Written Testimony

Before The

Senate Committee on Commerce, Science, and Transportation
SUBCOMMITTEE ON CONSUMER AFFAIRS, INSURANCE AND AUTO SAFETY

Regarding

"The Credit Repair Organizations Act: How Can It Be Improved"

July 31, 2007

Submitted by: Joanne S. Faulkner, Attorney
123 Avon Street
New Haven CT 06511
(203) 772-0395

on behalf of the

National Association of Consumer Advocates
National Consumer Law Center (for its low income clients)
U.S. PIRG
Consumer Federation of America

Chairman Pryor, Ranking Member Sununu and other distinguished members of the Consumer Affairs Subcommittee, thank you for inviting me to testify today in this important hearing to consider the improvements necessary for the effective implementation of the Credit Repair Organizations Act. I offer this testimony today on behalf of the National Association of Consumer Advocates, the low income clients of the National Consumer Law Center, U.S. PIRG, and Consumer Federation of America. We oppose changing the Act to protect credit monitoring services since the proposed changes instead facilitate evasion of the Act's salutary protections by credit repair organizations. Instead, we offer suggestions for improving the Act to strengthen its protections against deceptive credit repair services.

I am Joanne Faulkner, a founding member of NACA. A brief description of my background in consumer protection law, and a description of the consumer organizations named above, is appended.

I have first hand experience in trying to enforce the Credit Repair Organizations Act, 15 U.S.C. § 1679 et seq. (CROA). Enforcing the CROA is frustrating, not because of what has been enacted, but because the targets of the law have devised methods of evasion. While the Federal Trade Commission has enforcement power, it does not have the resources to address the burgeoning and emboldened number of entities that prey on already financially overburdened consumers with false promises of credit repair.

The law desperately needs to be strengthened to prevent evasive tactics. If Congress considers watering down the Act by exempting credit monitoring services, the exemption will simply provide a roadmap that will be exploited by those seeking to avoid CROA's protections against deceptive practices.

In order to prevent evasion, and encourage private attorneys to effectively participate in stemming the abuses and dislocations caused by credit repair entities, the CROA should be strengthened. The Act needs:

1. An express prohibition on pre-dispute arbitration clauses, commonly inserted by credit repair organizations (CROs) both to insulate them from liability as well as to keep their deceptive practices out of the public eye and under the rug.
2. A prohibition on distant forum clauses, commonly imposed by CROs to deter consumer enforcement of their rights under the CROA.
3. A provision affirmatively allowing the consumer to sue the CRO in the federal or state judicial district where the consumer resides irrespective of any contractual provision to the contrary.
4. A provision that the consumer may obtain injunctive relief.
5. A prohibition on any contract provision that prevents class actions, particularly important here because an individual's damages may not be sufficient to interest competent attorney representation.
6. An amendment to §1679b(4) of the CROA to effectuate the intent of Congress to bar unfair and deceptive practices. Because the word "fraud" is used in that subsection only, some courts are demanding a higher burden of proof and pleading than normally imposed for unfair or deceptive practices.

7. A provision preventing CROas from evading §1679b(b) by charging for discrete services ("set up file"; "monthly report on progress" and the like).

8. Non-profits should not be exempt. CROs have set up elaborate structures whereby the consumer contracts with a non-profit "educational" entity but that entity outsources books and services to profit-making friends, relatives and associates.

Moreover, as discussed below, we strongly oppose weakening the CROA by enacting the deceptively named "Credit Monitoring Clarification Act," H.R. 2885, which is virtually identical to last year's Senate companion bill, S. 3662. This bill would allow almost any business currently covered by CROA to escape the Act's important protections. Even a slight change in description from promising to "improve credit" to providing "access to credit reports, credit monitoring notifications, credit scores ...., any analysis, evaluation or explanation of credit scores . . . " would mean that CROA's current strict prohibition against deception would no longer apply to entities abusing the consumer, deceiving the credit bureaus, and harming the economy.

