



Prepared Testimony

National Association of Mortgage Brokers

on

The Fair Credit Reporting Act

before the

House Financial Services Committee

Subcommittee on Financial Institutions and Consumer Credit

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Chairman Bachus, Ranking Member Sanders, and members of the Committee, I am A.W. Pickel, President-Elect of the National Association of Mortgage Brokers (NAMB) and President of Leader Mortgage Company in Lenexa, Kansas. I appreciate the opportunity to present NAMB's views on the Fair Credit Reporting Act (FCRA). NAMB is the nation's largest organization exclusively representing the interests of the mortgage brokerage industry and has more than 14,000 members. NAMB represents mortgage brokers in all 50 states as well as the District of Columbia. NAMB provides education, certification, industry representation, and publications for the mortgage broker industry. NAMB members subscribe to a strict code of ethics and a set of best business practices that promote integrity, confidentiality, and above all, the highest levels of professional service to the consumer.

Today, mortgage brokers originate more than 60% of all residential mortgages. They are vital members of their communities, often operating in areas where traditional mortgage lenders do not, such as rural communities. A mortgage broker is an independent real estate financing professional who specializes in the origination of residential and/or commercial mortgages. A mortgage broker is also an independent contractor who markets and originates loans offered by multiple wholesale lenders.

I want to commend this Committee for holding a series of hearings on an issue that is vital to our economy and to consumers. FCRA provides a national standard for credit reporting and allows intrastate and interstate commerce to flourish. A national uniform credit reporting system impacts nearly every business sector that makes consumer credit

related decisions. More importantly, this system impacts a consumer's ability to access reasonably priced credit. It is also essential to the operation of the mortgage industry. The information that is provided by consumer reporting agencies is required to make sound mortgage lending decisions and to help evaluate risk. In addition, the information obtained by mortgage originators is essential to provide consumers with the access to reasonably priced products.

I. Background on FCRA

Over thirty years ago, Congress created a national framework that has developed the most efficient and reliable credit reporting system in the world. The primary purpose of FCRA is to ensure "confidentiality, accuracy, relevancy, and proper utilization."¹ Through FCRA, Congress developed a system whereby a balance was struck that encourages the voluntary reporting of consumer information while maintaining accuracy of the information reported. The reliability of credit bureau data through the national uniform standard created through FCRA has facilitated significant changes to our marketplace to the benefit of consumers and businesses. For example, a business in New Jersey can do business with a consumer located in Alabama based on the reliability of information provided by credit bureaus. FCRA creates a uniform national credit system that goes beyond state borders.

As the Federal Trade Commission and the Federal Reserve Board have testified, the development of consumer credit came after the World War II era, when this country's financial system became much too large and complex to transfer credit information about consumers. It was no longer feasible to evaluate consumer credit at the local level. Personal relationships between consumers, merchants and banks became less localized as the nation's population increased and consumers became more mobile. Consumer credit also was in high demand as the nation moved away from the "cash only" era, and consumers sought goods and services on demand through credit. In addition, there was an increase in demand for home ownership. All of these factors and other factors resulted in the creation of a national uniform credit system. Consumers and the industry alike, will agree that the current national credit system has had, as Chairman Greenspan states, "a dramatic impact...on consumers and households and their access to credit in this country at reasonable rates."²

In 1996, Congress amended FCRA to expand the permissible uses of credit report data, further encourage the accuracy of reported information, in addition to giving consumers more authority and oversight to their credit information. One of the most critical components of FCRA, created by the 1996 amendments, was to preserve and enhance the uniformity of the national reporting system by creating Federal preemption of state and local laws.³

¹ Fair Credit Reporting Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (codified at 15 U.S.C. §§ 1681-1681t).

² Remarks following prepared testimony by Chairman Alan Greenspan, Board of Governors of the Federal Reserve System, February 12, 2003, House Financial Services Committee.

³ 15 U.S.C. § 1681t(a)(b).

