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Getting Credit Where Credit Is Due: Helping Welfare-to-Work Clients Address Credit-Reporting Issues

By Deanna Kitamura and Deanne Loonin

The transition from welfare to work can be very difficult. For many clients trying to enter or reenter the job market, one step forward is often followed by two steps back. For some, abusive relationships continue to hold them back. For others, lack of education or training keeps them from moving into higher-paying jobs.

Still others are haunted by the past in the form of unmanageable debt. Getting ahead is simply impossible when a household’s monthly expense exceeds its income. Ironically clients’ expense budgets may be higher than ever as they get back into the work force. They may need to buy a car to get to work, pay for additional child care, or spend more on work clothes. These new expenses combined with high-cost debt from the past can doom efforts to move forward and break the public-assistance cycle.

A good credit rating can help make or break future plans. A negative rating can dash hopes of owning a home, a car, or other necessities of life. For people attempting to break the cycle of poverty, a negative credit report may be the reason why they are turned down for work, an apartment, or credit. A bad situation may worsen when someone who is denied credit from an affordable lender, and has nowhere else to turn, ends up in the hands of a predatory lender that charges exploitative interest rates and exorbitant fees.

Despite these potentially dire implications, consumers may take meaningful actions to deal with negative credit reports. In this article we give advocates the statutory and practical information necessary to help their clients understand their rights and overcome credit-reporting problems.

We first present an overview of the relevant federal statutes—Fair Credit Reporting Act and Credit Repair Organization Act—as well as the credit-reporting industry. We then detail the permissible uses of credit reports under the Fair Credit Reporting Act so that clients will understand when a credit rating is relevant and when it is not. We help advocates understand the contents of credit reports and explain how to correct errors, request an investigation, and identify obsolete information. We sound a warning to avoid credit repair companies and give practical tips on establishing and rebuilding credit. Because litigation is an option that attorneys are increasingly using to challenge credit bureaus and furnishers of information, we discuss civil liability under the Fair Credit Reporting Act and legal approaches to commonly litigated issues.

I. Fair Credit Reporting Statutes

The primary statutory scheme discussed here is the federal Fair Credit Reporting Act and corresponding state fair credit statutes. The federal statute regulates the activities of consumer reporting agencies,
the users of reports, and those who furnish information to consumer reporting agencies. The Act attempts to protect consumers from the distribution of false, outdated, or misleading information by placing various obligations on persons who use or disseminate credit information about consumers. The Act also contains a set of disclosure requirements so that consumers can review the information in their reports and find out who is using those reports. Many states have fair credit laws that for the most part mirror the federal statute.

Another federal statute discussed here is the Credit Repair Organization Act. This federal act and corresponding state statutes regulate credit repair agencies and other for-profit companies claiming that they can improve a consumer's credit rating or help the consumer gain access to credit. Many of these companies make outrageous and fraudulent claims about what they can do to clear up problems with credit reports.

State attorney generals and the Federal Trade Commission are authorized to enforce the Fair Credit Reporting Act. A consumer may file an administrative complaint with the commission or proper state agency. The commission and state attorney generals also have administrative enforcement powers for the Credit Repair Organization Act. However, advocates should advise clients that to obtain redress they should rely on the self-help solutions outlined in this article or a private lawsuit rather than the administrative process.

II. The Credit-Reporting Industry

The idea that businesses are making huge profits by keeping files on all of us may seem frightening and mysterious. It is. Credit bureaus keep records on at least 190 million Americans, more than 90 percent of American adults.

The three main credit bureaus in the United States are Equifax, TransUnion, and Experian. Many smaller credit bureaus throughout the country keep records mostly on consumers in certain geographic areas. Most are either affiliated with or owned by one of the “Big Three” credit bureaus. Specialty agencies also exist, focusing on topics such as check cashing, tenants, and medical records.

Credit bureaus do not grant credit. Instead they collect huge quantities of information on consumers and condense it into consumer credit reports, which they then resell to third parties, such as potential creditors. They also sell information to employers, landlords, and insurers.

Credit bureaus obtain their information for most credit reports from three sources: their subscribers, public records, and the information that consumers report on themselves. Subscribers include banks, retailers, insurers, and landlords. Most subscribers send the bureaus information on customer accounts regularly, often by keeping a record on a computer tape that is periodically “dumped” into the bureaus' files. For investigative consumer reports, bureaus also receive information from third-party interviews.

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1 Fair Credit Reporting Act, 15 U.S.C.A. §§1681–1681u (1998). We thank Will Ogbum, executive director of the National Consumer Law Center, for his contribution to this article.
2 Id. § 1681. For a general resource on the Fair Credit Reporting Act, see NATIONAL CONSUMER LAW CTR., FAIR CREDIT REPORTING ACT (4th ed. 1998 & 1999 Supp.) [hereinafter Fair Credit Manual].
5 Consumers should file administrative complaints when the furnisher fails to supply accurate or complete information to a credit bureau because the government agencies, unlike private individuals, are able to enforce that requirement, although with some restrictions. Id. §1681s-2(a) (1998).
6 Id. § 1679h.
7 Each of the “Big Three” credit bureaus maintains approximately 190 million files. See ASSOCIATED CREDIT BUREAUS, FACT SHEET (June 2000). Credit bureaus are also called credit-reporting agencies. We use these two terms here interchangeably.
A. A Typical Report

A typical consumer credit report contains an individual's personal information, such as name, age, social security number, home and business addresses, previous addresses, job, marital status, spouse's name, and number of children.

