No. 22-846

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT RURAL HOUSING SERVICE, PETITIONER

v.

REGINALD KIRTZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the civil-liability provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, unequivocally and unambiguously waive the sovereign immunity of the United States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-34a) is reported at 46 F.4th 159. The opinion of the district court (Pet. App. 35a-48a) is not published in the Federal Supplement but is available at 2021 WL 1750141.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 2022. A petition for rehearing was denied on November 3, 2022 (Pet. App. 49a-50a). On January 17, 2023, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including March 3, 2023, and the petition was filed on that date. The petition for a writ of certiorari was granted on June 20, 2023. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-52a.

STATEMENT

Respondent filed suit in the United States District Court for the Eastern District of Pennsylvania, alleging that the United States Department of Agriculture Rural Development Rural Housing Service (USDA) and other defendants violated provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* The district court granted the government's motion to dismiss on sovereign-immunity grounds. Pet. App. 35a-48a. The court of appeals reversed. *Id.* at 1a-34a.

A. Statutory Background

1. In 1970, Congress enacted the Fair Credit Reporting Act (FCRA or 1970 Act), Pub. L. No. 91-508, Tit. VI, 84 Stat. 1127 (15 U.S.C. 1681 *et seq.*), to "promote efficiency in the Nation's banking system and to protect consumer privacy," *TRW Inc.* v. *Andrews*, 534 U.S. 19, 23 (2001). See 15 U.S.C. 1681(b).

As originally enacted in 1970, FCRA principally imposed duties on "consumer reporting agenc[ies]," defined as entities engaged in "assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties." 1970 Act, sec. 601, § 603(f), 84 Stat. 1129; see sec. 601, §§ 604, 605, 607-614, 84 Stat. 1129-1133. Congress's express goal in imposing those duties was "to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit * * * in a manner which is fair and equitable to the consumer" and is conducted with a "respect for the consumer's right to pri-

vacy." Sec. 601, § 602(a)(4) and (b), 84 Stat. 1128; see *TRW*, 534 U.S. at 23.

The 1970 Act also required "users of consumer reports," such as potential creditors, to inform consumers of the reasons for any adverse actions taken on the basis of information in the relevant consumer report. Sec. 601, § 615, 84 Stat. 1133. And a provision codified at 15 U.S.C. 1681d imposed certain conditions on when a "person" could "procure or cause to be prepared an investigative consumer report on any consumer." Sec. 601, § 606(a), 84 Stat. 1130; see sec. 601, § 606(b), 84 Stat. 1130. The 1970 Act defined "person" as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity." Sec. 601, § 603(b), 84 Stat. 1128 (15 U.S.C. 1681a(b) (1970)).

In its remedial provisions, the 1970 Act provided that "[a]ny consumer reporting agency or user of information" that violated FCRA's provisions would be subject to civil liability. Sec. 601, §§ 616, 617, 84 Stat. 1134 (15 U.S.C. 1681n, 1681*o* (1970)). Such liability could include actual damages, costs, reasonable attorney's fees, and, in the case of willful violations, punitive damages. *Ibid.* The 1970 Act also imposed criminal liability on officers and employees of consumer reporting agencies who disclosed consumer information without authorization. Sec. 601, § 620, 84 Stat. 1134 (15 U.S.C. 1681r (1970)). And a separate provision, codified at 15 U.S.C. 1681q, imposed criminal liability on "[a]ny person" obtaining consumer information "under false pretenses." Sec. 601, § 619, 84 Stat. 1134.

The 1970 Act did not otherwise contain any substantive requirements or remedial provisions applying directly to a "person," as opposed to "consumer reporting

agencies" or "users of information." Instead, with the exception of Sections 1681d and 1681q, the 1970 Act used "person" or "persons" only in provisions imposing duties on consumer reporting agencies with respect to a "person." *E.g.*, § 604(3), 84 Stat. 1129 (identifying circumstances in which a consumer reporting agency may furnish a consumer report to a "person") (codified at 15 U.S.C. 1681b(a)(3)); § 613(1), 84 Stat. 1133 (requiring consumer reporting agencies to make disclosures to consumers about "the name and address of the person to whom [certain] information is being reported") (codified at 15 U.S.C. 1681k(a)(1)); see, *e.g.*, sec. 601, §§ 607, 610-612, 615, 620, 84 Stat. 1130-1134.

2. In 1996, Congress amended FCRA by expanding the Act's regulatory focus beyond consumer reporting agencies to include "persons" who furnish information to those agencies. See Consumer Credit Reporting Reform Act of 1996 (1996 Act), Pub. L. No. 104-208, Div. A, Tit. II, Subtit. D, ch. 1, 110 Stat. 3009-426. The 1996 Act added, among other things, a requirement that a "person" conduct an investigation and take specific steps "[a]fter receiving notice * * * of a dispute with regard to the completeness or accuracy of any information provided by [the] person to a consumer reporting agency." Sec. 2413(a), § 623(b)(1), 110 Stat. 3009-448; see 15 U.S.C. 1681s-2(b)(1).

The 1996 Act also amended FCRA's remedial provisions. It changed the subject of the general civil-liability provisions from "[a]ny consumer reporting agency or user of information" to "[a]ny person"; provided for statutory damages in addition to actual and punitive damages; expanded the availability of attorney's fees; and enhanced the criminal penalties applicable to "person[s]." 1996 Act §§ 2412(a)-(e), 2415, 110 Stat. 3009-

446 to 3009-447, 3009-450; see 15 U.S.C. 1681n, 1681*o*, 1681q. The 1996 Act additionally authorized state governments to bring actions seeking damages and injunctive relief against "person[s]" who violate FCRA, and the Federal Trade Commission (FTC) to bring enforcement actions against such "person[s]" seeking civil penalties under the procedures set out in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* §§ 2416, 2417, 110 Stat. 3009-450 to 3009-452; see 15 U.S.C. 1681s(a)-(d).[1]

The 1996 Act did not, however, revisit or revise the definition of "person" in the 1970 Act. Nor did Congress include any provision specifically stating that the general remedial provisions in Sections 1681n and 1681*o* applied to the governmental entities that Congress had included within the definition of "person" in the more limited 1970 version of FCRA.

B. Proceedings Below

1. The United States Department of Agriculture operates the Rural Housing Service, which offers loans and other financial services to promote housing in rural areas. Pet. App. 4a; see 7 U.S.C. 6943. Respondent received such a loan and later filed suit against USDA, another loan provider, and a consumer reporting agency. Pet. App. 4a-5a, 36a-37a. He alleges that he has fully paid the loan, but that the consumer reporting agency issued a credit report erroneously indicating that payments were past due. *Ibid.*; see Am. Compl. ¶¶ 11-12.

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[1] The Consumer Financial Protection Bureau now shares enforcement authority with the FTC. See Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, Tit. X, Subtit. H, § 1088(a)(10), 124 Stat. 2088-2090 (15 U.S.C. 1681s(b)(1)(H)).

Respondent further alleges that he sent a dispute letter to the credit reporting agency and that the credit reporting agency alerted USDA to the issue, but that USDA failed to make a good-faith effort to investigate or correct the disputed information. Pet. App. 4a-5a, 36a-37a. Respondent claims that USDA thereby violated 15 U.S.C. 1681s-2(b)(1)—a provision added by Section 2413(a) of the 1996 Act, 110 Stat. 3009-448—which imposes those corrective obligations on persons that furnish credit information to consumer reporting agencies. Pet. App. 4a n.1, 37a. And, asserting that the alleged violations were both negligent and willful, see *id.* at 4a, 37a, respondent seeks actual, statutory, and punitive damages, as well as attorney's fees under FCRA, see Am. Compl. 12.