Abuses by the Credit Repair Industry continue and cry out for a stronger CROA

Congress has found that "the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." Fair Credit Reporting Act, 15 U.S.C. § 1681(a)(a). To further that purpose, Congress enacted the CROA, 15 U.S.C. §

1679, finding that "Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters." 15 U.S.C. § 1679(a)(2). The CROA was enacted "to protect the public from unfair or deceptive advertising and business practices by credit repair organizations." §1679(b)(2).

"As Americans' reliance on credit has increased, so-called 'credit repair clinics' have emerged, preying on individuals desperate to improve their credit records. These organizations typically promise they can have any negative information removed permanently from any credit report . . . for a fee." FTC v. Gill, 265 F.3d 944, 947 (9th Cir. 2001) (sanctions against lawyer operating credit repair clinic in violation of CROA). Because of well-known abuses, thirty eight states have also enacted laws restricting credit repair operations, including my state of Connecticut, Conn. Gen. Stat § 36a-700.

CROs are designed to undermine accurate credit reporting. Despite the CROA, the CROs have established elaborate ruses to intentionally profit from obtaining payment before credit repair services are fully performed. Some intentionally solicit consumers on the representation that a law firm is involved, and that consumers will benefit by being represented by a law firm. CROs intentionally and systematically deceive credit bureaus about the source and nature of the dispute correspondence, and intentionally deceive consumers before and during the course of their representation.

The CROs' volume of mailings to the credit bureaus causes harm to the credit reporting system because of the resources of bureau staff and time devoted to responding to the volume of letters generated by CROs, as well as the dislocation of

bureau efforts from the disputes of individuals who have legitimate accuracy complaints, such as victims of identity theft or of mixed files (similar names). The volume and spurious nature of the disputes sent by CROs intentionally interferes with the credit bureaus' business of providing accurate reports. These practices ultimately cause creditors to extend credit in reliance on credit bureau reports that are not accurate because the CROs' dispute volume is intended to force bureaus to delete tradelines that they cannot investigate within thirty days. The CROs' systematic deception of the credit bureaus and of consumers undermines the banking system and harms consumers and creditors alike. Appended to this testimony is a 1988 New York Times article recognizing the type of abusive practices that are still taking place today.

Let me quote from the testimony of Stuart K. Pratt, President of the Consumer Data Industry Association, before the House Committee on Financial Services (June 19, 2007), showing credit repair is an ongoing and still significant problem:

> Historically credit repair operators would promise to delete accurate but negative data from a consumer's file for fees that in some cases exceeded $1,000. Their primary tactic was to flood the reinvestigation system with repeated disputes of the same negative data in an effort to "break" the system and cause the data furnisher to both give up and not respond or to simply direct the consumer reporting agency to delete the data. Today, operators are savvier and often avoid making false promises but even now they suggest that they will assist the consumer with disputing inaccurate or unverifiable information. In many cases "unverifiable" equates to the same practice of flooding the system and trying to have accurate, predictive derogatory data removed.
>
> Our members estimate that on average across our members operating as nationwide consumer reporting agencies, no less than 30% of disputes filed are tied to credit repair. Repetitive disputes can be particularly harmful to smaller data furnishers such as community banks, thrifts, credit unions and retailers. These data sources are often a key to ensuring full and complete data on all credit-active consumers, but their ability to absorb costs is limited. In extreme cases, small-business data sources may simply choose not to report at all if costs of responding to disputes are too high.

> Thankfully, no one data source is usually the target of a credit repair operator and credit repair efforts most often end up in failure. But this failure is at a cost to our members and to consumers. Consumers spend money on a service that cannot deliver. Industry incurs costs as well when it has to dedicate resources which could be used to service legitimate disputes, to disputes that are not likely to be valid.

Thus, consumers and credit bureaus alike are eager to strengthen the CROA.