The Fair Credit Reporting Act sets out who has the right to obtain a consumer credit report and how the report may be used

It also contains financial information, such as estimated income, value of car and home, bank accounts, credit accounts held, payment history and credit limits, and mortgages held.

Public record information—such as tax liens, bankruptcies, court judgments, and even driving records—appears on a credit report. A report also shows who has requested the consumer's credit report within the last two years.8

B. Credit Scores

A consumer credit report may include a credit score. Credit scores are numerical calculations that are supposed to indicate the risk that a consumer will default, with higher numbers indicating less risk and lower numbers indicating potential problems.9 A generic credit score will fall within a range of from a low of 300 to 400 to a high of 800 to 900. Credit scores were originally developed as an objective measure of a person's creditworthiness. They were developed at least in part because of the belief that underwriters making subjective decisions often discriminated against women, minorities, and other protected groups. Much controversy surrounds these scores for several reasons: which factors are considered in creating the score is difficult to find out. Compounding the mystery surrounding the scores is that bureaus are not required to disclose credit scores.10 Concern also exists that credit scoring leads to even more discriminatory results than subjective underwriting.11

C. Investigative Reports

Investigative reports are a subset of consumer credit reports. The main difference between the two is that investigative reports contain far more information than credit reports. Most important, investigative reports include information from third-party interviews. Investigative reports furnish not only a general picture of a consumer's credit history but also information related to a consumer's character, general reputation, and personal characteristics.12

For the most part, a creditor, employer, or other user with a legitimate reason for requesting a credit report can also request an investigative report. However, because of the more personal and invasive nature of the investigative report, the Fair Credit Reporting Act provides additional consumer protections in cases in which investigative reports are requested or reviewed or both.13 Although im-

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8 We discuss a sample report in more detail in subsection IV.B below. A sample credit profile from Equifax may be found at www.equifax.com/consumer/products/sample_profile/sample_profile.js.html.
9 See generally Fair Credit Manual § 3.5.7.1.
10 The Fair Credit Reporting Act specifically exempts from otherwise required disclosures "any information concerning credit scores or any other risk scores or predictors relating to the consumer." 15 U.S.C.A. § 1681g(a) (1998). The Federal Trade Commission's administrative decision in In re TransUnion Corp. offers some insight into credit scoring. See No. D-9255, at 29 (F.T.C. July 31, 1998) (initial decision). See also NATIONAL CONSUMER LAW CTR., CREDIT DISCRIMINATION § 9.3.2.2 (2d ed. 1998 & 1999 Supp.) (regarding ways to find out information about scoring systems through discovery).
11 A full discussion of this concern is beyond the scope of this article. For more information, see NATIONAL CONSUMER LAW CTR., supra note 10, § 9.3.2.
12 See generally Fair Credit Manual ch. 11.
13 Among other protections, consumers must be notified that an investigative report may be made. Users must certify to the reporting agency that they have given this notice to the consumer and that, upon proper request, they will disclose the nature and scope of the investigation. 15 U.S.C.A. §1681d(a)(1) (1998). See generally Fair Credit Manual ch. 11.
important, these protections go only so far in preserving consumer privacy. For example, the names of the sources that the bureaus use in third-party interviews do not need to be disclosed.14

Creditors do not usually request these more extensive investigative reports. The exception to this general rule is that both insurers and employers often request and use investigative reports. Landlords may also request these reports, although most simply use the less invasive consumer credit report.

III. Permissible Uses of Credit Reports

Although many clients may have been denied credit or housing because of information contained in their credit reports, most probably do not know who may and may not access their reports. Without knowing this information, consumers are unable to determine when their credit reports play a role in their lives. The Fair Credit Reporting Act sets out who has the right to obtain a consumer credit report and how the report may be used. If the use of the report does not fit within those that the Act explicitly permits, the use is impermissible. Although the exceptions nearly swallow the rule, advocates and clients should understand that not everyone has legal access to credit reports.

In addition to setting out who may obtain a report and for what purposes, the Act also sets out what notices are required. A consumer’s right to various types of notices depends on the type and effect of the credit report. From a client’s perspective, the most useful notice is a document called “A Summary of Your Rights Under the Fair Credit Reporting Act,” which is prescribed by the Federal Trade Commission.15 The notice simply explains a consumer’s basic rights under the Act, including the steps to take to correct any inaccurate information included in the report.

When an adverse action is based in whole or in part on any information contained in a credit report, the Act requires the user of the report to give the consumer an adverse action notice.16 Among other information, the notice gives the consumer contact information regarding the credit bureau that supplied the report and a notice of the right to receive a free report from the bureau upon request within 60 days.17

A. Employers

Those entering the job market may find prospective employers delving into their backgrounds.18 Employers often conduct background checks of job applicants and employees seeking promotions or job reassignment. The Fair Credit Reporting Act allows employers to use consumer credit reports for “employment purposes.”19 This term is broadly defined and includes evaluating an individual for “employment, promotion, reassignment or retention as an employee.”20 Prospective employers may want, besides references from former employers, an employee’s credit history or criminal record, especially in a job involving the handling of money.21 For those seeking sensitive positions such as security guards or after-hour janitorial workers, an employer may want an investigative report.