2. USDA moved to dismiss the claims against it on the ground that FCRA does not waive the sovereign immunity of the United States for purposes of imposing monetary liability under the remedial provisions in Sections 1681n and 1681*o*. See Pet. App. 5a, 37a-38a. The district court granted the motion, *id.* at 35a-48a, and entered a partial final judgment under Federal Rule of Civil Procedure 54(b) on the claims naming USDA, D. Ct. Doc. 38 (June 9, 2021).

The district court observed that a "waiver of the government's immunity 'must be unequivocally expressed in statutory text,'" Pet. App. 38a (quoting *Lane* v. *Pena*, 518 U.S. 187, 192 (1996)), and that "[e]ven when a waiver is unequivocally expressed, the scope of that waiver must be strictly construed in favor of the government, settling any ambiguity in favor of immunity," *ibid.* (citing *United States* v. *Williams*, 514 U.S. 527, 531 (1995)). The court further explained that "[a]mbiguity exists when there is a 'plausible' reading of the statute that

does not impose 'monetary liability on the Government.'" *Ibid.* (quoting *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 37 (1992)).

The district court found nothing implausible about reading FCRA's liability provisions to preserve sovereign immunity. The court observed that "reading 'person' to include the United States and its agencies throughout FCRA would lead to illogic[al] results," such as "subject[ing] the United States to criminal penalties," authorizing "'state and federal enforcement' actions" against the federal government, and "expos[ing] the Government to punitive damages." Pet. App. 42a-44a. The court also observed that "another section" of FCRA expressly authorizes claims against the United States, thereby "demonstrat[ing] that Congress uses particular and explicit language in waiving immunity," which it did not use in the provisions at issue in this case. *Id.* at 44a-45a; see 15 U.S.C. 1681u(j) (providing damages actions against "[a]ny agency or department of the United States" for certain prohibited disclosures of information provided to the Federal Bureau of Investigation (FBI)). Similarly, the court noted that other statutes waiving sovereign immunity "expressly mention 'the United States'" in their "liability sections," whereas a waiver here would have to be "deduced from broad language in the definition section" of FCRA. Pet. App. 45a-46a (citing 28 U.S.C. 1346(a), 2674).

3. The court of appeals reversed. Pet. App. 1a-34a.

In the court of appeals' view, FCRA's "express definition" of "'person,'" "'for purposes of this subchapter,'" necessarily applies to the statute's "enforcement provisions." Pet. App. 8a (quoting 15 U.S.C. 1681a(a) and (b)). The court thus construed the statute to "operate[] as a waiver of sovereign immunity." *Id.* at 11a.

The court viewed that construction to be dictated by the statute's "clear and unambiguous terms," and to be "reinforced" by the fact that, unlike some other statutes, FCRA does not "expressly preserve[] the United States' sovereign immunity against civil suits," *id.* at 11a-12a, 14a; see *id.* at 11a-17a, 31a-34a.

The court of appeals acknowledged that uniformly including the federal government each time FCRA's remedial provisions apply to a "person" would produce anomalous results, such as exposing the United States to punitive damages, criminal penalties, and enforcement actions by the FTC and States. Pet. App. 21a-28a. But the court advanced a rationale for avoiding certain forms of FCRA liability against the United States while allowing others. *Id.* at 22a-26a. In its view, it could "depart[] from a statutory definition," but "only to the extent necessary to avoid untenable—not merely implausible—results." *Id.* at 22a. It accordingly interpreted FCRA not to waive federal sovereign immunity with respect to criminal liability because "[i]t would be absurd * * * to subject the federal government to criminal prosecution," *ibid.*, while at the same time interpreting FCRA to nonetheless waive federal sovereign immunity for punitive damages, enforcement actions by federal agencies and States—which it considered merely "implausible," *id.* at 25a—and private damages actions like respondent's. See *id.* at 25a-27a.

SUMMARY OF ARGUMENT

The court of appeals erred in concluding that Congress has unequivocally and unambiguously waived the United States' sovereign immunity to private damages suits under the general remedial provisions of FCRA, 15 U.S.C. 1681n and 1681*o*. FCRA lacks either of the hallmarks of a sovereign-immunity waiver: It has no

provision that expressly addresses and withdraws sovereign immunity, and inferring an unspoken waiver of sovereign immunity is not necessary to give effect to any of the statutory language. By reading a waiver into the statute nonetheless, the court of appeals misread its text, disregarded context, contradicted this Court's precedent, and created profound anomalies in the statute's operation.

It "long has been established * * * that the United States, as sovereign, 'is immune from suit save as it consents to be sued.'" *United States* v. *Testan*, 424 U.S. 392, 399 (1976) (citation omitted). Thus, in order to bring a successful suit against the United States, a plaintiff must identify not only an applicable cause of action but also an unambiguous congressional waiver of sovereign immunity. Those requirements are "analytically distinct," *FDIC* v. *Meyer*, 510 U.S. 471, 484 (1994) (citation omitted), and a plaintiff cannot make the requisite showing "if there is a plausible interpretation of the statute that would not authorize money damages against the Government," *FAA* v. *Cooper*, 566 U.S. 284, 290-291 (2012).

This Court has found an unambiguous waiver of sovereign immunity "in only two situations." *Financial Oversight & Management Board for Puerto Rico* v. *Centro de Periodismo Investigativo, Inc.*, 143 S. Ct. 1176, 1184 (2023). Neither is present here. The first is when "a statute says in so many words that it is stripping immunity." *Ibid.* Nobody contends that is true of FCRA. The second is "when a statute creates a cause of action," that cause of action "expressly authorize[s] suits against sovereigns," and "recognizing immunity" would "negate[]" that express authorization. *Ibid.* That type of waiver is likewise absent here.

When the Court has found that Congress's creation of a cause of action also effected a waiver of sovereign immunity, the cause of action itself referred explicitly to sovereign entities—a reference that would be effectively superfluous if sovereign immunity were applicable. Where the statutory cause of action does not refer specifically to sovereign defendants, however, a "general authorization for suit in federal court" is insufficient to waive sovereign immunity even if that authorization uses general terms that are broad enough to cover sovereign entities. *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234, 246 (1985). Congress's consistent practice as well as this Court's decision in *Employees of the Department of Public Health & Welfare* v. *Department of Public Health & Welfare*, 411 U.S. 279 (1973), illustrate that Congress does not waive sovereign immunity simply by cross-referencing a broad general definition. Because Sections 1681n and 1681*o* do not themselves refer specifically to sovereign defendants, and no word in those provisions or elsewhere is rendered superfluous by a sovereign-immunity defense available only to a small subset of "person[s]," the general remedies' reference to "person[s]" does not unequivocally and unambiguously waive sovereign immunity.

In any event, even if a cross-reference could in some circumstances communicate an unequivocal congressional intent to waive immunity, it is far from clear that Congress intended the definition of "person" in the more limited original version of FCRA to apply to the civil remedies adopted more than a quarter-century later. As this Court has recognized, a general definition need not invariably apply across a statute, *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 320 (2014), and

context shows that FCRA sometimes uses "person" in its more natural, non-sovereign sense. Even the court of appeals, for example, recognized that it would be "absurd" to think that the United States and federal agencies qualify as "'person[s]'" within the meaning of the statute's criminal provision. Pet. App. 22a; see 15 U.S.C. 1681q. It is at least plausible to interpret the civil provisions that Congress applied to "person[s]," 15 U.S.C. 1681n and 1681*o*, to have a similarly restrained scope.