The broad Federal preemption provision states that no requirement or prohibition may be imposed under the laws of any state with regard to matters specifically identified as being a preemption provision.⁴ The preemption standard applies to seven specific areas, many of which play an integral part of our current uniform credit system. This broad preemption provision expires on January 1, 2004.

If Congress does not amend FCRA to extend the preemption provision, states are free to enact different laws on the specific matters addressed in FCRA, which could severely jeopardize our current national uniform credit system.

II. Support for the Current National Uniform Credit System

If Congress allows the preemption provisions in FCRA to expire, the outcome of such inaction will have a detrimental effect on a consumer's access to and availability of credit. NAMB generally supports the extension of the preemption provisions, some of which I will address. NAMB believes that failure to extend the preemption provisions will increase risks for mortgage originators, which could have a significant impact on the cost and availability of credit for housing. . Further, it will lead to the imposition of new operational costs on the industry, which will result in an increase in the cost of credit for consumers and a reduction in the access to credit for consumers. As such, NAMB believes it is important that the federal preemption provisions of FCRA be extended so that our current national credit system remains fluid, workable and continues to provide consumers with strong benefits and protections.

FCRA provides uniform national standards that have increased the effectiveness of consumer report information that plays a fundamental role in the mortgage origination process. A mortgage broker's ability to obtain information about a consumer's credit is as essential to their business as is the ability to transfer that information across state lines for the benefit of the consumer. Permitting states to enact inconsistent credit system laws will disrupt the current free flow of information that enhances interstate commerce. If laws vary from state to state, it will be very difficult to maintain a practical and reliable credit system that promotes efficiency in the marketplace that consumers currently enjoy. Failure to continue our current national uniform system will have a sweeping impact on every sector of the economy, from consumers to retailers to employers. It could also have a detrimental impact on this country's housing market - one of the only markets sustaining this economy.

The ability to make quick decisions on offers of credit is critical to both consumers and mortgage originators. The expedited flow of information enables credit grantors to make immediate and accurate credit decisions. Consumers greatly benefit from the expeditious manner in which credit decisions are made and enjoy the convenience of the current process. Applying for a mortgage was a very time-consuming process before the carefully constructed balance of FCRA was created. Processing a mortgage application required personal contacts with references, other creditors, and contacts with individuals

⁴ 15 U.S.C. § 1681 (b).

who had knowledge of a consumer's personal financial history. The process to obtain credit, was lengthy, as loan officers would have to go through a comprehensive procedure with consumers to verify consumer credit.

In a post-FCRA (as amended) world, consumers can obtain access to credit virtually instantaneously on a wide array of credit products. In addition, consumers can even shop for competitive rates through the Internet and pursue a mortgage from a lender or a mortgage broker that is located in a different state.

The current national uniform system also promotes competition throughout the industry. As a result of competition, consumers are presented with more opportunities and choices in obtaining a mortgage. This competition enables mortgage brokers to do what they do best – place consumers in homes. As such, homeownership has increased over the years, especially among minorities.

These consumer benefits would cease to exist if the preemption provisions contained in FCRA are not extended. States could enact legislation on seven subject areas, which would create a patchwork of state laws for credit grantors to comply with, making it difficult if not impossible for consumers to obtain expeditious and cost effective access to credit. Permitting states to enact inconsistent laws could also prevent consumers from reaping the true competitive benefits of the current national uniform credit system.

III. Expiring Preemption Provisions

Consumer Report Contents

This preemption provision prohibits states from regulating the information that may be included in consumer reports. If this preemption provision expires, states could preclude consumer-reporting agencies from including certain information about consumers in consumer reports and impose time limitations during which such information could be included.

Further, the information contained in the consumer reports could vary from state to state thereby reducing the reliability of the reports and negatively impacting the scoring model used to determine mortgage rates. For example, a consumer report in one state may not include the same information, causing the report not to have the same significance as a consumer report in another state. One state may require that consumer reports include bankruptcy information whereas a consumer report in another state may not require such information to be reported thereby not reflecting a consumer's true credit history.