16 Id. § 1681m(a).
17 Id.
18 For a discussion of other situations in which a family leaving welfare may encounter credit-reporting issues, see generally Fair Credit Manual chs. 4 & 7.
20 Id. § 1681a(b).
21 References interviewed by the employer are not credit reports because they are not performed by a third party.
In 1997 amendments to the Fair Credit Reporting Act increased the responsibilities of employers using consumer credit reports. For an employer to obtain a credit report, the employer must take three steps. First, the employer must notify the applicant or employee that a report may be used. Second, the employer must obtain the employee's written authorization to obtain the employee’s credit report before the employer may request a report from the credit bureau. Third, the employer must certify to the credit bureau that it is in compliance with the Fair Credit Reporting Act and that it will not misuse the information in the report in violation of equal employment opportunity laws. Without this certification, the credit bureau may not release any report to an employer.

In the employment context, an adverse action occurs when an employer denies employment or a decision adversely affects a current or prospective employee. Because the Act requires an adverse action notice whenever adverse action is based in whole or in part on information contained in a credit report, there is no requirement that the information influencing the adverse action be negative. For example, a job applicant may have an excellent short-term credit history but may be denied a job for failing to have a long enough credit history. In that situation, the employer must give the adverse action notice even though the decision was not based on negative information.

Before an employer may take an adverse action based on a credit report, the employer must give the employee a pre-adverse action disclosure that includes a copy of the employee’s report and a copy of the Federal Trade Commission’s ‘A Summary of Your Rights Under the Fair Credit Reporting Act.” Only after giving the employee the pre-adverse action disclosure may an employer deny a job application, deny a promotion, or reassign or terminate an employee based on the credit report. The period of time in which an employer must wait to act between the pre-adverse action disclosure and the adverse action is not specified in the Fair Credit Reporting Act. A staff attorney on the commission has suggested that five days between the pre-adverse action disclosure and the actual adverse action is reasonable. Following the adverse action, the employer must give the employee an adverse action notice either orally, in writing, or electronically.

B. Landlords

Many families leaving welfare lose their eligibility to receive public housing...
and need to find new housing. Or if and when a family begins to earn more income than it received through public benefits, the family may choose to move to a different apartment or house. These clients may be concerned as to how prospective landlords will view their credit histories. This is a legitimate concern because the Fair Credit Reporting Act permits landlords to seek and review prospective tenants’ credit reports.

Unfortunately many landlords not only request reports from credit bureaus but also use “specialty” tenant reports compiled by tenant-screening companies. These reports contain information culled from eviction, housing court, and small claims court docket sheets; previous landlords; and sometimes other credit bureaus. The tenant-screening file lists sources of income (ranging from welfare payments to return on investments), back rent owed, late payments, bounced checks, and court proceedings and judgments.

Tenant-screening and other reports on tenants generally are recognized to be consumer credit reports because the reports involve consumer credit and relate to information used in a business transaction for personal, family, or household purposes. When such reports contain subjective personal information from personal interviews obtained by a third party such as the credit bureau, they are also investigative reports.

Too often tenant-screening reports are carelessly compiled, incomplete, misleading, or gossipy. As a result, many responsible tenants are unfairly deprived of needed access to the housing market. If an adverse action occurs based on a tenant-screening report, the landlord should furnish the tenant with the notice of adverse action discussed above.

C. Government

While clients entering the work force may no longer qualify for Temporary Assistance for Needy Families, they still may be eligible for some public assistance, such as food stamps and the federal government’s low-income home energy assistance program. The Fair Credit Reporting Act permits government agencies to obtain a consumer credit report to determine the consumer’s eligibility for needs-based public assistance. The user need not be the government agency administering the benefit program but must be a party charged by law with responsibility for assessing the consumer’s eligibility for the benefit.

For example, a utility authorized to determine eligibility for the government’s energy assistance program may have a permissible purpose to obtain credit reports.

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30 Landlords and others with “a legitimate business need for the information in connection with a business transaction initiated by the consumer” have a permissible use. Id. § 1681b(a)(3)(F). See also Commentary, supra note 14, § 604(3)(E), item 3.


32 See, e.g., Cotto, 721 F. Supp. 5. For a list of additional cases, see Fair Credit Manual § 2.3.5.4 at n.76.


34 Id. §§ 1681a(k)(1), 1681m. Advocates should look to state credit-reporting statutes—besides the Fair Credit Reporting Act—for protections concerning tenant investigative reports. E.g., the California Fair Credit Reporting Act expressly applies to investigative tenant reports. See CAL. CIV. CODE § 1785.11 (Deering 1998).


36 See Commentary, supra note 14, § 604(3)(d), item 1.
On the other hand, parties who are not responsible for determining a consumer’s eligibility for a government benefit do not have a permissible purpose. 37 Although the Act appears to contemplate the use of credit reports on applicants only, commentary by the Federal Trade Commission on the Act permits the use of reports after an application for benefits is granted whenever the government, on its own initiative, is reviewing a recipient’s continuing eligibility for the benefits. 38 As with other users, when a government agency denies or otherwise imposes an unfavorable change in the terms of a government benefit, based in whole or in part on a credit report, the agency must notify the consumer. 39

The Fair Credit Reporting Act permits state and local government officials to obtain credit reports to help determine an individual’s capacity to make child support payments.40 The Act does not require notice to the consumer when the requesting agency is administering a state plan as provided by federal welfare laws.41 If the request comes from another official, that official must certify to the agency that it has given prior notice to the consumer. Officials may not use credit reports to assist in establishing paternity.42

As with other users of credit reports, the government may not obtain a report if it does not have a permissible use set out in the Act. Absent some permissible purpose or a court order, the district attorney’s office is not entitled to a credit report to investigate any criminal or civil matter and the government may not use credit reports in litigating criminal or civil cases.43 The Act does not permit the Immigration and Naturalization Service to obtain a credit report for an immigration proceeding or for reviewing citizenship applications.