The court of appeals' contrary view gives rise to a number of insoluble incongruities. It necessarily attributes to the 1996 Congress an intent to waive not only federal sovereign immunity, but also state sovereign immunity—something that this Court had just told Congress it could not do under the Commerce Clause. *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996). It would be inconsistent with FCRA's express authorization of suits against the federal government in a different provision that specifically allows money damages for certain violations by "[a]ny agency or department of the United States." 15 U.S.C. 1681u(j). It would read FCRA's general remedies to supersede the more limited remedies against the United States under the carefully calibrated provisions of the Privacy Act of 1974 (Privacy Act), Pub. L. No. 93-579, 88 Stat. 1896 (5 U.S.C. 552a), which addresses similar matters. And it would do all of that without any evidence in the legislative record that Congress was actually trying to waive sovereign immunity.

The better inference—at a minimum, a plausible one—is that Congress did not make a deliberate and evident waiver decision, as required by this Court's

sovereign-immunity jurisprudence. The court of appeals' contrary decision should be reversed.

ARGUMENT

THE FAIR CREDIT REPORTING ACT DOES NOT WAIVE THE UNITED STATES' SOVEREIGN IMMUNITY FOR CLAIMS UNDER 15 U.S.C. 1681n AND 1681*o*

Congress has not waived the United States' sovereign immunity from suit for claims under 15 U.S.C. 1681n and 1681*o*. No provision of FCRA expressly states that the federal government is waiving its sovereign immunity for such claims. And the remedial provisions themselves are not enough to provide the requisite unequivocal and unambiguous waiver of sovereign immunity. The provisions do not by their terms clearly apply to federal entities, let alone clearly revoke the sovereign-immunity defense that the United States presumptively retains even against express causes of action. It is, at a minimum, plausible to interpret them as applying solely to non-sovereigns, and the court of appeals accordingly erred in adopting a contrary interpretation.

A. A Waiver Of Sovereign Immunity Requires Unmistakably Clear Statutory Language

A suit against a sovereign requires not just a cause of action, but a withdrawal of sovereign immunity as well. That withdrawal must be unequivocal and unambiguous; a liability-creating statute is subject to a sovereign-immunity defense whenever it is plausible to construe it that way.

1. A cause of action is ineffective against the sovereign unless accompanied by a waiver of sovereign immunity

"The essence of sovereign immunity * * * is that remedies against the government differ from general remedies principles applicable to private litigants." *Sossamon* v. *Texas*, 563 U.S. 277, 291 n.8 (2011) (internal quotation marks omitted). For the federal government to be exposed to suit, Congress must provide not only a substantive cause of action, but also a waiver of the sovereign-immunity defense that the United States could otherwise invoke.

"When the Constitution was ratified, it was well established in English law that the Crown could not be sued without consent in its own courts." *Alden* v. *Maine*, 527 U.S. 706, 715 (1999). Accordingly, "[t]he generation that designed and adopted our federal system considered immunity from private suits central to sovereign dignity." *Ibid.*; see, *e.g.*, *The Federalist No. 81*, at 548 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) ("It is inherent in the nature of sovereignty, not to be amenable to the suit of an individual without its consent.") (emphasis omitted). The Founders embraced that understanding of sovereignty in our constitutional structure, and it thus "long has been established * * * that the United States, as sovereign, 'is immune from suit save as it consents to be sued.'" *United States* v. *Testan*, 424 U.S. 392, 399 (1976) (quoting *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941)).

The United States' immunity, like that of other sovereigns, is "'analytically distinct'" from the question of whether a plaintiff "ha[s] a cause of action for damages." *FDIC* v. *Meyer*, 510 U.S. 471, 483-484 (1994) (citation omitted); see, *e.g.*, *Wyatt* v. *Cole*, 504 U.S. 158, 173 (1992) (Kennedy, J., concurring) (explaining that

questions of "immunity" are "distinct" from the "element[s] of a plaintiff's cause of action"). A sovereign invokes its immunity as a "defense * * * that it is not amenable to suit." *International Primate Protection League* v. *Administrators of Tulane Educational Fund*, 500 U.S. 72, 86 (1991). And the Court has described federal sovereign immunity, in particular, as "jurisdictional in nature." *Meyer*, 510 U.S. at 475.

Accordingly, to impose liability on a sovereign, a plaintiff must identify both a "source of substantive law" that "provides an avenue for relief" *and* "a waiver of sovereign immunity." *Meyer*, 510 U.S. at 484. Congress has expressly provided, for example, both that the Postal Service "shall be considered to be a 'person'" for purposes of certain specified trademark and consumer protection laws, 39 U.S.C. 409(d)(1)(A), and that the Postal Service "shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service," 39 U.S.C. 409(d)(1)(B). If treating a federal agency as a "person" within the meaning of a civil cause of action were enough to establish an unequivocal waiver of sovereign immunity, Congress would have had no need to include the second provision.

2. *A waiver of sovereign immunity must be unequivocal and unambiguous*

The foundational nature of sovereign immunity is reflected in the "stringent" standard that this Court applies in assessing whether it has been abrogated or waived. *Financial Oversight & Management Board for Puerto Rico* v. *Centro de Periodismo Investigativo, Inc.*, 143 S. Ct. 1176, 1183 (2023). In addressing sovereign-immunity questions, the Court has "invoked [a] clear-

statement rule, and applied it equivalently, in cases naming the federal government, States, and Indian tribes as defendants." *Ibid*; see, *e.g.*, *id.* at 1183 n.3 (equating abrogation and waiver standards). Specifically, "[u]nder long-settled law, Congress must use unmistakable language to abrogate sovereign immunity." *Id.* at 1180.

It is thus "a common rule, with which [courts] presume congressional familiarity, that any waiver of the National Government's sovereign immunity must be unequivocal." *United States Department of Energy* v. *Ohio*, 503 U.S. 607, 615 (1992) (citation omitted); see *Lane* v. *Pena*, 518 U.S. 187, 192 (1996). The Court's clear-statement rule requires that "[a]ny ambiguities in the statutory language are to be construed in favor of immunity, so that the Government's consent to be sued is never enlarged beyond what a fair reading of the text requires." *FAA* v. *Cooper*, 566 U.S. 284, 290 (2012) (citation omitted). And "[a]mbiguity exists if there is a plausible interpretation of the statute that would not authorize money damages against the Government." *Id.* at 290-291.

As this Court has explained in the parallel context of state sovereign immunity, "[t]he requirement of a clear statement in the text of [a] statute ensures that Congress has specifically considered * * * sovereign immunity and has intentionally legislated on the matter." *Sossamon*, 563 U.S. at 290-291; see *id.* at 285 n.4 (observing that "the strict construction principle" applies equally to state and federal sovereign immunity). The Court has been "particularly alert to require a specific waiver of sovereign immunity before the United States may be held liable" for "monetary exactions," *United States* v. *Idaho*, 508 U.S. 1, 8-9 (1993), in light of Con-

gress's exclusive power of the purse, see *OPM* v. *Richmond*, 496 U.S. 414, 424-434 (1990); *United States* v. *Shaw*, 309 U.S. 495, 501-502 (1940). "[T]he allocation of scarce resources among competing needs and interests lies at the heart of the political process," and were the federal government to be stripped of sovereign immunity without consent, "private suits for money damages would place unwarranted strain on the [government's] ability to govern in accordance with the will of [its] citizens." *Alden*, 527 U.S. at 750-751.