If states enact inconsistent state laws on what information can be contained in a consumer report, some consumers may not receive credit although they qualify and some consumers that do not qualify may receive credit thereby eliminating the reliability of our current credit system. Such inconsistent state laws would result in a gap in our current credit system, and consumers could suffer the consequences of such a gap.

It is critical to the continued availability of consumer credit at reasonable costs that mortgage brokers have the ability to obtain standardized consumer reports that contain nationally uniform full factual credit information. The information contained in a consumer report is an essential component to the mortgage process. What is contained in a consumer report dictates the terms and rates for a consumer's mortgage. A national uniform standard for the information contained in a consumer report is crucial since credit grantors rely on consistent information about consumers that can be used to make credit decisions.

Without full and complete accuracy of information delivered in a uniform manner, the technological advances that have been made in real estate finance lending over the last eight years would not be possible. Sophisticated predictive models have been designed to assess risk, as reflected in a consumer's credit score. Scoring models are based on an analysis of historical consumer data, which allow creditors to develop systems that help them to better predict the risk of default by a particular consumer.

Accurate reports benefit not only the consumer, but the mortgage broker and lender who are able to make more rapid and accurate credit decisions utilizing these scoring models within their underwriting. Risk assessment based on a borrower's past payment history, replaces the old face-to-face attempts to evaluate character and capability to repay which was so common many years ago.

The lack of a national standard on the contents of a consumer report would add a level of uncertainty in the risk profile of a consumer's credit history, thereby eliminating the ability to ascertain credit risk when pricing a mortgage. As a result, the price of credit will increase, and access to credit will be reduced, which could result in a reduction in this country's historically high homeownership rates.

Adverse Action Notices

This preemption provision prohibits states from regulating the duties of persons to provide adverse action notices to consumers in connection with the use of consumer reports. If this preemption provision expires, states could enact legislation to require users of consumer reports to provide additional information on the adverse action notice and enforce specified time limitations and circumstances under which the notices are provided. Under some circumstances, mortgage brokers provide adverse action notices when a consumer is declined credit or a credit product by either them or their wholesale lender or when a consumer qualifies for a different product based on a consumer's credit.

If a company transacts business in multiple states, they would have to send a different adverse action notice depending on particular state law requirements. If the content of the adverse action notice and circumstances under which the notice is provided varies from each state, businesses will experience a significant increase in operational costs. Unfortunately, these operational costs will be passed through to consumers in the form of higher credit costs.

Furnishers of Information

This preemption provision prohibits a state from regulating the responsibilities of persons who furnish information to consumer reporting agencies. If it expires, states could enact laws imposing different obligations on furnishers. States could create laws relating to those who furnish information to credit bureaus and impose varying duties on furnishers to correct and update information reported. States could also create laws imposing liability for failure to comply with certain furnisher obligations. They could also impose a duty on the furnisher to investigate consumer claims reported to credit bureaus.

States may impose duties on furnishers that are impractical for furnishers to comply with, which will result in an increase in compliance cost. Mortgage brokers generally do not furnish information to consumer reporting agencies. However, the lenders with which mortgage brokers transact business and many other industry sectors do furnish information to consumer reporting agencies.

If furnishers decide that compliance with different state laws is too burdensome, furnishers may choose not to submit the information at all thereby making consumer reports inaccurate or unreliable. This will result in a reduction in credit for the consumer and will increase the cost of credit since the risk of not knowing the credit worthiness of an individual will have to be priced as such.

Procedures of Disputing Inaccurate Information

This preemption provision applies to the procedures a consumer reporting agency must use if a consumer disputes the accuracy of information in his/her consumer report. If this preemption provision expires, states could enact varying procedures for consumer-reporting agencies to follow when they dispute information contained in their consumer report. This could result in a patchwork of state laws that impose different investigation duties on consumer reporting agencies, including the amount of time required to investigate a consumer dispute.

Some states may allow a consumer reporting agency a longer period of time to investigate disputed reports whereas other states may allow a shorter period of time to investigate. This could lead to a cursory and inaccurate investigation to the detriment of consumers. Mortgage brokers often work with consumers to help them to review and correctly dispute their credit when necessary to effect the most rapid modifications necessary before a consumer applies for a mortgage loan. It is one of the many benefits consumers experience when they work with a mortgage broker. Cursory and inaccurate investigations of credit disputes will frustrate this working relationship between a mortgage broker and the consumer.