D. Utility Companies

As noted above, many clients making the transition from welfare to work may need to relocate to a new apartment or house. Thus families need to apply for different utility services or transfer their current service to a new address. Generally even a seriously blemished credit record does not prevent a consumer from obtaining utility service. The typical utility company does not seek a credit report on an applicant but looks into whether the applicant has any outstanding obligations to that utility. For example, past-due telephone or gas bills usually have no impact on an applicant obtaining electric service. A consumer with an outstanding bill with the same utility may still obtain new service, but payment of the old bill is a precondition. Consumers should attempt to obtain a payment plan from the utility company.

E. Judgment Creditors

Because public benefits are exempt...
from collection, most clients receiving public assistance are judgment proof. This means that all their income and assets are protected by state and federal exemption laws. Thus creditors often do not try to collect or pursue lawsuits for past-due debts against those receiving public benefits because such attempts are usually futile.

A consequence of the transition to work is that clients may now have income, such as wages, that may be garnished.** As a result, clients may find creditors reviewing their credit reports more often than in the past in order to decide whether to begin collection efforts. This is a permissible purpose under the Fair Credit Reporting Act.45 Creditors also may use the reports for "skip tracing"—hiring someone to locate a consumer or the consumer’s assets.46 Although creditors ultimately may choose not to pursue a collection case, they may use the credit reports in deciding whether to go forward with their collection attempts.**

The creditors' permissible purpose for obtaining a credit report also applies to judgment creditors because a creditor-debtor relationship is created by the judgment. Thus, for example, when a court orders alimony, the person entitled to those payments may obtain the former spouse’s credit report in an attempt to locate the former spouse’s assets. Similarly a government agency seeking to collect a money judgment may use a credit report because a “credit” relationship exists even if it was not permitted to receive such a report prior to the judgment.48

F. Potential Creditors

Families leaving welfare may find that they have new expenses. For example, a new job may mean that a family needs to buy a reliable car or a new wardrobe for work. In other words, leaving welfare may mean that a family has more need to obtain credit than in the past.

The Fair Credit Reporting Act permits potential creditors to use a credit report in connection with a credit transaction involving the extension of credit to the consumer.49 However, a creditor may obtain a credit report for credit purposes only when the consumer has made an offer or otherwise initiated a credit transaction or when an existing credit transaction is involved.50 Simply to determine if the consumer is a potential customer is not a sufficient reason for obtaining a credit report. For example, if an automobile dealer wishes to read a consumer’s credit report before answering questions about the availability of financing, the dealer must obtain the consumer’s permission or the consumer must indicate a desire to enter into a credit transaction.51 To limit potential creditors’ access to credit reports, advocates should advise their clients not to sign authoriza-

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44 For information regarding property exempt from creditors, see NATIONAL CONSUMER LAW CTR., FAIR DEBT COLLECTION ch. 16 (3d ed. 1996 & 1999 Supp.).
46 See Commentary, supra note 14, § 604 (3)(A).
47 For information regarding collection efforts by creditors, see generally NATIONAL CONSUMER LAW CTR., supra note 44.
49 15 U.S.C.A. § 1681b(a)(3)(A) (1998). Creditors who adversely act on information obtained from a person other than a credit bureau have notice requirements in addition to the standard adverse action notice. Id. § 1681m(b). Furthermore, the federal Equal Credit Opportunity Act imposes its own notice requirements on a creditor, including specifying the reason for the action taken or giving a statement of the right to obtain the reason. Equal Credit Opportunity (Regulation B), 12 C.F.R. § 202.9(a)(2) (2000). For a discussion on the Act, see Fair Credit Manual § 5.4.5 and NATIONAL CONSUMER LAW CTR., supra note 10, § 7.5.
tions for credit reviews unless they are serious about a possible transaction.

IV. Resolving Problems with Credit Reports

Credit reports affect several situations in a consumer’s life. For that reason, all consumers should review their credit reports periodically and make every effort to correct errors. Although advocates may assist, many clients should be able to do most of the work themselves. Besides familiarizing clients with the procedures involved and assisting them in deleting errors and obsolete information, advocates should counsel clients to avoid credit repair agencies.

A. Ordering a Credit Report

The first step in any advocacy plan is for consumers to send for their credit reports. This is the only way to know with certainty what the credit bureau reports contain. In most cases, consumers should request a report from each of the Big Three credit bureaus because the information reported by each bureau may differ.

Consumers have a right to review their files at any time. Contact information for the Big Three credit bureaus is listed in a sidebar on page 159.

The information required by the different bureaus to obtain a report varies slightly. In general, the bureaus request that consumers disclose their full name, date of birth, social security number, spouse’s first name if applicable, current address, and addresses for the last five years.