B. FCRA's General Remedial Provisions Do Not Contain An Unmistakably Clear Waiver Of The United States' Immunity

As the Court observed last Term, it has found the clear statement that is necessary to eliminate sovereign immunity "in only two situations." *Financial Oversight & Management Board*, 143 S. Ct. at 1184. The first is where Congress has addressed immunity directly and expressly withdrawn it. *Ibid.* The second is where Congress has prescribed a remedial scheme that explicitly singles out a sovereign as a potential defendant, such that entertaining a sovereign-immunity defense would negate the express terms of the statute. *Ibid.* FCRA's general remedial scheme under Sections 1681n and 1681*o* "fits neither of those two molds." *Ibid.*

*1. Congress has not waived sovereign immunity by directly addressing it in Sections 1681n or 1681*o

The first type of waiver arises when "a statute says in so many words that it is stripping immunity." *Financial Oversight & Management Board*, 143 S. Ct. at 1184. "Congress, for example, has provided that States 'shall not be immune,' under any 'doctrine of sovereign immunity, from suit in Federal court' for patent or copy-

right infringement. *Ibid.* (quoting 17 U.S.C. 511(a), 35 U.S.C. 296(a)). "Those provisions * * * 'could not have made any clearer Congress's intent' to abrogate immunity." *Ibid.* (citation omitted).

The U.S. Code contains many examples of Congress addressing the sovereign immunity of the United States in a similarly direct manner. For example, in the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, Congress has provided that certain federal suits against the United States "seeking relief other than money damages * * * shall not be dismissed * * * on the ground that [they are brought] against the United States." 5 U.S.C. 702. The trademark laws include a "[w]aiver of sovereign immunity by the United States" for suits involving trademark violations. 15 U.S.C. 1122(a) (emphasis omitted). The Bankruptcy Code provides that "[n]otwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit" with respect to nearly 60 specifically enumerated bankruptcy provisions. 11 U.S.C. 106(a); see *Lac du Flambeau Band of Lake Superior Chippewa Indians* v. *Coughlin*, 143 S. Ct. 1689, 1694-1695 (2023). And Congress has enacted a "[w]aiver of sovereign immunity" in certain suits related to "Federal reclamation law," under which "[c]onsent is given to join the United States as a necessary party defendant." 43 U.S.C. 390uu (emphasis omitted). Such provisions unquestionably show that Congress has focused on the United States' immunity and decided to forgo it.

In the context of claims under Sections 1681n or 1681*o*, however, it is undisputed that Congress has not "sa[id] in so many words that it is stripping immunity." *Financial Oversight & Management Board*, 143 S. Ct. at 1184. Nothing in either of those provisions mentions

sovereign immunity. See 15 U.S.C. 1681n, 1681*o*. The "[d]efinitions and rules of construction" set out in Section 1681a likewise do not mention sovereign immunity. 15 U.S.C. 1681a(a). Nor does anything else in FCRA directly waive a sovereign-immunity defense to private damages claims under Sections 1681n and 1681*o*.

2. Congress has not waived sovereign immunity by explicitly singling out sovereigns as potential defendants in Sections 1681n or 1681*o

The second type of waiver that this Court has recognized occurs when "a statute creates a cause of action and * * * expressly authorize[s] suits against sovereigns," such that "recognizing immunity" would have the effect of "negat[ing] th[at] authorization[]." *Financial Oversight & Management Board*, 143 S. Ct. at 1184 (citations omitted). FCRA does not include that type of waiver for claims under Sections 1681n or 1681*o*, either.

a. Construing a cause of action as a waiver of sovereign immunity requires a direct reference to sovereign defendants

In *Financial Oversight & Management Board for Puerto Rico* v. *Centro de Periodismo Investigativo, Inc.*, the Court identified three examples in which it had found that the terms of a cause of action demonstrated unambiguous congressional intent to also waive or abrogate sovereign immunity. See 143 S. Ct. at 1184. The first was *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996). There, the Court interpreted a provision of the Indian Gaming Regulatory Act (IGRA) that provided a cause of action for the "failure *of a State* to enter into negotiations" as a clear attempt to abrogate the State's sovereign immunity to such suits. *Id.* at 56-57 (emphasis added); see 25 U.S.C. 2710(d)(7)(A)(i). The

second was *Kimel* v. *Florida Board of Regents*, 528 U.S. 62 (2000), where the Court found a waiver of sovereign immunity in a provision of the Age Discrimination in Employment Act of 1967 (ADEA) allowing an employee to bring suit "against any employer (*including a public agency*) in any Federal or State court of competent jurisdiction." 29 U.S.C. 216(b) (2000) (emphasis added); see *Kimel*, 528 U.S. at 73-74. And the third was *Nevada Department of Human Resources* v. *Hibbs*, 538 U.S. 721 (2003), where the Court interpreted language in the Family and Medical Leave Act of 1993 (FMLA) identical to the ADEA's to have the same effect. *Id.* at 726; see 29 U.S.C. 2617(a)(2).

The findings of a withdrawal of sovereign immunity in those cases all reflect the "'cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001)); see, *e.g.*, *City of Chicago* v. *Fulton*, 141 S. Ct. 585, 591 (2021) (rejecting construction that would, *inter alia*, render language "largely superfluous"). In each case, allowing the sovereign named in the remedial provision to invoke sovereign immunity would have deprived Congress's specific remedial language of meaningful effect. See *Financial Oversight & Management Board*, 143 S. Ct. at 1184 (explaining that while "none of those Acts expressly declared sovereigns non-immune," they "all expressly authorized suits against sovereigns * * * [a]nd recognizing immunity would have negated those authorizations").[2]

[2] The three cases cited by respondent (Br. in Opp. 20) for the principle that "Congress may waive sovereign immunity by authorizing

There would be no point in providing a cause of action against a "State" under the IGRA, or specifying the liability of a "public agency" under the ADEA or FMLA, if the "very suits allowed against governments would automatically have been dismissed." *Financial Oversight & Management Board*, 143 S. Ct. at 1184. Congress does "not * * * authorize a suit against a sovereign with one hand, only to bar it with the other." *Ibid*. Instead, "each word Congress uses" is presumably "there for a reason." *Advocate Health Care Network* v. *Stapleton*, 581 U.S. 468, 477 (2017). And where it is "unmistakably clear," *Financial Oversight & Management Board*, 143 S. Ct. at 1184 (quoting *Kimel*, 528 U.S. at 73), that the reason can only have been to specify a sovereign's liability in a civil action brought by a private party, Congress's language can be understood to deliberately withdraw the sovereign's immunity.

Where, in contrast, all the words of a statutory cause of action "serve a function without [a court] reading an abrogation [or waiver] of immunity into" the statute, the Court has been unwilling to infer a withdrawal of sovereign immunity. *Financial Oversight & Management Board*, 143 S. Ct. at 1185. In that circumstance, allowing the sovereign-immunity defense would not effectively "negate[]" a remedial provision's language by rendering a specific reference to sovereign liability su-

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suit against the United States or its agencies" all fit the same pattern. To the extent that each recognizes a sovereign-immunity waiver for suits against federal entities, it is in the context of a direct and explicit reference to such federal entities in the relevant cause of action itself. See *Cooper*, 566 U.S. at 291 (remedy solely against federal entities in 5 U.S.C. 552a(g)); *Lane*, 518 U.S. at 192 (remedy against "Federal provider[s]" in 29 U.S.C. 794a(a)(2)); *United States* v. *Williams*, 514 U.S. 527, 532 (1995) (remedy in 28 U.S.C. 1346(a) "against the United States").

perfluous. *Id.* at 1184. Instead, preserving sovereign immunity "ensure[s] [that] Congress does not, by broad or general language," waive sovereign immunity "inadvertently or without due deliberation." *Spector* v. *Norwegian Cruise Line Ltd.*, 545 U.S. 119, 139 (2005) (plurality opinion); see *Sossamon*, 563 U.S. at 290-291.

