FTC's Bureau of Consumer Protection, regarding our members' program.

“Another collaborative effort with tremendous promise is your new police report initiative. Through this program, the three agencies have agreed to block any credit line when they receive from the consumer a copy of the police report documenting the identity theft. And, last year the IACP passed a resolution encouraging local law enforcement to issue police reports to ID theft victims.<sup>1</sup> We're doing our part too, developing a training video with IACP to encourage the police to issue the reports. I appreciate that certain consumer-based initiatives require you to balance accuracy issues – knowing that the consumer's report contains all relevant credit information, including derogatory reports – against customer service. From my perspective, your police report initiative strikes just the right balance. You have an assurance of the consumer's good faith, evidenced through the official police report, and the consumer will be untouched by the false negative information. I encourage the ACB and its members to continue developing programs and systems that ease the burden on identity theft victims.”<sup>2</sup>

**Acceptance of the FTC Fraud Affidavit** – The FTC undertook a complex and laudable task of trying to simplify an ID fraud victim's paperwork burden by creating a single affidavit for multiple uses. A number of our members participated in the work group discussions which led to the creation of this new form and all of the CDIA's nationwide credit reporting system members accept this affidavit.

**A Single Call Reaches All Nationwide Consumer Reporting Agencies** – Included with this testimony is our news release wherein we discuss a very new initiative that should help victims by reducing the number of phone calls they have to make. As of April of this year, consumers can make a call to any of the nationwide consumer reporting agencies and in doing so, their information will be transferred to all nationwide agencies, each of which will add a security alert to the victim's file, opt them out of prescreened offers of credit or insurance and issue a file

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<sup>1</sup> International Association of Chiefs of Police, *Curbing Identity Theft*, (Nov. 15, 2000) available at <http://www.theiacp.org>

<sup>2</sup> Excerpt from a speech delivered to the members of the Consumer Data Industry Association by FTC Director Beales on January 17, 2002.

disclosure. This is truly a progressive step that makes it easier for a victim to notify our members that they have been a victim of ID Fraud.

### **CDIA and Consumer Education**

Any time a crime is identified, we all want to find the one “silver bullet” which will stop it in its tracks. In reality, layers of efforts and, in some cases, years of work are necessary to truly reduce the incidents of a particular type of crime. In our visits with law enforcement and with consumer groups, it was evident to the members of the CDIA that procedural changes are important, but that consumer education, focused on prevention and post-victim assistance, was essential.

**A Commitment to Call for Action** - The CDIA committed financial resources and technical expertise to support the efforts of Call for Action, a consumer educational organization, which is reaching out aggressively to consumers and ID fraud victims. Enclosed with this testimony is a practical, easily understood brochure developed by Call for Action with the assistance of the CDIA. The brochure has been distributed to:

- National and state law enforcement agencies;
- States attorneys general and consumer protection offices;
- Military barracks and educational institutions;
- Call for Action regional affiliate offices; and
- CDIA members.

Call for Action reports that more than 200,000 ID fraud brochures have been distributed and another 100,000 are going to print. Further, the information in the brochure is also available on their website and Call for Action reports that they have had more than 125,000 visitors view their

ID fraud information. The brochure, produced by Call for Action, is available at [www.callforaction.org](http://www.callforaction.org).

Call for Action's efforts also include production of a video news release (VNR). Their VNR reached 6.7 million viewers nationwide. The VNR included interviews with the FTC and, again, highlighted a message of steps for prevention and for post-victim assistance.

**Making sure victims understand their rights** – In addition to the many voluntary steps members of the CDIA have taken on behalf of consumer victims, our members must also comply with specific duties under the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 *et seq.*). As important as it is for our members to comply with the law, it is equally important that victims of identity fraud are fully aware of their rights. To help accomplish this goal, the CDIA produced a brochure entitled “The Credit Reporting Dispute Resolution Process.” A simple flow chart, which is color coded, ensures consumers understand what must be done with their dispute of fraudulent information each step of the way. It has been an effective educational tool and it won the National Association of Consumer Agency Administrators’ Print Media – Private Sector Category Award in 2000. Each year the CDIA sends letters to state consumer protection and state attorneys general offices offering free bulk supplies of this brochure.

**Are the efforts of government and the private sector paying off?** - There are some trends which are encouraging and which show that our nation is making progress on this issue. The efforts of the FTC, our industry and others to educate consumers about the crime of identity fraud appear to be making headway.

First, our own members report that the majority of consumers who contact our credit reporting members' fraud units are taking preventative steps and are not reporting an actual crime. This is a strong indicator that the message is getting out to consumers to exercise caution and quickly take the right actions to protect themselves.

Regarding victims of the crime, the FTC's own ID fraud trend data shows that 42<sup>3</sup> percent of the consumers who contacted the FTC learned about the occurrence of the crime in less than a month. This percentage is fully ten percentage points higher than the statistic cited in the FTC's previous report. Here too, we see that where consumers are educated, they are learning how to spot the crime and take steps to limit the extent of the criminal's activity. Ultimately, consumer education remains one of the best crime-prevention efforts on which we can continue to focus.

### **Summary**

In conclusion, we believe that since this crime began being debated publicly, a great deal has changed. Our members have voluntarily adjusted their practices to better assist victims. The educational efforts of the private sector and the efforts of government are making progress with consumers, both in terms of a improving a consumer's understanding of prevention and post-victim assistance steps that can be taken. New laws have been enacted to define this crime and to clarify that consumers are clear victims. This point may seem to be less significant today. At one time 1 victims' top complaint was merely that law enforcement didn't consider them to be victims under a crime statute. We continue to applaud the enactment of the "Identity Theft and

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<sup>3</sup> Federal Trade Commission Report produced by the Identity Theft Clearinghouse entitled "Identity Theft Complaint Data, *Figures and Trends on Identity Theft*", November 1999 through June 2001, Page 4.