Most people leaving welfare can obtain a free copy of their credit reports. The credit bureaus are required to give free reports to consumers who have been denied credit within the past 60 days. Consumers also may obtain one free report in any 12-month period if they

- are unemployed and will be applying for a job within the next 60 days,
- are receiving public assistance,
- have reason to believe that the file at the credit bureau contains inaccurate information due to fraud, or
- live in a state that requires the bureaus to furnish a free report each year.

Even if these circumstances do not apply, credit bureaus may charge no more than $8.50 per report. Some states limit that charge; they require the bureaus to charge less than the $8.50 maximum that the Fair Credit Reporting Act permits.

B. Reading a Credit Report

Although the information collected by the Big Three credit bureaus is usually similar, the reports they give consumers and users look quite different. The following description is based on a sample Equifax report.

The credit report contains, at the top, personal identification information, including last reported employment. This information should pertain only to the individual who is the subject of the report.

53 Id. § 1681f(c).
54 Id.
55 Id.
56 To date, six states require the bureaus to provide free reports: Colorado, Georgia, Maryland, Massachusetts, Oklahoma, and Vermont. See generally Fair Credit Manual § 3.4.5.2.
57 15 U.S.C.A. § 1681j (1998 & Supp. 2000). The effective date for the $8.50 charge was January 1, 2000. Previously the maximum charge was $8.00 per report.
58 E.g., Maine limits charges to the bureaus’ actual costs. See ME. REV. STAT. ANN. tit. 10, § 1316(2) (West Supp. 1999). See generally Fair Credit Manual § 3.4.5.2.
59 Equifax’s sample credit profile may be found at www.equifax.com/consumer/products/sample_profile/sample_profile.jshtml. For sample reports from the other major credit bureaus, see Fair Credit Manual app. G.
port. This means, for example, that separate records must be kept on spouses.60

The next box on the sample report contains public record information, such as judgments and bankruptcies. Consumers should check this information carefully for errors. Even if it is accurate, consumers should check to see if the information is obsolete and should no longer be reported.

The next two boxes list collection agency account information and credit account information. The most important information here with respect to a positive credit rating is a history of on-time payments for all accounts.

The final box on the report lists companies that have requested the credit file. Advocates should note that even though the consumer will see the complete list of companies that requested reports, users will not see certain inquiries, such as prescreening inquiries, periodic reviews, and consumers' own requests for reports.61

A large number of such inquiries may be a red flag for some creditors. They believe, often wrongly, that numerous inquiries indicate that the consumer made frequent requests for credit but was turned down. In reality, the consumer may simply have been shopping around and creditors may have impermissibly requested their credit reports.62

C. Correcting Errors

Given the importance of credit reports in many important aspects of our lives, it is frightening to learn how often these reports contain errors. Seventy percent of the credit reports in a U.S. Public Interest Research Group survey contained errors of some type.63 Consumers have the absolute right to correct erroneous information, but this is not always easy.

Clients first need to understand that not all information that is bad is erroneous. If the information is accurate but simply bad, it cannot be corrected. However, if the negative information is accurate but outdated, a consumer may have the information deleted.

If the negative information is both accurate and current, the best strategy is to focus on rebuilding credit. Clients might also consider including an explanatory statement in their credit reports.

If, however, the information is inaccurate, the client should dispute the error by requesting an investigation by the credit bureau. A client who achieves a successful result should verify that the corrected information appears on the credit report and that the inaccurate information does not reappear.

D. Requesting Investigations of Errors

Consumers who find mistakes on their reports have the right to request an investigation.64 The best course of action is usually to request an investigation directly from the credit bureau. The consumer should make this request in writing and keep a

60 15 U.S.C.A. § 1681a(g) (1998) (defining the term "file" as information "on that consumer"). Nevertheless, primarily in an attempt to assist women without credit accounts in their own names to build up their credit histories, the Equal Credit Opportunity Act requires creditors to furnish certain data to reporting agencies. Specifically, if a consumer can use or is obligated on a spouse’s account, the creditor must designate the account to reflect the participation of both spouses. Equal Credit Opportunity (Regulation B), 12 C.F.R. § 202.10 (2000). See generally Fair Credit Manual § 7.2.6.1; NATIONAL CONSUMER LAW CTR., supra note 10, ch. 5.

61 Promotional inquiries are a particular area of concern for many consumers. The bureaus are required to maintain a system by which consumers can elect to have their names omitted from prescreening lists. 15 U.S.C.A. § 1681b(e) (1998). These promotional inquiries should appear only on the report released to the consumer and not to users.

62 See generally Fair Credit Manual § 4.2.4. Note also that in the past too many requests by lenders to see a consumer’s report had a negative impact on the consumer’s credit score. This problem has been fixed so that a large number of inquiries in a short period of time should not damage a credit score.


copy of the request. The bureau may not charge for this investigation. The consumer also should notify the creditor or other furnisher of the disputed information about the dispute when sending the investigation request to the credit bureau.

The credit bureau must investigate the underlying facts to determine whether the disputed information is accurate, although usually it relies on statements from the creditor or other furnisher of the disputed information. The process is supposed to work like this. Within five days of receiving a notice of dispute from a consumer, the credit bureau must notify the person who furnished the information. After receiving notice, the furnisher must investigate and report back to the credit bureau in time for the bureau to complete its investigation in a timely fashion. Furnishers must report the results of their investigation not only to the credit bureau that contacted them, but also to every other reporting agency to which they originally reported the information.