The present credit reporting system is broken. Every analysis or study in this decade, including the FACTA authorized FTC Pilot Study has found inaccuracies in a significant percentage of the reports considered. The CROs are one cause of the inaccuracies. The amendments we suggest are essential to stop them, or at least provide a more effective means of deterring noncompliance than we have now.

CROA has successfully deterred other deceptive credit services

The CROA should not be watered down because it has also proved useful against entities other than traditional credit repair organizations when those entities have made deceptive claims about improvement of credit history. The Act has been held to apply to:

- Credit counseling agencies that promise to improve participants' credit ratings;
- Debt collectors who offer improvement of the debtor's credit rating in return for payment of the debt (even when the effect is actually to worsen the credit rating);
- A company that generated subprime auto financing leads by advertising that it could restore consumers' credit.

Payday lenders have also operated under the guise of credit services organizations in order to evade state interest rate caps.

Strengthen CROA By Adding Important Protections

Rather than weakening the CROA, the Act should be strengthened to ensure that it will protect consumers from deceptive credit repair practices.

1. Pre-dispute arbitration clauses must be prohibited

Arbitration clauses are commonly inserted in contracts by credit repair organizations to insulate them from liability as well as to keep their deceptive practices out of the public eye and under the rug. One court mastered this issue, Alexander v. U.S. Credit Management, Inc., 384 F. Supp. 2d 1003, 1014 (N.D. Tex. 2005), but others have endorsed arbitration clauses. Congress can reduce the volume of litigation over the effectiveness of unilaterally imposed arbitration clauses by prohibiting them in the CROA.

Mandatory pre-dispute arbitration clauses unilaterally imposed by creditors and scam artists alike cause significant harm to consumers, deter and indeed eliminate effective enforcement and keep corporate wrongdoing under the rug and out of the public's scrutiny.

Although arbitration can be a fair and efficient way to resolve a dispute when both parties choose it after the dispute arises, arbitration is particularly hostile to individuals attempting to assert their rights. High administrative fees, and a lack of discovery proceedings, jury trials and other civil due process protections, and meaningful judicial review of arbitrators' decisions all act as barriers to the fair and just resolution of an individual's claim. When arbitration is required rather than voluntarily chosen, the likelihood that these problems will occur and that arbitrators will favor repeat corporate players over individual claimants is increased.

2. Distant Forum clauses must be prohibited

CROs commonly include a clause in their contracts requiring that any suit or arbitration be brought in some location distant from the consumer and expensive to

travel to. Plainly, this type of provision effectively precludes any effort to enforce the CROA. "Distant forum abuse is 'unconscionable' and 'insidious' conduct employing 'an ostensibly legitimate legal process to deprive consumers of basic opportunities which should be afforded all litigants.'" Yu v. Signet Bank/Virginia, 69 Cal.App.4th 1377, 1389 (1999) (citations omitted). "[M]isuse of the courts in this manner contributes to an undermining of confidence in the judiciary by reinforcing the unfortunate image of courts as 'distant' entities, available only to wealthy or large interests," and leads consumers "to conclude that the legal system is merely a 'rubber stamp' for the improper practices utilized by predatory agencies." Barquis v. Merchants Collection Assn., 7 Cal.3d 94, 108, 101 Cal. Rptr. 745, 496 P.2d 817 (1972) (filing in a distant venue for the ulterior purpose of impairing consumer's rights to defend the suits to coerce inequitable settlements or default judgments is abuse of process).

In Spiegel, Inc. v. F.T.C., 540 F.2d 287 (7th Cir. 1976), the practice of filing collection lawsuits in distant forums was held unfair and unconscionable. This practice has been attacked successfully in both private and public enforcement actions. E.g., Schubach v. Household Finance Corporation, 376 N.E.2d 140, 141-142 (Sup. Jud. Ct. Mass. 1978) (practice unfair or deceptive even when permitted by venue statute); Celebrezze v. United Research, Inc., 482 N.E.2d 1260, 1262 (Ohio App. 1984); Zanni v. Lippold, 119 F.R.D. 32 (C.D. Ill. 1988) (class composed of defendants subject to distant forum abuse certified).