This Court has therefore recognized that the second type of type of waiver does not exist where Congress has provided only a "general authorization for suit in federal court." *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234, 246 (1985). In *Atascadero State Hospital*, for example, the general language at issue was broad enough to encompass sovereign entities—authorizing suit against "'*any* recipient of Federal assistance,'" where a State could plainly be a "recipient of federal aid under the statute." *Id.* at 245-246 (quoting 29 U.S.C. 794a(2) (1982) (emphasis added by Court)). But the Court held that Congress's authorization of suit against an undifferentiated set of defendants that includes sovereigns and non-sovereigns alike "is not the kind of unequivocal statutory language sufficient to" eliminate sovereign immunity. *Ibid.* Allowing a sovereign to assert its immunity from suit did not negate any express authorization in the statute or render any words in the cause of action superfluous because the statutory cause of action against "'recipient[s] of Federal assistance'" still allowed suit against "other class[es] of recipients of federal aid." *Ibid.* (citation omitted). The Court was thus unwilling to infer that Congress had intended to "abrogate the Eleventh Amendment bar to suits against States" without addressing their immunity directly. *Id.* at 246.

b. A cause of action's cross-reference to a general definition that includes sovereigns is not an unequivocal and unambiguous waiver of sovereign immunity

For similar reasons, no waiver of sovereign immunity can be inferred when a cause of action merely cross-references a general definition that includes sovereigns along with non-sovereigns. If a statute actually provided in haec verba that a plaintiff "may sue an individual, a corporation, or a state agency," then allowing a state sovereign-immunity defense could negate the reference to a "state agency." But if a statute simply defined the term "person" to mean "an individual, a corporation, or a state agency," and then used the term in various places including an authorization of suits against a "person," an invocation of state sovereign immunity would create no surplusage. The cause of action would still be effective against non-sovereign "person[s]," and the definitional reference to a "state agency" would still be effective in other provisions that referred to a "person."

Accordingly, when Congress actually intends to waive sovereign immunity through a remedial provision, it does not just cross-reference a broader definition that includes the sovereign along with non-sovereigns; instead, Congress specifically names the sovereign. For example, notwithstanding that the FMLA (at issue in *Hibbs*) defines "employer" to include "any 'public agency,'" 29 U.S.C. 2611(4)(A)(iii), its cause of action explicitly references such agencies as subject to suit, specifying that the defendant may be "any employer (including a public agency)." 29 U.S.C. 2617(a)(2). That specific authorization of claims against public agencies indicates Congress's understanding that a "general au-

thorization for suit" against all "employers," without more, would be too equivocal to impose liability on a sovereign, *Atascadeo State Hospital*, 473 U.S. at 246, even if the statute elsewhere defines "employer[s]" to expressly include sovereign entities.

Congress has taken the same approach when the term is "person"—a word that does not ordinarily refer to a sovereign, see *Return Mail, Inc.* v. *United States Postal Service*, 139 S. Ct. 1853, 1861-1862 (2019). The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 *et seq.*, for instance, is analogous to FCRA in that it defines "person" to include not only individuals and corporate entities but also "State[s]," "political subdivision[s] of a State," and "each department, agency, and instrumentality of the United States," 42 U.S.C. 6903(15). Yet in authorizing private suits under RCRA, Congress provided expressly that claims could be asserted "against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution." 42 U.S.C. 6972(a)(1)(B).

Similarly, the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. 1401 *et seq.*, defines "[p]erson" to include "any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government," 33 U.S.C. 1402(e). In authorizing "[c]ivil suits by private persons" to enforce the MPRSA, Congress stated expressly that private parties "may commence a civil suit * * * to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the

eleventh amendment to the Constitution), who is alleged to be in violation of" the statute's substantive requirements. 33 U.S.C. 1415(g)(i) (emphasis omitted); see *Middlesex County Sewerage Authority* v. *National Sea Clammers Ass'n*, 453 U.S. 1, 13-17 (1981) (discussing MPRSA's citizen-suit provision).

*c. FCRA's definition of "person" does not support an unequivocal and unambiguous waiver of sovereign immunity against claims under Sections 1681n or 1681*o

FCRA's general remedial provisions in Sections 1681n and 1681*o*, in contrast, do not specifically name sovereign entities. And combining their use of the word "person" with a definition of "person" that includes a "government or governmental subdivision or agency," 15 U.S.C. 1681a(b), would not provide the clear statement necessary to waive the United States' sovereign immunity.

i. Unlike the situations this Court confronted in *Seminole Tribe*, *Kimel*, and *Hibbs*, an invocation of sovereign immunity does not negate any of the text in Sections 1681n or 1681*o*. To the contrary, both of those provisions continue to afford remedies against a broad range of non-sovereign persons even if sovereign defendants are able to raise their traditional immunity defense. See 15 U.S.C. 1681n, 1681*o*. Neither of the other two defendants in respondent's suit, for example, pressed a sovereign-immunity defense. See Pet. App. 4a-5a.

Nor does the invocation of sovereign immunity create surplusage in the definitional provision, 15 U.S.C. 1681a(b), which applies in many other places in the statute. For instance, as the court of appeals itself recognized, "[i]f the United States and its agencies were not

'persons,' within the FCRA's definition, credit reporting agencies would not be able to legally provide them with credit reports" in the same circumstances that such reports are available to the general public. Pet. App. 10a n.4 (discussing 15 U.S.C. 1681b(a)(1)-(6)). And similarly, because FCRA's statutory definition of "person" covers the United States and federal agencies, credit reporting agencies are generally required to notify consumers when they provide credit reports to the government for employment purposes, subject to a specific exemption in situations involving national security investigations. See 15 U.S.C. 1681k; see also pp. 3-4, *supra* (discussing Congress's use of "person" in the 1970 Act to define the responsibilities of credit reporting agencies).

ii. The Court has previously rejected an effort to infer a waiver of sovereign immunity from a definitional cross-reference in nearly identical circumstances. The Court's decision in *Employees of the Department of Public Health & Welfare* v. *Department of Public Health & Welfare*, 411 U.S. 279 (1973), addressed an amendment to the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, that expanded the statutory definition of "employer" to include state entities. *Employees of the Department of Public Health & Welfare*, 411 U.S. at 282-283. At the time of the amendment, a pre-existing cause of action in the FLSA already provided for civil remedies, including back pay and liquidated damages, against "[a]ny employer who violates the" FLSA's minimum-wage and overtime provisions. *Id.* at 283; see 29 U.S.C. 216(b) (1970). The Court, however, declined to read the provisions as abrogating sovereign immunity. *Employees of the Department of Public Health & Welfare*, 411 U.S. at 286.

The Court accepted that, as a result of the amended definition of "'employer,'" state entities were "covered" by "the literal language of the" statute. *Employees of the Department of Public Health & Welfare*, 411 U.S. at 283. But notwithstanding such "literal * * * cover[age]" of state entities in a definition that could apply to the FLSA's cause of action, the Court explained that there remained the distinct question of "whether Congress has brought the States to heel, in the sense of lifting their immunity from suit in a federal court." *Ibid.* The Court answered that question in the negative, "holding that Congress did not lift the sovereign immunity of the States under the FLSA." *Id.* at 285.