After receiving information from the furnisher, the credit bureau is required to complete its investigation usually within 30 days from the date of notice of dispute. The bureau must notify the consumer of the results of the investigation within five days of its completion. This investigation of the consumer’s complaint must be a good-faith effort. The bureau must conduct an investigation and may not merely inform users that the consumer disputes the report. Instead of conducting this lengthier investigation, the bureau may resolve the dispute in an expedited manner by deleting the disputed information within three business days of receiving the notice of dispute. These expedited resolutions are rare.

A credit bureau may refuse to delete or reinvestigate the information only if it “reasonably determines” that a dispute is frivolous or irrelevant. This is meant to be a high standard. Bureaus must assume a request is bona fide unless it has evidence to the contrary.

If the investigation reveals that the information is inaccurate or can no longer be verified, credit bureaus must delete the information or modify it. Upon receiving a favorable decision from the bureau, consumers should take the following steps:

- Obtain another copy of the information in the file to confirm that the credit bureau made the corrections.
- Determine whether other credit bureaus’ files contain the same error; if so, send the results of the investigation to those agencies as well.
- Obtain and read the credit report three to six months later to verify that the credit bureau has not reinserted the information.
- Consider requesting that the credit bureau notify past users of the correction. Credit bureaus are required to do this only upon consumer request and only if the consumer first files a statement of dispute with the bureau.

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65 See Commentary, supra note 14, § 612, item 2.
67 Id. § 1681s-2(b)(1)(B).
68 Id. § 1681(a)(1). The 30-day period begins on the date on which the agency receives the consumer’s notice of dispute. Id. One 15-day extension is allowed. Id.
69 See Commentary, supra note 14, § 611, item 2. See generally Fair Credit Manual § 9.4.4.3.
72 Id. § 1681(a)(3).
73 See Commentary, supra note 14, § 611, item 10. See generally Fair Credit Manual § 9.4.3.
75 Id. § 1681(c).
report's past users specifically designated by the consumer.  

Keeping errors that have been corrected from reappearing is difficult. This problem had been so pervasive that the Fair Credit Reporting Act was amended in 1996 to prevent such abuse. A credit bureau is required to maintain, among other protections, reasonable procedures to prevent the reappearance of inaccurate information in a consumer's file. Despite these protections, problems are common. Perseverance is often required, but with aggressive advocacy and persistent follow-up many errors can be corrected and stay corrected.  

However, not all consumer disputes end happily. In many cases the bureau decides after an investigation that the information is accurate even when it is not. Or the bureau makes a correction, but only temporarily. At that point consumers have the right to sue the credit bureau, the furnisher of information, or both for violations of the Fair Credit Reporting Act or state credit-reporting statutes or for other violations. Consumers may elect to have a statement of dispute included in their files. This right gives them an opportunity to explain their side. Theoretically this statement places users on notice of potential problems with the report, although its practical impact is uncertain. Such a statement may be relevant in subsequent litigation because some courts may look less favorably on a consumer's lawsuit challenging an inaccurate report and the failure to correct it where the consumer has not filed a statement of dispute. To maximize effectiveness, consumers should file the statement with every credit bureau whose file contains the same inaccuracy. Credit bureaus may not charge consumers for accepting this statement. A statement drafted with the credit bureau's assistance may be limited to 100 words for each disputed item. No explicit length limitations apply in other cases, but consumers should keep the statement brief.  

The Fair Credit Reporting Act's requirement that agencies include a statement of dispute is limited. The Federal Trade Commission's commentary on the Act suggests that a credit bureau need not insert a consumer statement explaining extenuating circumstances, such as illness or unemployment, for not paying a debt. This is because such explanations arguably do not relate to the completeness or accuracy of the information. Consumers still should try to submit these statements because the

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<td>Allen, TX 75013-2104</td>
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<td>P.O. Box 740241</td>
<td>888 (EXPERIAN) or</td>
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<td>Atlanta, GA 30374-0241</td>
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<td>800.997.2493</td>
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<td>Assistance Center</td>
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<td>P.O. Box 2104</td>
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76 Id. § 1681(d). See generally Fair Credit Manual § 9.8.1.  
80 See, e.g., Koropoulos v. Credit Bureau Inc., 734 F.2d 37, 45 (D.C. Cir. 1984) (Clearinghouse No. 36,537); Stewart v. Credit Bureau Inc., 734 F.2d 47, 55 (D.C. Cir. 1984) (Clearinghouse No. 36,536).  
81 See Commentary, supra note 14, § 612, item 2. See generally Fair Credit Manual § 9.7.1.1.  
83 Commentary, supra note 14, § 611, item 4.  
Credit Reporting Issues

Credit-reporting bureaus have discretion to accept them, but consumers may be charged for this service.85

E. Identifying Obsolete Items

Consumers should review their credit reports not only for mistakes but also for any information that should no longer appear on the report. The general rule is that the information reported may not antedate the report by more than seven years. The clock begins to tick when the account is placed for collection or charged to profit and loss.86 In any case, the seven-year period may begin no later than 180 days after the delinquency itself.87 Credit bureaus do not have to report information for the full time period allowed, but generally they do.

