

Testimony of Edward L. Yingling  
On Behalf of the American Bankers Association  
Before the  
Subcommittee on Financial Institutions and Consumer Credit  
Of the Committee on Financial Services  
United States House of Representatives  
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Mr. Chairman, I am Edward Yingling, Executive Vice President of the American Bankers Association (ABA). ABA brings together all elements of the banking community to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings institutions, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Mr. Chairman, we appreciate your holding hearings on the Fair Credit Reporting Act (FCRA) and the issue of protecting customer information, including medical information. There is no higher priority for the banking industry than the responsible use and protection of customer information. The banking industry has a long history of earning the trust of its customers and, in particular, of protecting their private financial information. Indeed, our extensive survey work shows that consumers trust banks more than virtually any other institution to protect their information. Before I address medical privacy specifically, I would like to set the context for this discussion by very briefly outlining the core philosophy of the banking industry regarding responsible use of information and the importance of preserving the FCRA for our economy. Thus, in my testimony today, there are three main themes:

- The cornerstone of successful banking is preserving the trust of our customers and that only can be accomplished by the protection and responsible use of their financial information;
- Preserving a voluntary, national credit reporting system is critical to the U.S. economy;  
and

- Medical or health information should be private and should not be used in the credit granting process, except in those specific cases where it is directly relevant. In those cases, medical information should only be obtained with the consent of the customer.

Let me briefly discuss each of these themes.

## **Preserving Trust is the Cornerstone of Banking**

The industry values the trust customers have that banking institutions will protect their personal financial information. Not only is protecting privacy the right thing to do, the highly competitive financial market demands it. No bank can be successful without having a strong reputation for protecting the confidentiality of customer information. In fact, our survey work shows this reputation for trust is both strong among consumers and central to banking's place in the competitive marketplace.

We are now in the middle of a revolution in information technology that has dramatically changed the way information is gathered, used and stored. This rapidly changing technological landscape raises exciting new possibilities to provide customers with new and innovative products, to increase convenience, and to lower costs. At the same time, this changing technology raises important questions about the appropriate use of information and the need to make sure we meet the expectations of our customers that information be used responsibly. While technologies have changed, the importance of preserving customer trust and confidentiality of personal information has not – it remains a core value of the banking industry.

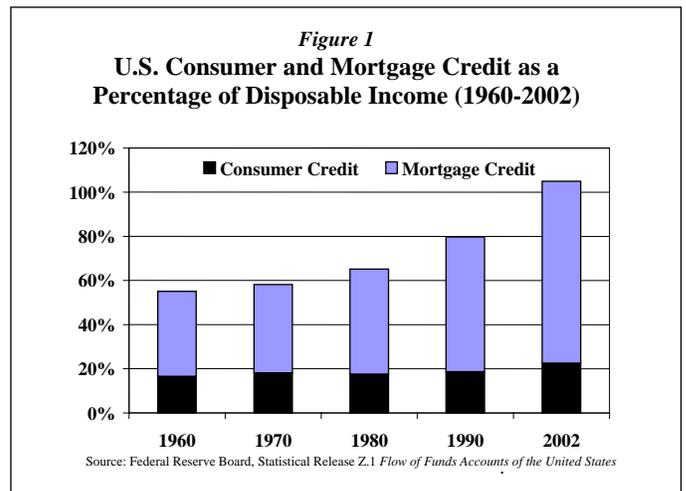
## **Preserving a National Credit Reporting System is Critical to the U.S. Economy**

One of the keys to the strength and resiliency of the U.S. economy is the efficiency of the consumer credit markets. U.S. consumers have access to more credit, from a greater variety of sources, more quickly, and at lower cost than consumers anywhere else in the world. Over the last several years, particularly, the ability of consumers to use portions of their home equity for other

purposes has given them a level of financial flexibility that has helped consumer spending remain strong as other portions of the economy faltered.

***What makes this possible is a nationwide, seamless, and reliable system of credit reporting.*** Such a system would be impossible without the Fair Credit Reporting Act. For businesses – retailers, insurers, banks, employers, landlords and others – FCRA has helped them to make smart, immediate decisions that keep sales up, prices down and losses at a minimum. For consumers, it means they can walk into an auto dealership and drive off with a new car on the same day. They can move across the country and open a bank account without hassle. Picking up the phone or going online, homeowners can compare mortgage rates across the country and refinance quickly to take advantage of falling interest rates. Consumers can easily take advantage of varied credit card offers to obtain the best credit card deal for them. It allows them to shop around for the best rates on any loan commensurate with their credit history. By enabling complete and accurate credit histories, it has also helped expand credit access to millions of Americans who otherwise might not been able to get it.

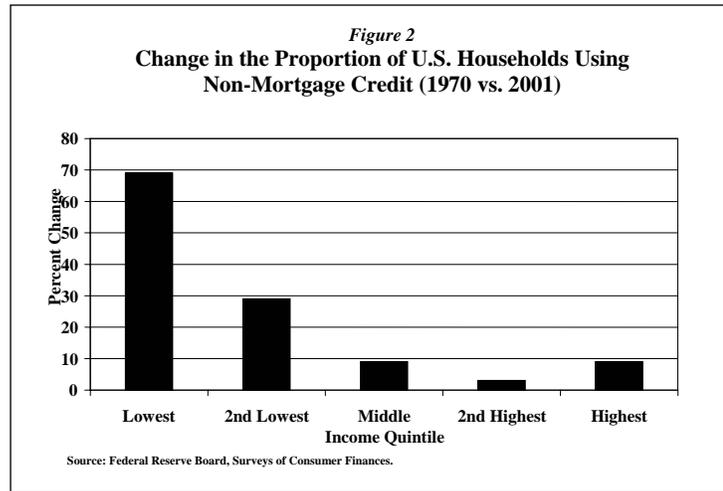
These findings are confirmed by a recent study by professors Michael E. Staten and Fred H. Cate entitled *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation*.<sup>1</sup> The authors demonstrate that the role of household credit in the U.S. economy, especially mortgage credit, has grown dramatically since the passage of FCRA (see Figure 1). They state: “Credit markets help translate optimism into real economic activity. In this way, *smoothly functioning credit markets facilitate and extend economic expansion.*”