The Court observed that the States' retention of a sovereign-immunity defense would not "make the extension of coverage to state [entities] meaningless," because the amended definition of "employer" had effects through its application in other parts of the statute. *Employees of the Department of Public Health & Welfare*, 411 U.S. at 285. In those circumstances, the Court found no basis "to infer that Congress deprived [a State] of her constitutional immunity without changing the old" cause of action itself "or indicating in some way by clear language that the constitutional immunity was swept away." *Ibid.* And the Court noted that it "ha[d] found not a word in the history of the 1966 amendments to indicate a purpose of Congress to make it possible for [an individual] to sue the State in the federal courts." *Ibid.*

The circumstances here are identical in all relevant respects to the circumstances of *Employees of the Department of Public Health & Welfare*. Here, as there, the question is whether applying a general definition to a remedial provision would be enough to clearly waive

sovereign immunity. See *Employees of the Department of Public Health & Welfare*, 411 U.S. at 283. Here, as there, no word in any provision would be rendered "meaningless," *id.* at 285, if a sovereign-immunity defense remained available. Here, as there, the definitional and remedial provisions were adopted at different times, with no clear indication that Congress included sovereign entities in the general definition in order to subject them to suit. See *id.* at 283. Accordingly, here, as there, the Court should "hold[] that Congress did not lift * * * sovereign immunity." *Id.* at 285.

iii. The court of appeals in this case provided no sound basis for departing from *Employees of the Department of Public Health & Welfare*. Instead, it discounted the precedent entirely on the theory that the Court's decision had relied on a deprecated mode of reasoning, by "disregard[ing] a clear and unambiguous waiver of immunity based solely on silence in the Congressional record." Pet. App. 17a n.11. But that misreads this Court's decision, which instead emphasized that Congress had not "chang[ed] the old" statutory text to include "clear language [indicating] that the constitutional immunity was swept away." *Employees of the Department of Public Health & Welfare*, 411 U.S. at 285. The lack of any intent to waive immunity expressed "in the history of the 1966 amendments" simply reinforced why it would be inappropriate "to infer that Congress * * * desired silently to deprive the States of an immunity they have long enjoyed." *Ibid.*

Moreover, to the extent that *Employees of the Department of Public Health & Welfare* did consider the FLSA's legislative history, it was not wrong to do so. Contrary to the court of appeals' suggestion (Pet. App. 16a), legislative history is not categorically irrelevant to

the sovereign-immunity inquiry. In the absence of "unmistakably clear" textual evidence, "recourse to legislative history will be futile" to infer that Congress *has* waived sovereign immunity, *Dellmuth* v. *Muth*, 491 U.S. 223, 230 (1989)—but a statute's history can reinforce that Congress has *not* waived immunity. And here, as in *Employees of the Department of Public Health & Welfare*, "not a word in the history"—much less any unambiguous text—"indicate[s] a purpose of Congress" to waive sovereign immunity. 411 U.S. at 285; see pp. 38-39, *infra.*

3. Sections 1681n and 1681o do not even unambiguously incorporate FCRA's statutory definition of "person"

Indeed, it is doubtful that the 1996 Act's substitution of "person" in place of "credit reporting agency" in Sections 1681n and 1681*o* even nominally creates a cause of action against federal agencies. FCRA's use of the word "person" is context-dependent: Sometimes it refers to the default statutory definition in 1681a(b); sometimes it does not. And the far better interpretation of Sections 1681n and 1681*o* is that they use the word in its more natural, non-sovereign sense, such that neither section even purports to impose liability against the United States, let alone waives sovereign immunity to allow recovery of such liability through private damages actions.

a. The meaning of "person" in FCRA is context-dependent

As the Court has recognized, "a statutory term—even one defined in the statute—'may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.'" *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 320

(2014) (*UARG*) (quoting *Environmental Defense* v. *Duke Energy Corp.*, 549 U.S. 561, 574 (2007)). That principle applies with full force to a default statutory definition of the word "person." See *United States* v. *Public Utilities Commission*, 345 U.S. 295, 312-316 & nn.20-21 (1953) (declining to apply statutory definition of "[p]erson[]" that would produce incongruous result). And neither the 1970 Act nor the 1996 Act takes an inflexible approach that applies the default statutory definition everywhere the word "person" appears in FCRA.

i. FCRA's statutory definition of "person" to include sovereigns is inconsistent with that term's ordinary meaning. The typical understanding of the word "person," both in "common usage" and in the federal Dictionary Act, "does not include the sovereign," *Return Mail, Inc.*, 139 S. Ct. at 1861-1862; see 1 U.S.C. 1 (Dictionary Act definition of "person"). The definition in Section 1681a(b), in contrast, includes "any * * * government or governmental subdivision or agency," along with every possible "other entity." 15 U.S.C. 1681a(b).

Statutory context makes clear that Congress used the plain-English meaning of "person," rather than the atypical statutory definition, in some of the instances where "person" appears in the 1970 Act. As discussed above, see pp. 3-4, *supra*, Congress primarily referred to "persons" in the 1970 Act to describe the responsibilities of credit reporting agencies, and in those settings it is plain that Congress intended to employ the defined, rather than typical, meaning of the term. See, *e.g.*, 15 U.S.C. 1681k(a)(1) and (b) (requiring credit reporting agencies to disclose the "name and address of the person to whom" a consumer report is provided, but providing that that requirement "does not apply in the case of

an agency or department of the United States Government" if the head of the agency makes certain written findings). In other provisions, however, Congress employed the term "person" in contexts "where what [was] meant [was] obviously narrower than the Act-wide definition." *UARG*, 573 U.S. at 319.

For example, the original version of Section 1681q imposed criminal liability, including imprisonment or a fine of up to $5000, on any "person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses." 15 U.S.C. 1681q (1970). That provision plainly uses "person" in its natural sense, not the sense provided in the general definition in Section 1681a(b); as even the court of appeals in this case acknowledged, "[i]t would be absurd * * * to subject the federal government to criminal prosecution" under Section 1681q. Pet. App. 22a; see *United States* v. *Cooper Corp.*, 312 U.S. 600, 609 (1941) (finding it "obvious" that provision imposing criminal liability for certain actions by "'any person'" did not include the United States); *Return Mail*, 139 S. Ct. at 1863 & n.4 (observing that provision applicable when "'a person'" is charged "with a criminal offense" is a use of "person" that "plainly excludes the Government").

ii. The same context-specific understanding of "person" is apparent in the 1996 Act. That Act did not itself include a definition of "person," or amend the previous one; it was instead over a quarter-century removed from the 1970 Act's atypical definition. And the 1996 Act included amendments inconsistent with the definition's universal application.

Among other things, the 1996 Act enhanced the criminal penalties applicable to "person[s]." § 2415, 110

Stat. 3009-450 (15 U.S.C. 1681q). It is implausible that, in enacting those enhancements, the 1996 Congress was doubling down on the "absurd[ity]," Pet. App. 22a, of criminal liability for the United States. Instead, the natural inference is that the 1996 Congress, like the 1970 Congress, did not contemplate that those criminal provisions would apply to the United States in the first place.

The 1996 Act also authorized the FTC to seek civil penalties against "[a]ny person" who violates the statute. § 2416(a)(2), 110 Stat. 3009-450 (15 U.S.C. 1681s(a)(2)). But it is hard to imagine that Congress intended to enable one federal agency (the FTC) to sue another federal agency—or the United States itself—in federal court to recover civil penalties, without being pellucidly clear about such an intent. Cf. Joseph W. Mead, *Interagency Litigation and Article III*, 47 Ga. L. Rev. 1217, 1245 (2013).

In a similar vein, the 1996 Act authorized States to bring FCRA actions, including for monetary damages, against "any person" in any court of competent jurisdiction. § 2417, 110 Stat. 3009-451 to 3009-452 (15 U.S.C. 1681s(c)). But it would be anomalous and at odds with the constitutional structure to assume that Congress intended—again, without making such intent clear—to allow States to seek damages under FCRA against the United States. Cf. *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819).