The CRO should not be allowed to sue the consumer in a distant forum. The consumer should not be required to sue the CRO in a distant forum.

3. Venue must be local

Lack of a venue provision is one obvious gap in the provisions of the CROA. Venue is the locale where the consumer can sue or be sued. The CROA should have an affirmative provision, like other subtitles of the Consumer Credit Protection Act, placing the location of lawsuits at the consumer's residence, such as: "An action to enforce any liability credited by this subchapter may be brought in any appropriate United States District Court without regard to the amount in controversy, or in any other court of competent jurisdiction, located in the judicial district or similar legal entity in which the consumer resides at the commencement of the action."

4. Injunctive relief is essential

The CROA allows States and the FTC to obtain injunctive relief. By omission, there may be an implication that United States District Courts do not retain their normal injunctive power in individual CROA cases. While it is likely that Congress did not intend to so divest Federal Courts of their injunctive powers, any judicial confusion can be corrected with a short addition to the statute expressly acknowledging such a remedy. This would provide a faster and less burdensome remedy for consumers and facilitate their "private attorneys general" in obtaining effective relief.

5. Class action waivers should be explicitly disallowed

Another way the CROs reduce their exposure to wrongdoing is by inserting a clause prohibiting class actions, or prohibiting the individual consumer from participating in a class action against the CRO. The CROA allows class actions; it should also override any effort by the CRO to undermine this salutary provision by attempting to preclude class litigation.

The Supreme Court has long recognized that without class actions, claimants with small claims would not be able to obtain relief. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985). "Class actions . . . may permit the plaintiffs to pool claims which would be uneconomical to litigate individually. For example, this lawsuit involves claims averaging about $100 per plaintiff; most of the plaintiffs would have no realistic day in court if a class action were not available." Id. at 809. The 1966 Advisory Committee Notes to Rule 23 echo this concern: "These interests [in individual litigation] may be theoretical rather than practical: . . . the amounts at stake for individuals may be so small that separate suits would be impracticable." Similarly, the leading treatise on class actions has stated:

> The desirability of providing recourse for the injured consumer who would otherwise be financially incapable of bringing suit and the deterrent value of class litigation clearly render the class action a viable and important mechanism in challenging fraud on the public.

Newberg, Class Actions at § 21.30. See also Watkins v. Simmons and Clark, Inc. 618 F. 2d 398, 404 (6th Cir. 1980) (class action certifications to enforce compliance with consumer protection laws are "desirable and should be encouraged.")

6. The word "fraud" should be deleted from §1679b(4)

The CROA is a broadly worded enactment, a uniquely potent consumer protection statute that both provides for punitive damages and voids the violative contract. The type of intentional conduct required by a fraud standard is taken into account only in determining the amount of punitive damages. Yet, courts unfortunately have been drawn by the word "fraud" in §1679b(4) to impose a higher burden of pleading and proof on the consumer.

What Congress actually said, and notably the only place the word "fraud" was used, does not require a CROA plaintiff to exclusively plead fraud; the plain language encompasses fraud, but is much broader than that:

> (4) engage, directly or indirectly, in any act, practice, or course of business that constitutes **or** results in the commission of, or an attempt to commit, a fraud **or** deception on any person in connection with the offer or sale of the services of the credit repair organization.

The legislative history shows that the section was meant to prohibit deceptive and unfair practices, even if they do not amount to fraud.[1] The subsection should be reworded to clarify that intent. We suggest the following:

(4) engage, directly or indirectly, in any act, practice, or course of business that INVOLVES ANY FALSE, DECEPTIVE OR MISLEADING REPRESENTATION OR MEANS ~~constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person~~ in connection with the offer or sale of the services of the credit repair organization.