The seven-year period is not extended by the assignment of the account to another entity or by a partial or full payment.88 However, if the consumer brings the account completely up to date and subsequently defaults, the seven-year reporting period will run from the date of the new default.89

Reports of lawsuits and judgments are obsolete after seven years from their date of entry or until the governing statute of limitations has expired, whichever is longer.90 Records of criminal convictions, indictments, or arrests may be reported for no more than seven years from the date of disposition, release, or parole.91 Confinement may be reported for seven years from the date of release or parole.92

The date of parole is determined from the beginning of parole rather than from its completion.93 Acquittals and dismissed charges may be reported for seven years from the date of dismissal.94 If the consumer was not confined, a conviction may be reported from the sentencing date.95

Bankruptcies are an exception to the general seven-year rule. They are considered obsolete after ten years.96 This period begins from the date of entry of the order for relief or date of adjudication under the Bankruptcy Code.

F. Avoiding Credit Repair Companies

Although deleting erroneous and obsolete information often requires persistence, clients can do most of this work on their own. Unfortunately many clients do not know their rights or are desperate to find a magic solution to their credit problems. They are particularly vulnerable to the deceptive claims of credit repair agencies that promise, for a fee, to clear up credit reports.

Credit repair companies rarely deliver what they promise. Credit repair strategies may make matters worse in some cases. For example, many credit repair companies suggest “file segregation” as a solution. This is the practice of confusing the credit bureau about a consumer’s identity so that a new file is created. If the intent is to defraud creditors, and it almost always is, this approach is illegal.97

The federal Credit Repair Organization Act and corresponding state statutes

85 See Commentary, supra note 14, §611, item 4.
87 Id. §1681c(c). See generally Fair Credit Manual §10.3.3.
88 See Commentary, supra note 14, §605(a)(4).
89 Whether the reporting period begins again if the consumer signs a repayment agreement is unclear. See generally Fair Credit Manual §10.3.3.
91 Id. § 1681c(a)(5) (1998).
92 See Commentary, supra note 14, § 605(a)(5), item 2.
94 See Commentary, supra note 14, § 605(a)(4), item 2.
95 See supra note 94.
were enacted to combat this problem. These statutes can be powerful tools in challenging the deceptive behavior of credit repair agencies.

Such statutes also may be used in creative ways to expand consumer rights in various transactions. For example, many of these statutes apply to anyone who takes money to improve the consumer's credit rating or obtains or assists in an extension of credit. Thus they should apply to used car dealers who advertise not only that they sell cheap cars but also that they supply access to "easy credit." One court held that a state credit repair organization statute applied to a home improvement contractor. Applying such statutes to automobile dealers and others gives consumers additional protections, such as notice requirements and rights to cancel, that do not usually apply to nonmortgage consumer transactions.

V. Establishing and Rebuilding Credit

Even after pursuing the many rights and protections afforded consumers, many clients will be left with a credit report that is accurate but bad. In this situation advocates should caution clients against wasting their money on scam credit repair agencies and advise them to focus instead on establishing and rebuilding credit.

The first step in establishing a good credit rating is to stabilize employment, income, and debts. This will prevent new delinquencies from occurring and being reported. While past delinquencies may stay on a credit record for as long as seven years, creditors are likely to ignore older debt problems if a consumer's situation becomes stable and if the consumer is paying present obligations.

The best way to rebuild credit is to develop a positive credit history by obtaining credit and making timely payments. However, consumers should not start trying to get new credit during times of financial difficulty simply to improve a credit report. This is likely to shift consumers' attention away from paying high-priority debt first. Consumers in these circumstances are likely to try to establish credit with a lender advertising "easy credit" or "no credit history required." Many such lenders are scam operators preying on those who fear that they cannot obtain traditional forms of credit. These predatory lenders generally charge exorbitant fees and rates and other hidden charges. This enormously expensive credit is rarely affordable over time and inevitably will result in a default on the consumer's credit record—exactly the opposite of the result being sought.

Another problem in rebuilding credit by getting new credit is that consumers may overextend themselves. Getting a new credit card, for example, may lead the consumers down the same path that got them into trouble in the first place.

The best way to establish a credit history is to start small with necessary items and deal only with legitimate lenders. Most landlords, utilities, and student loan

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101 Before giving up on obtaining traditional forms of credit, consumers should shop around because the impact of a blemished report is not always predictable. E.g., while a bankruptcy listing may be a stigma for certain creditors, other creditors look favorably on bankruptcy listings because the consumer may not file a second Chapter 7 bankruptcy for another seven years and fewer debts now are competing for the consumer's stream of income. In any event, consumers should avoid predatory lenders.

102 For a discussion of what to watch out for in credit card offers, see NATIONAL CONSUMER LAW CTR., supra note 97, ch. 10.
Credit-Reporting Issues

Creditors do not seek a credit report. Establishing a good payment history with these sources may be the first step toward reestablishing credit.

Another good step is to start with local department stores or banks. For example, a consumer could open a savings account at a bank and then ask for a small loan with the savings as security. Consumers may consider building credit by obtaining credit with a reliable cosigner.

Consumers may also want to consider supplying positive, but unreported, payment histories to credit bureaus. For example, credit reports generally do not include regular payments to landlords and utilities, among others, because these creditors may not subscribe or furnish information to any credit bureau. Consumers should try to submit this information on their own to the credit bureaus.

This may be difficult, however, because the bureaus are not required to add new information to a file. New information may be added as of right only if it enhances the completeness or accuracy of an item already in the file.