*b. The statutory definition of "person" does not apply to Sections 1681n and 1681*o

Against that context-sensitive backdrop, the 1996 Act should not be construed to have imposed private liability against the United States under FCRA's general remedial provisions. Although the 1996 Act broadened

FCRA's remedial scope from consumer reporting agencies to "persons" who provide information to reporting agencies and who make use of credit reports, *e.g.*, §§ 2403, 2411, 110 Stat. 3009-430 to 3009-431, 3009-443 to 3009-446 (15 U.S.C. 1681b(b)(2) and (3), 1681m(a)), the expanded remedial provisions codified in Sections 1681n and 1681*o* do not mention the United States or other sovereign entities.

It is certainly questionable whether Congress in fact intended the cause of action to extend to them, and it is very unlikely that Congress intended the general remedies available to private plaintiffs in Sections 1681n and 1681*o* to apply to the sovereign, if the criminal penalties, the FTC enforcement provisions, and state suits did not. See *United States* v. *California*, 297 U.S. 175, 186 (1936) (discussing the "canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it"); Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 149 (2010) (recounting Justice Story's interpretive principle that "the government rarely intends to subject itself to its own regulations"). Instead, Congress would have expected all of FCRA's remedial provisions imposing liability on "person[s]" to have a similar scope—the one consistent with that word's natural meaning.

This Court has cautioned that even an "extremely broadly" written "general definition" does not necessarily "constitute a clear statement that Congress meant the statute to" have improbable effects by means of a cross-reference. *Bond* v. *United States*, 572 U.S. 844, 860 (2014). And just last Term in *Abitron Austria GmbH* v. *Hetronic International, Inc.*, No. 21-1043, 2023 WL 4239255 (June 29, 2023), the Court held that

two provisions of the Lanham Act regulating the use of trademarks "in commerce" do not apply extraterritorially, even though the statutory definition of "commerce" referred to " 'all' commerce Congress can regulate." *Id.* at *5 (citation omitted). The Court explained that combining the operative provisions' reference to the use of marks " 'in commerce' " with "a definition of 'commerce' that refers to Congress's authority to regulate foreign commerce" is "not enough" to provide the clear statement necessary to intrude on a foreign sovereign's domain. *Ibid.* (citation omitted). Reflexively combining FCRA's statutory definition of "person" with the operative text of Sections 1681n and 1681*o* would have a similarly unexpected—and unjustified—effect.

C. The Court Of Appeals' Decision Produces Inexplicable Incongruities

As the court of appeals recognized, allowing private damages actions against the United States under Sections 1681n and 1681*o* introduces a number of additional incongruities. The court's attempts to avoid those anomalies are unsound.

1. For one thing, treating the use of "person" in Sections 1681n and 1681*o* as sufficient to overcome sovereign immunity would subject not just the federal government, but also individual States, to private suits for money damages. Indeed, the court of appeals embraced that view, finding that Congress's insertion of the word "person" into Sections 1681n and 1681*o* in the 1996 Act "clearly expresse[d] Congress's intent to authorize suits against both the federal and state governments," Pet. App. 24a, since the definition of "person" in Section 1681a(b) covers both federal and state entities. See *id.* at 22a-24a.

The context in which Congress enacted the 1996 Act, however, makes that conclusion especially implausible. Adoption of the amendments to Sections 1681n and 1681*o* came months after this Court's decision in *Seminole Tribe*, which held that Congress lacked authority under the Commerce Clause to abrogate state sovereign immunity and subject States to suit, even if it made clear that it wanted to do so. See 517 U.S. at 47, 72. As the Fourth Circuit has observed, it would have been extraordinary if Congress, "in an insurrectionary moment," responded to *Seminole Tribe* with a FCRA provision quixotically purporting to subject States to both compensatory and punitive damages. *Robinson* v. *United States Department of Education*, 917 F.3d 799, 805 (4th Cir. 2019), cert. denied, 140 S. Ct. 1440 (2020). The far more plausible understanding is that Congress did not understand itself to be addressing sovereign immunity in Sections 1681n or 1681*o* at all.

2. In addition, Congress already had a model for authorizing suits against the United States under FCRA, which the 1996 Act did not follow. In a FCRA amendment enacted just a few months before the 1996 Act and codified in 15 U.S.C. 1681u, Congress empowered the FBI to obtain and use consumer information from consumer reporting agencies in limited circumstances for national security purposes. Intelligence Authorization Act for Fiscal Year 1996, Pub. L. No. 104-93, Tit. VI, sec. 601(a), § 624(i), 109 Stat. 976-977 (15 U.S.C. 1681u). And Congress simultaneously provided that "[a]ny agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer" for statutory, actual, and (in cer-

tain circumstances) punitive damages. *Ibid.*; see 15 U.S.C. 1681u(j).

The 1996 Act, however, contained no such specific remedies against the federal government for the types of violations that are the subject of respondent's suit here. This Court has recognized that "differences in language" in the same statute generally "convey differences in meaning." *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). Congress's unequivocal and unambiguous authorization of suits against federal agencies in Section 1681u(j) is thus a strong indication that it intended no such authorization in Sections 1681n and 1681*o*. See *Daniel* v. *National Park Service*, 891 F.3d 762, 771 (9th Cir. 2018) ("Equating 'the United States' with a 'person' in multiple sections of FCRA also conflicts with a very clear waiver of sovereign immunity elsewhere in the statute.").

The court of appeals attempted to distinguish Section 1681u on the ground that "only federal agencies are subject to [its] substantive requirements in the first place." Pet. App. 18a. If anything, however, that distinction cuts the other way: Congress would have had even less reason to explicitly identify the United States in Section 1681u(j), given that no other "person" (on the court's view) had duties or obligations under Section 1681u. Congress's explicit naming of the United States in Section 1681u(j) underscores that even when Congress imposes particular substantive duties only on the federal government, it knows that it still must be unequivocal and unambiguous if it wishes to authorize private damages actions for breaching those duties.

3. Authorizing suits against the United States under Sections 1681n and 1681*o* would also have been inconsistent with the carefully calibrated remedies available

against the federal government under the Privacy Act. That statute comprehensively regulates Executive Branch agencies in their collection, maintenance, use, and dissemination of "records" containing information about an "individual," when those records are maintained as part of a "system of records." 5 U.S.C. 552a(a)(1)-(5) and (b). And it authorizes only a limited scope of private civil actions. 5 U.S.C. 552a(g). Expansive civil remedies against federal agencies under FCRA would have overwhelmed the careful balance that the Privacy Act struck. See *Cooper*, 566 U.S. at 303 (observing that Congress's goal in enacting the Privacy Act was "to cabin relief, not to maximize it").

Construing Sections 1681n and 1681*o* as authorizing suits against the United States would vastly expand liability for federal-agency activity already covered by the Privacy Act. The Privacy Act addresses, for example, disclosures by a federal agency to a consumer reporting agency of an overdue debt that the federal agency is trying to collect. A federal agency is required by law to make such a disclosure under certain circumstances, see 31 U.S.C. 3711(e), such as for student loans, see 20 U.S.C. 1080a, 1087a(b)(2), 1087e(a)(1). If the disclosed record of the overdue debt contains an error, the Privacy Act offers procedures for individuals to obtain corrections of the record, see 5 U.S.C. 552a(d), and specifies requirements for reporting such corrections, see 5 U.S.C. 552a(c)(4). Those error-correction procedures are analogous, but not identical, to FCRA's requirements of correction and notice when a "person" makes an error in a disclosure to a credit reporting agency. See 15 U.S.C. 1681s-2(b). The remedial schemes, however, are quite divergent.