7. Close the "services" loophole

CROs contract to perform credit repair. However, in order to evade the statutory prohibition on charging before services are rendered, they break services down into each step. They separately charge a set-up fee (setting up the file is a "service") and a monthly report fee (mindlessly transmitted by computer). Another charge is described as for "time and expense for commencing the representation of the client." There is a "rush

[1] Section 404, as described in H.R. Rep. 104-486, 103rd Cong. 2d Sess., 1994 WL 164513 *57-58.

> Section 404 prohibits credit repair organizations from (1) making untrue or misleading statements or advising consumers to make such statements with respect to a consumer's credit worthiness, credit standing, or credit capacity to a consumer reporting agency or to a person extending credit to the consumer; (2) making statements or advising consumers to make statements to consumer reporting agencies or a person extending credit to the consumer that are intended to alter the consumer's identification to prevent the display of adverse credit information that is accurate and not obsolete; (3) making or using untrue or misleading representations of the services the credit repair organization can provide; **(4) engaging in deceptive acts**; and (5) charging or receiving payment in advance of fully performing services for the consumer.

fee" for expedited services. This breakout of each small step in the ultimate service should be prohibited. No money should change hands, in escrow or otherwise, until the credit repair itself is actually performed. We request the following amendment.

1679b(b) Payment in advance.—No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service FOR THE EXPRESS OR IMPLIED PURPOSE OF IMPROVEMENT IN ANY CONSUMER'S CREDIT RECORD, CREDIT HISTORY OR CREDIT RATING which the credit repair organization has agreed to perform for any consumer before such ~~service~~ IMPROVEMENT is fully performed.

8. Non-Profits should not be exempt

The FTC has sued "educational" entities that have nonprofit status but are structured so that founders and their family and friends have high-price contracts for goods or services sold to the nonprofit. Section 1679a should be amended to at least add a qualifying phrase, "and is not for its own profit or that of any person directly or indirectly associated with the organization." The change would endorse the thoughtful interpretation limiting the section's exemption to true nonprofits by the First Circuit Court of Appeals in Zimmerman v. Cambridge Credit Counseling Corp., 409 F.3d 473 (1st Cir. 2005).

Deceptive Credit Monitoring Services

Although the national credit bureaus are victims of many credit repair scams, they themselves have also engaged in deceptive practices. The national credit bureaus have developed another new and lucrative profit center based on consumer fear of inaccuracies in credit reports. Each agency markets a credit-monitoring product directly to consumers. As the agency reported to its shareholders on May 23, 2007:

> Consumer Direct [*online credit reports, scores and monitoring Services]* delivered excellent growth throughout the period, with strong demand from consumers for credit monitoring services, which led to higher membership rates.

In its most recent quarterly filing, the agency reported that its sale of these reports and its credit monitoring products directly to consumers had generated no less than 10% of its operating revenue and one sixth of its credit reporting revenue.

Whether or not their credit monitoring services offer any benefit to consumers, these services have been marketed in a deceptive way to induce consumers to pay for reports they are legally entitled to receive for free, and for fraud monitoring services that the CRAs are already legally obligated to perform. For example, Experian has branded and marketed its misnamed service www.freecreditreport.com.

Concerns over these services must be kept in mind because the CRAs are pushing for an exemption from CROA. We strongly oppose such an exemption.

Experian has been penalized twice by the Federal Trade Commission for deceptively linking subscription-based credit monitoring offers to the federal free annual credit report on request right established by the 2003 FACT Act. In August 2005, Consumerinfo.com paid $950,000 to settle charges by the FTC that Experian offered consumers a free copy of their credit report and "30 FREE days of Credit Check Monitoring" without adequately explaining that after the free trial period for the credit-monitoring service expired, consumers automatically would be charged a $79.95 annual membership unless they notified the defendant within 30 days to cancel the service. Consumerinfo.com billed the credit cards that it had told consumers were "required only to establish your account" and, in some cases, automatically renewed memberships by re-billing consumers without notice. The settlement required Consumerinfo to pay

redress to deceived consumers, barred deceptive and misleading claims about "free" offers, and required clear and conspicuous disclosure of terms and conditions of any "free"offer.