The best approach in these circumstances is to furnish information to individual users. Particularly useful is for consumers to supply information on their own to creditors when they are applying for credit. The Equal Credit Opportunity Act requires that prospective creditors at least consider this information and not rely exclusively on credit reports in making their decisions.

VI. Litigation

The typical legal services advocate uses the Fair Credit Reporting Act to inform clients of their rights and help clear up problems with credit reports. A growing number of attorneys also are filing cases challenging credit bureaus and furnishers for violating the Act and other statutes. Although litigation can be lengthy and complex, it may lead to significant impact in a client’s life and deter future bad conduct on the part of the credit bureaus and furnishers. Recognizing that many legal services programs do not have the resources for such lawsuits, we briefly discuss possible fair credit lawsuits and a few of the issues advocates should consider before filing a complaint.

The Fair Credit Reporting Act establishes two types of civil liability: negligent noncompliance with requirements of the Act and willful noncompliance.

These theories may be pled in the alternative. Depending on the facts of the case, consumers have three possible defendants to sue: the credit bureau, the furnisher of the information, and the user of the report. Also, clients may sue credit repair agencies for violations of the Credit Repair Organization Act. Under the Fair Credit Reporting Act, a consumer may be entitled to actual, statutory, and punitive damages, as well as attorney fees and costs.

Commonly litigated issues include

- credit bureaus supplying inaccurate and obsolete reports;
- credit bureaus and furnishers failing to make permanent corrections after investigations; and
- users obtaining reports without a permissible purpose or under false pretenses.

A. Litigating Inaccurate Reports

An issue regarding a report’s accuracy involves a two-prong test. The first question is whether the information at issue is inaccurate.

While some courts

103 See Commentary, supra note 14, § 611, item 3. See generally Fair Credit Manual § 9.7.1.3.
104 See Commentary, supra note 14, § 611, item 3.
108 Id.
narrowly construe “accuracy” as requiring only a technically correct statement, the more modern view is that a report can be inaccurate by being overly general, incomplete, out of date, or misleading even if the report is technically true in some narrow sense.” If a court determines that the report is accurate, the court will dismiss the case.

If a report is not accurate, the case turns on whether the procedures used by the agency were nevertheless reasonably fashioned and maintained to “assure maximum possible accuracy.” The bureau has the burden of proving that its procedures were reasonable. This emphasis on internal procedures in turn places a heavy emphasis on pretrial discovery and requires a thoughtful presentation of evidence at trial. The best cases to pursue through litigation are instances in which errors are made again and again despite repeated, documented efforts by the consumer to have inaccuracies removed.

B. Suing Furnishers

The 1996-97 amendments to the Fair Credit Reporting Act made furnishers liable for violating the Act. Suing furnishers is a rapidly growing area of litigation because they are a prime source of inaccuracies, and cases are generally straightforward. Until recently furnishers often did not exercise much care in supplying information, and they may be surprised to be sued.

Although the Act requires furnishers to supply accurate information, they are liable-in a private lawsuit—only for failing to investigate after a consumer initiates a dispute with a credit bureau and for failing to correct erroneous information after the investigation. The failure to delete errors permanently is a common problem. Thus, before filing a suit against a furnisher, a consumer should (1) dispute inaccuracies with a credit-reporting bureau, (2) give information to the creditor although it is not required, and (3) document claims of inaccuracy as clearly as possible.

C. Discovering Impermissible Uses

Discovering if a credit report has been used for an impermissible purpose is not always easy. A user must disclose the use of a credit report in various situations, such as after taking adverse action based on information contained in a report. Those receiving reports for impermissible purposes are unlikely to give these notices.

In any instance in which a client has been subjected to adverse action in a business or government benefits situation, the attorney should inquire whether a credit report was used.

110 For an example of the modem view, see Koropoulos, 734 F.2d 37. For a list of cases based on a narrow construction of “accuracy,” see id. at 39, n.3. For additional cases based on the modem view, see Fair Credit Manual § 9.10.3.2 n.257. The modem view is also supported by the Federal Trade Commission in its commentary and other interpretations see, e.g., Commentary, supra note 14, §§ 607, items 3F(1), (2), (3), 611, items 5, 6. See also Federal Trade Comm’n, Compliance with the Fair Credit Reporting Act 28 (1977).
112 See, e.g., Guimond v. TransUnion Credit Information Co., 45 F.3d 1329 (9th Cir. 1995).
114 Id. § 1681s-2(d). Public agencies have limited public enforcement authority over furnishers failing to give accurate information. Id.
obtaining a credit report, the consumer may have a cause of action against the user, the credit bureau, or both.\textsuperscript{115}

Credit-reporting issues affect all clients’ lives. For those leaving welfare, such issues may be more important than ever. Advocates who help clients understand their rights and ensure that their credit reports are as accurate as possible may make it possible for them to obtain a job, find an affordable place to live, buy a reliable car, or access credit for other necessities of life.

\textsuperscript{115}Differentiating between users of prescreening lists and those without a permissible purpose to receive a report on the consumer is important. Credit bureaus compile or edit prescreening lists of consumers based on specific criteria. Credit bureaus supply them to users who use the lists to solicit consumers with a firm offer for the users’ products or services. They are, e.g., the source of unsolicited credit card offers and other junk mail. The Fair Credit Reporting Act allows prescreening for credit and insurance purposes only. \textit{Id. §§ 1681a(1), b(c), b(3), m(d).}