<sup>1</sup> Michael E. Staten is the Distinguished Professor and Director of the Credit Research Center at the McDonough School of Business, Georgetown University and Fred H. Cate is the Distinguished Professor and Ira C. Batman Faculty Fellow at the Indiana University School of Law-Bloomington.

The authors also document the impact of credit reporting on traditionally underserved Americans. They state: “One of the more remarkable achievements attributable to the development of comprehensive credit reporting is the increased access to credit down the household income spectrum in the U.S. over the past three decades.” (Refer to Figure 2.)

The intuition behind this is straightforward: detailed and reliable information on past payment behavior gives lenders confidence in assessing the creditworthiness of new borrowers



and allows them to design products to meet the needs of previously underserved populations. And because the credit-reporting infrastructure helps to support broader access to credit, it can enhance asset and wealth accumulation – an effect particularly pronounced for younger households.

Professors Cate and Staten extend their analyses to the implications of not continuing the preemptions under FCRA which enable a national standard. They conclude that: “Proposals to depart from a national reporting system by allowing states to intervene run the risk of upsetting the carefully balanced interests under FCRA, and diluting the benefits that flow from the existing system.” I have made copies of this study, sponsored by the Financial Services Coordinating Council of which ABA is a member, available to this committee.

Simply put, the U.S. credit system works and is the envy of the world. Anything that increases the cost of access to information, or decreases its quality, would reduce the flow of credit in our economy and significantly impact retail sales and the housing markets. With \$8 trillion in consumer credit outstanding, even the slightest change or uncertainty about the consistency and completeness of credit histories can have a huge economic consequence. This is why the reauthorization of FCRA, and in particular the pre-emption of state laws which assures a national, consistent and complete system, is so important.

## **Medical and Health Information In the Credit Granting Process – Limited Use and Only With Customer Permission**

It would seem obvious that medical information is at the top of the list of personal information about which consumers are concerned, and, indeed, our survey work confirms that. Throughout its history, the banking industry has protected the medical information of its customers whenever that information has been made available to banks. Therefore, our approach to medical information is straightforward. With respect to banks, *medical information should only be used for the express purpose for which it is provided and should not be shared without the express consent of the customer*. More specifically, concern has been expressed that lenders might use medical information obtained elsewhere in making a credit decision. ABA's position is that such use of medical information in a credit decision obtained without the knowledge and consent of the borrower is just plain wrong. Let me explain further.

The general approach is that medical and health information should not be used at all when making credit decisions. However, there are a limited number of instances where medical information is relevant – for example, in sole proprietorships or small businesses where the franchise value of the firm hinges on one or two key individuals. In such cases, insurance on the key individuals might be required. However, in those instances, the prospective borrower will know what information is required, and can expressly consent to its being obtained and used. Otherwise the lender should not obtain medical information.

Thus, in general, medical and health information should not be sought during the credit-granting process. In those types of loans where it is directly relevant, the information should only be obtained with the consent of the potential borrower. Finally, any such information obtained should be kept strictly confidential by the lender.

ABA has been a leader in helping banks assess every aspect of how they collect, use and distribute information – from who sees the information, to how it is stored and updated; from how it is used to benefit the customer, to how it is protected. For example, three years ago, we convened a select group of bankers to work on privacy issues. One of the many results of this task force was a Privacy Toolbox designed to help banks assess their information practices, comply with the

requirements of the Gramm-Leach-Bliley Act (GLB Act), train employees on handling sensitive information, and communicate to customers about how their information is protected.

ABA's Privacy Task Force went further in this toolbox than just the requirements of GLB Act to address both medical privacy and identify theft. Regarding medical privacy, the Task Force believed it important to reassure customers and the public at large that, to the extent banks possess medical information on a customer, it will be held sacred. This would include, for instance, information on payments made by a customer to a medical facility. Therefore, ABA's task force set forward the following principle:

### **Medical Information Will Not Be Shared**

Financial institutions recognize that, when consumers provide medical information for a specific purpose, they do not wish it to be used for other purposes, such as for marketing, or in making a credit decision. If a customer provides personal medical information to a financial institution, the financial institution will not disclose the information, unless authorized by the customer.

In addition, we encouraged banks to either add language to their privacy policies – or create a separate privacy document – promising to keep medical information confidential.

## **Conclusion**

Mr. Chairman, the banking industry is built on trust. Protecting customer information is absolutely necessary to maintaining that trust. How information is collected, used, and protected is an issue not just for banks; it is an issue of economic health for our nation. Efficient consumer credit markets are vital to a thriving economy, and efficiency demands a nationwide, seamless, and reliable system of credit reporting. Such a system would be impossible without the Fair Credit Reporting Act. Protecting medical and health information is extremely important and should only be used when directly relevant to the credit granting process, and then only with the permission of the potential borrower.

Mr. Chairman, the ABA appreciates the opportunity to testify today, and I would be happy to answer any questions you, or the subcommittee members, may have.