Experian then violated this settlement agreement, and in February 2007 was fined a second time by the FTC for $300,000 to settle charges that its ads for a "free credit report" continued to fail to disclose adequately that consumers who signed up would be automatically enrolled in a credit- monitoring program and charged $79.95.

Although Consumerinfo.com now contains the disclosures, they are in fine print, and the website implies that the truly free report is not "user-friendly" like the free one that comes with the monitoring service .

Moreover, the main Equifax, Transunion and Experian websites all are worse. All prominently mention free credit reports with links that lead to a sign up for their paid monitoring service. Although they each have disclosures somewhere about the price and the distinction between the truly free report, they are obscure and easy to overlook. All three websites make it very difficult to learn about how to get a truly free report, and very easy to respond to a prominent "get my free report" link and inadvertently sign up for a paid services.

Beyond the free report, it is not clear what these credit monitoring services offer beyond the CRA's existing legal duties. The bureaus have been charged by Congress with maintaining "maximum possible accuracy" in consumers' credit reports. Yet, their credit monitoring services ask the consumer to pay to review the accuracy of their credit files. The bureaus should be preventing identity theft, mixed files, and other errors on their own and without charging the consumer for so doing.

Resist Efforts to Weaken CROA

The variety of forms that deception can take, the creativity of those who would exploit consumer's concern for their credit rating, and the variety of actors involved, are all a strong warning against creating any loopholes in CROA's protections against deceptive practices. I have seen a draft of a proposal whose short title is the "Credit Monitoring Clarification Act," (H.R. 2885). NACA, NCLC and U.S. PIRG and other consumer organizations oppose the bill. The line between an offer to help ensure that credit reports "are accurate & free of fraud," as on Equifax's website, and offers to improve a credit report or credit score, covered by CROA, is a fine one. We believe that credit monitoring services should comply with CROA's protections against deception just like other credit repair services.

Unfortunately, H.R. 2885 opens wide, wide loopholes for CROs as well. The proposed amendment to CROA for credit monitoring activities includes broad and sweeping exemptions. Anyone who characterizes their services as providing "access to credit reports, credit monitoring notifications, credit scores ...., any analysis, evaluation or explanation of credit scores . . . ." would be *exempted* from coverage under CROA as long as they provide a new disclosure and cancellation rights for credit monitoring services. In fact, the business would remain exempt *even if it offered to improve credit scores or modify credit reports*, as long as the offer did not promise to remove accurate items that are not obsolete.

Yet as Stuart Pratt of the Consumer Data Industry Association noted in the testimony quoted above, "Today, operators are savvier and often avoid making false

promises but even now they suggest that they will assist the consumer with disputing inaccurate or unverifiable information. In many cases 'unverifiable' equates to the same practice of flooding the system and trying to have accurate, predictive derogatory data removed."

In other words, any business that is currently defined to be a credit repair organization under CROA could simply escape the coverage of CROA by slightly changing the description of what they do and offering, for example, to provide analyses and projections of a person's credit score. CROA's current strict prohibition against deception and fraud would no longer apply to that business.

Below are some examples of the consumer protections in the current law that would not be available under H.R. 2885.

- When run-of-the-mill *credit repair businesses* deceptively advertise their ability to improve consumers' credit scores by exaggerating what they can accomplish, CROA offers protections against this deception.
- When *debt collectors* collect debts by deceptively promising improvement of a consumer's credit rating, CROA's prohibition against deception can be brought to bear.
- Some *payday lenders* are now advertising themselves as credit repair specialists to evade state restrictions on interest rates; activities to which CROA's protections clearly apply.