Mortgage brokers have continued to work with the Consumer Data Industry Association (CDIA) in an effort to correct the dispute resolution issues we find on a daily basis on behalf of consumers. Mortgage brokers have played an active role notifying and encouraging repositories to continually better the accuracy in credit reporting. Mortgage brokers have been the watchdogs who have given CDIA the examples of the problematic reporting we have had to help consumers overcome in securing their home financing.

Inconsistent state procedures relative to disputing inaccurate information will upset the ability of mortgage brokers to continue to work with consumers on fixing their credit inaccuracies.

If states enact different laws on the procedures of disputing inaccurate information, consumers may receive a fair and comprehensive investigation solely contingent upon the state in which credit was extended. The process whereby a consumer disputes information contained in their consumer report would therefore result in an inequitable and unreliable process.

Affiliate Sharing

This preemption provision prohibits states from regulating the exchange of information among affiliates. As the financial services sector has evolved, financial services companies have come to rely a great deal on sharing information among affiliates. Although many of these companies are structured through separate legal entities, they serve their customers through one unit.

The ability to share among affiliates allows a company to tailor products and services to individual consumers thereby increasing consumer choice and reducing costs. Pursuant to FCRA, information can be shared among affiliates with limited restrictions. Information can be shared among affiliates without restriction if the information relates generally to experience and identification information. Affiliates can also share nonexperience information provided that the consumer has been notified that the information may be shared and is given an opportunity to opt out of sharing their information.

Generally, most mortgage broker businesses are very small, with very few employees, so most mortgage brokers do not have affiliates with which they share consumer information. However, some mortgage brokers do have business affiliates, such as a title company or appraisal company affiliates that consumers may work with throughout his or her purchase of a home. Some mortgage brokers also have insurance and financial planner affiliates. However, as the mortgage marketplace continues to grow and evolve, this could certainly be an issue in the future for mortgage brokers.

If this preemption provision expires, our national uniform credit reporting system could dwindle as states enact different affiliate sharing standards. The operational costs for companies would increase as they attempt to comply with inconsistent state affiliate sharing requirements. Any costs associated with such compliance will ultimately be passed on to consumers. If states impose restrictions on affiliate sharing, great benefits currently enjoyed by affiliate sharing, such as cross-marketing products and obtaining certain affiliate services, will be missed. The current national uniform affiliate-sharing standard is critical to the operational infrastructure of companies and provides enhanced benefits to consumers.

Identity Theft

In the context of FCRA, Congress has been focusing on the issues relative to identity theft. NAMB supports efforts to address the growing problem of identity theft, but is concerned about that these efforts could be at the expense of the consumer. Identity theft is one of the fastest growing crimes in this country. Identity theft can tarnish a consumer's credit and sabotage their ability to obtain credit. NAMB believes that enforcement is also an integral component to combating identify theft.

Mortgage brokers today are constantly educating their consumers about methods to safeguard their credit. Mortgage brokers are generally the first contact for a consumer who must give that consumer the bad news about credit information revealed on his or her report that indicates someone else is using his or her identity. Mortgage brokers often spend hours assisting the consumer in how to clear their credit records before that consumer is in a position to make an application for a real estate loan. Mortgage brokers have a strong interest in eliminating avenues for identity theft.

We look forward to working with Congress and the Administration to address the growing concern with identity theft.

Conclusion

The benefits of FCRA expand to a broad range of industry sectors from the mortgage originator to the retailer. These benefits are derived from an accurate, reliable and national uniform credit reporting system. FCRA provides a very carefully balanced uniform system that allows for the continued flow of consumer information. If the preemption provisions in FCRA are allowed to expire, our national uniform credit reporting system will be endangered and the benefits from FCRA will be lost.

Thank you for giving NAMB the opportunity to testify today on this very important issue.