Assumption Deterrence Act of 1998” (Pub.L. 105-318) and the more than 30 state laws which our members have actively supported.

In all of this, while procedures will help victims and reduce application fraud, and while consumer educational efforts will continue, we believe that it is critical is that Congress ensure that law enforcement has the resources necessary to enforce the law. Ultimately, identity fraud isn't a consumer protection issue begging for new laws. It is a crime prevention issue in need of large-scale, coordinated efforts to investigate and prosecute criminals. Law enforcement needs the financial support of Congress to get the job done. Everyone who even considers perpetrating identity fraud, should also know that they will be pursued, prosecuted and incarcerated. These criminals deserve nothing less.

Finally, we believe that the FCRA does have the basic framework of rights that all consumers need and deserve. Timeframes for the completion of the reinvestigation of a consumer's or victim's dispute are particularly important and this is one of the seven provisions of the FCRA that operates as a uniform national standard. The benefit of having a national standard is that we can design our systems for assisting consumers and victims on a nationwide basis and we can be much more successful in encouraging national and local lenders to use our automated systems for dispute resolution which allow us to often resolve disputes in less than the FCRA standard of 30 days. It would be vastly more difficult to build a nationwide dispute resolution network if we had competing state requirements and this would work against servicing the needs of identity theft victims, as well. We believe that the standard timeframes for completion of

reinvestigations and all of the uniform standards found in Section 624(b) of the FCRA should be made permanent.

Thank you for the opportunity to appear before this Committee and to share our views. I am happy to answer any questions you may have.



## Consumer Reporting Agency Responses to Identity Fraud

- 1993. CDIA, then known as ACB, formed a Fraud and Security Task Force.
- 1998. Creation of True Name Fraud Task Force led by former Vermont Attorney General M. Jerome Diamond. The work of the task force included meetings with law enforcement, consumer organizations, privacy advocates, legislators and staff, victims, and others.
- The capstone of the True Name Fraud Task Force was a series of initiatives announced in March 2000. These initiatives meant the consumer reporting industry was the first industry to step forward and not merely educate its members about the problems consumers experienced, but to seek specific changes in business practices. The initiatives are:
  - Advocate the use and improve the effectiveness of security alerts through the use of codes transmitted to creditors. These alerts and codes can help creditors avoid opening additional fraudulent accounts.
  - Implement victim-assistance best practices to provide a more uniform experience for victims when working with personnel from multiple fraud units.
  - Assist identity theft victims by sending a notice to creditors and other report users when the victim does not recognize a recent inquiry on the victim's file.
  - Execute a three-step uniform response for victims who call automated telephone systems: automatically adding security alerts to files, opting the victim out of prescreened credit offers, and sending a copy of his or her file within three business days.
  - Launch new software systems that will monitor the victim's corrected file for three months, notify the consumer of any activity, and provide fraud unit contact information.
  - Fund, through ACB, the development of a series of consumer education initiatives through ACB to help consumers understand how to prevent identity theft and also what steps to take if they are victims.
- 2001. CDIA announced a police report initiative so that when a police report is provided as part of the process of disputing fraudulent data, Equifax, Experian and TransUnion will block these disputed items from appearing on subsequent consumer reports regarding that individual.

- “Another collaborative effort with tremendous promise is your new police report initiative...I appreciate that certain consumer-based initiatives require you to balance accuracy issues - knowing that the consumer’s report contains all relevant credit information, including derogatory reports - against customer service. From my perspective, your police report initiative strikes just the right balance.” *J. Howard Beales, III, Director of the FTC’s Bureau of Consumer Protection, before the Consumer Data Industry Association. Jan. 17, 2002.*
- 2002. ID Fraud Victim Data Exchange. CDIA and its members committed to start a pilot test so that when an ID fraud victim calls any one of the participating credit reporting agencies, the victim will be notified that his or her identifying information will be shared by the receiving credit reporting agency with the other two participating credit reporting agencies and that the following steps will be taken by each recipient of the victim’s information:
  - A temporary security alert will be added to the victim’s file. This security alert will be transmitted to all subsequent users (e.g., creditors), which request a copy of the file for a permissible purpose under the Fair Credit Reporting Act.
  - The victim will be opted out of all non-initiated offers of credit or insurance.
  - The CRA will ensure that a copy of the victim’s file is in the mail within three business days of the victim’s request.
- Our efforts are paying off.
  - *Most calls are prevention related.* CDIA members report a majority of consumers who contact fraud units are taking preventative steps and are not reporting a crime.
  - *Victims are learning of the fraud earlier.* According to an FTC report in June 2001, 42% of victims learn about the crime within 30 days or less, a full 10% less than in the prior report. CDIA estimates another 35% learn of the crime within one to six months and 7% learn of the crime in six months to a year.
  - *Victimization of the elderly is dropping.* In 2001, the FTC estimated that 6.3% of identity fraud victims were over 65, a .5% decrease from 2000.

### About CDIA

Founded in 1906, the Consumer Data Industry Association (CDIA), formerly known as Associated Credit Bureaus, is the international trade association that represents more than 400 consumer data companies. CDIA members represent the nation’s leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services.

For more information about CDIA, its members, or identity fraud or other issues, please visit us at [www.cdiaonline.org](http://www.cdiaonline.org) or contact us at 202-371-0910.

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