Moreover, credit monitoring services – which themselves have been marketed in a deceptive manner – would be completely exempt from CROA's prohibition against untruthful or deceptive practices. In fact, it is not even clear that the CRA's need an

exemption from CROA. *See* Hillis v. Equifax Consumer Servs., 237 F.R.D. 491, 515 (D. Ga. 2006) (discussing why credit monitoring services do not seem to be within CROA, but stating "if a credit reporting firm decides to offer a service that falls within the purview of the CROA, there is no reason that the CROA should not apply").

Thank you for the opportunity to testify. Please feel free to contact me for any additional information.

Joanne S. Faulkner is in solo private practice in New Haven CT, restricted to consumer matters, preferably for persons who cannot afford to pay a lawyer. In October, 2002, she received the prestigious Vern Countryman Award from the National Consumer Law Center "for excellence and dedication in the practice of consumer law on behalf of low-income consumers."

She is a past chair of the Consumer Law Section of the Connecticut Bar Association and edited its Newsletter for many years. She was a member of the Federal Reserve Board's Consumer Advisory Council, and has served on advisory committees to the Connecticut Law Revision Commission. She was on the Board of Directors of the National Consumer Law Center (NCLC) and is a trustee thereof. Mrs. Faulkner has lectured for the Connecticut Bar Association on consumer laws, and has assisted NCLC in editing various manuals, including its Truth in Lending Manual, Automobile Fraud Manual, Credit Discrimination Manual, Fair Credit Reporting Act Manual, Fair Debt Collection Manual, and supplements.

She has been involved in groundbreaking nationally reported cases, including Heintz v. Jenkins, 514 U.S. 291 (1995); Connecticut v. Doehr, 501 U.S. 1 (1991); Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057 (9th Cir. 2002); Romea v. Heiberger & Assoc., 163 F.3d 111 (2d Cir. 1998); Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., 111 F.3d 1322 (7th Cir. 1997); Charles v. Lundgren & Associates, P.C., 119 F.3d 739 (9th Cir. 1997); Newman v. Boehm, Pearlstein & Bright, Limited, 119 F.3d 477 (7th Cir. 1997); Poirier v. Alco Collections, Inc., 107 F.3d 347 (5th Cir. 1997); Avila v. Rubin, 84 F.3d 222 (7th Cir. 1996); Clomon v. Jackson, 988 F.2d 1314, 1321 (2d Cir. 1993).

***

NACA, a non-profit association of attorneys and consumer advocates committed to representing customers' interests. Our members are private attorneys, JAG officers from the various service branches, state attorneys general deputies and other public sector attorneys, legal services attorneys, law professors and law students whose primary focus is the protection and representation of consumers. We do not admit to membership anyone associated with a credit repair organization.

The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. NCLC provides expert legal advice to attorneys across the nation on a daily basis to assist in combating unfair and deceptive practices targeted at consumers, including credit repair services. Fair Credit Reporting (6th ed. 2006) is one of the eighteen practice treatises that NCLC publishes and annually supplements.

U.S. PIRG serves as the federation of state Public Interest Research Groups. PIRGs are non-profit, non-partisan public interest advocacy organizations with one million members around the country.

Consumer Federation of America (CFA) is a non-profit association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumer's interest through advocacy and education.

The New York Times
nytimes.com

July 23, 1988

CONSUMER'S WORLD; Need Credit? Be Wary Of Clinics Offering Help

By LEONARD SLOANE

LEAD: It was the most extreme case of credit-repair abuse ever uncovered: 9,000 people around the nation defrauded of about $2 million they had paid Credit-Rite Inc. to restore their eligibility for various forms of credit. Two of the operators of Credit-Rite, a New Jersey concern, were sentenced to prison terms this week in Federal District Court in

It was the most extreme case of credit-repair abuse ever uncovered: 9,000 people around the nation defrauded of about $2 million they had paid Credit-Rite Inc. to restore their eligibility for various forms of credit. Two of the operators of Credit-Rite, a New Jersey concern, were sentenced to prison terms this week in Federal District Court in Trenton, and the third received a suspended sentence.

Credit-repair clinics are profit-making ventures that, by their very nature, often operate at the edge of the law, thwarting the maintenance of orderly credit records in behalf of clients who have bad credit histories.

The clinics promise to help remove derogatory information from individuals' credit files, and charge as much as $2,000 for the service. They take advantage of a provision of the Fair Credit Reporting Act that gives consumers the right to challenge the information about them that credit bureaus have on file. This provision requires a credit bureau to verify the information upon request, generally within 30 days. If verification is not completed on time, the disputed data must be deleted. Company Guaranteed Results

Charlie Mae McCray of Cleveland testified at the Credit-Rite trial that she had paid more than $500 to clear up her credit record. The company had guaranteed results, but nothing was done. "I complained, I wrote letters, but I didn't get any response to my satisfaction," she said. "I still haven't received any money back."

Anne C. Singer, the Assistant United States Attorney in New Jersey who handled the Credit-Rite case, said: "It's impossible to perform this service as promised if someone's credit history is correct. The people involved in running these businesses raise the hopes of low- and moderate-income people, and then their hopes are dashed."

In another credit-repair clinic case this week in Los Angeles, the operator of Wise Credit Counselors was convicted and sentenced to probation and community service by a Municipal Court judge, who also ordered full restitution to the 13 victims. Corrections Without Fees

Individuals who feel their credit records have inaccuracies can go directly to a local credit bureau and ask that they be corrected. There are also nonprofit credit counseling services around the country that will help consumers develop workable budgets and pay off their bills.

Many credit-repair clinics also promise to obtain credit cards for people who have been refused by card issuers. There are about 30 million such people in the United States, cut off from such basic transactions as renting a car or making travel reservations because they do not have a card. Cards provided through credit-repair clinics are usually secured by a deposit made by the card holder in the bank that issues the card.

But some banks offer secured cards directly to consumers without charging the hundreds of dollars in application and membership fees exacted by many credit-repair clinics. Beyond that, only 4 out of every 10 applicants who pay fees for secured cards eventually get cards, according to H. Spencer Nilson, the publisher of the Nilson Report, a credit-card newsletter in Los Angeles.

But the blizzard of challenges to credit bureaus is the essential operating method of credit-repair clinics.

"The objective is to overwhelm the established system," said Walter R. Kurth, the president of Associated Credit Bureaus, a trade association.

Credit-repair operators do not necessarily disagree. "The credit bureaus have exercised too much power," said Paul Turk, general manager of City Wide Financial Services, a clinic in Los Angeles.

TRW Information Services, a credit-bureau chain based in Orange, Calif., refuses to do business with credit clinics. "We have a procedure in place when we feel consumers have been involved with a credit clinic, whereby we notify them we don't deal with third-party contacts," said Delia Fernandez, a spokeswoman. This policy is being contested in a lawsuit by the American Association of Credit, a Glendale, Calif., clinic. The case is pending. Equifax Inc., which owns a chain of credit bureaus, also makes "every effort to circumvent dealing with clinics," said Annette Aurrecoecher, a vice president of the Atlanta company. "But if a clinic has a notarized letter from a consumer, we feel there is an obligation to deal with it." 'Fly-by-night' Companies

Bills were proposed in both houses of Congress early last year to restrict the practices of credit-repair clinics, but no hearings have been scheduled. Seventeen states have passed laws regulating the clinics' advertising and business practices, yet residents of those states are often solicited by clinics in nearby states.

"We continue to be very concerned," said Kathleen V. Buffon, the Federal Trade Commission's assistant director of credit practices. "These companies tend to be fly-by-night."

Whether or not consumers use a credit-repair clinic, information that has been correctly recorded in a credit bureau file cannot be permanently removed until the problem is corrected or until the time provided by law has elapsed.

"The only way to acquire a good credit record is to straighten up your act," said Jeanne Hogarth, an assistant professor of consumer economics and housing at Cornell University. "There is no magic wand that these repair clinics can raise."