Under the Privacy Act, an individual generally may seek only injunctive relief, not money damages, for failure to correct the record. 5 U.S.C. 552a(g)(1)(A) and (2)(A). And compensatory damages are available only if "actual damages" resulted from an "intentional or willful" failure to take specified actions. 5 U.S.C. 552a(g)(4)(A); see *Doe* v. *Chao*, 540 U.S. 614, 620-621 (2004). FCRA suits, however, have neither limitation. If federal agencies could be sued under FCRA for erroneous reporting of overdue debt, they would be subject to a damages action not only for a failure to update the consumer reporting agency, but also for a failure to correct the relevant record. 15 U.S.C. 1681n, 1681*o*, 1681s-2(b). Either type of action could be premised merely on negligence, without any need to prove intentional or willful conduct. 15 U.S.C. 1681*o*. And if a willful violation were to be proved, the plaintiff could recover automatic statutory damages without any showing of "actual damages"—and could seek punitive damages as well. 15 U.S.C. 1681n(a)(1)(A). Congress cannot have intended the Privacy Act's reticulated remedial scheme to be so easily displaced or circumvented.

The court of appeals recognized the "overlap" between the Privacy Act and FCRA but asserted that no "actual inconsistency" existed because "the two statutes impose liability on federal agencies in different ways." Pet. App. 32a, 34a. But that is the very point. There is no sound reason to believe that Congress intended to make the United States liable for money damages under FCRA based on the same conduct that Congress found insufficient to trigger money damages under the Privacy Act. That is especially true given that the extent of liability under the Privacy Act was the subject of extensive congressional debate: Congress considered and

rejected amendments that would have allowed recovery for negligent violations or the award of punitive damages. See *Fitzpatrick* v. *IRS*, 665 F.2d 327, 330 (11th Cir. 1982), abrogated in part on other grounds by *Doe* v. *Chao*, 540 U.S. 614; see also, *e.g.*, 120 Cong. Rec. 36,659-36,660 (1974) (statements of Reps. McCloskey, Erlenborn, and Butler); *id.* at 36,956 (statement of Rep. Butler). It would not have undermined its prior careful and considered approach without being more explicit.

4. Indeed, the legislative history of the 1996 Act underscores that Congress did not understand itself to be imposing vast new liabilities on the United States and other governments. The federal government "is one of the largest furnishers of credit information in the country," so Congress would have anticipated that a "waiver of sovereign immunity [in FCRA] would * * * have a significant impact on the public fisc." *Robinson* v. *Department of Education*, 140 S. Ct. 1440, 1442 (2020) (Thomas, J., dissenting from the denial of certiorari). Yet there is no evidence that even a single Member of Congress was aware—let alone intended—that the effect of the 1996 Act could be to impose new liability on the United States for violations of FCRA's substantive provisions.

The House Report on an early version of the 1996 Act observed only that extension of the provisions for private damages suits to "'any person who'" fails to comply with FCRA would bring within the scope of the provisions "persons who furnish information to consumer reporting agencies, such as banks and retailers." H.R. Rep. No. 486, 103d Cong., 2d Sess. 49 (1994); see S. Rep. No. 185, 104th Cong., 1st Sess. 48-49 (1995). Likewise, the sponsor of a Senate bill containing identical language described those provisions as extending li-

ability to "banks, retailers and other creditors." 140 Cong. Rec. 8941 (1994) (statement of Sen. Bryan). Nothing indicates that the language was understood to extend liability to the United States or other sovereigns.

The court of appeals disregarded that factor based on the misplaced view that the inability of legislative history to *supply* a sovereign-immunity waiver implies its inability even to counsel *against* such a waiver. See pp. 27-28, *supra*. But the court provided no first-principles justification for ignoring the history in that latter context. A waiver of sovereign immunity is appropriate only where Congress "has specifically considered * * * sovereign immunity and has intentionally legislated on the matter." *Sossamon*, 563 U.S. at 290-291. Evidence that Congress did not, in fact, contemplate waiving sovereign immunity can thus reinforce the absence of the requisite textual waiver. And that is what it does here, further illustrating the error in allowing respondent's suit against the United States.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 15 U.S.C. 1681a provides in pertinent part:

Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term "consumer report" does not include—

(A) subject to section 1681s-3 of this title, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (*o*) or (x).[1]

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 1681b(g)(3) of this title, the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained di-

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[1] See References in Text note below.

rectly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * * * *

(n) STATE.—The term "State" means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States. * * * * *

2. 15 U.S.C. 1681n provides:

Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or

knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(d) Clarification of willful noncompliance

For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and June 3, 2008, but otherwise complied with the requirements of section 1681c(g) of this title for such receipt shall not be in willful non-

compliance with section 1681c(g) of this title by reason of printing such expiration date on the receipt.

3. 15 U.S.C. 1681*o* provides:

Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

4. 15 U.S.C. 1681p provides:

Jurisdiction of courts; limitation of actions

An action to enforce any liability created under 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, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

5. 15 U.S.C. 1681q provides:

Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both.

6. 15 U.S.C. 1681u provides:

Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of title 12) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information that includes a term that specifically identifies a consumer or account to be used as the basis for the

production of that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Identifying information

Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request that includes a term that specifically identifies a consumer or account to be used as the basis for the production of that information, signed by the Director or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information

is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) Court order for disclosure of consumer reports

Notwithstanding section 1681b of this title or any other provision of this subchapter, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, a court may issue an order ex parte, which shall include a term that specifically identifies a consumer or account to be used as the basis for the production of the information, directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States. The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(d) Prohibition of certain disclosure

(1) Prohibition

(A) In general

If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (e) is provided, no consumer reporting agency that receives a request under subsection (a) or (b) or an order under subsection (c), or officer, employee, or agent thereof, shall disclose or specify in any consumer report, that the Federal Bureau of Investigation has sought or obtained access to information or records under subsection (a), (b), or (c).

(B) Certification

The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that the absence of a prohibition of disclosure under this subsection may result in—

(i) danger to the national security of the United States;

(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

(iii) interference with diplomatic relations; or

(iv) danger to the life or physical safety of any person.

(2) Exception

(A) In general

A consumer reporting agency that receives a request under subsection (a) or (b) or an order under subsection (c), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

(i) those persons to whom disclosure is necessary in order to comply with the request;

(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(B) Application

A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request under subsection (a) or (b) or an order under subsection (c) is issued in the same manner as the person to whom the request is issued.

(C) Notice

Any recipient that discloses to a person described in subparagraph (A) information oth-

erwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

(D) Identification of disclosure recipients

At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(e) Judicial review

(1) In general

A request under subsection (a) or (b) or an order under subsection (c) or a non-disclosure requirement imposed in connection with such request under subsection (d) shall be subject to judicial review under section 3511 of title 18.

(2) Notice

A request under subsection (a) or (b) or an order under subsection (c) shall include notice of the availability of judicial review described in paragraph (1).

(f) Payment of fees

The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such

costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(g) Limit on dissemination

The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(h) Rules of construction

Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this subchapter. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

(i) Reports to Congress

(1) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Af-

fairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 3106 of title 50.

(j) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(k) Disciplinary actions for violations

If a court determines that any agency or department of the United States has violated any provision of this

section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(*l*) Good-faith exception

Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(m) Limitation of remedies

Notwithstanding any other provision of this subchapter, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

(n) Injunctive relief

In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.

7. Amendment of Consumer Credit Protection Act, Pub. L. No. 91-508, Tit. VI, 84 Stat. 3009-426 provides in pertinent part:

TITLE VI—PROVISIONS RELATING TO CREDIT REPORTING AGENCIES

AMENDMENT OF CONSUMER CREDIT PROTECTION ACT

SEC. 601. The Consumer Credit Protection Act is amended by adding at the end thereof the following new title:

"TITLE VI—CONSUMER CREDIT REPORTING

"§ 601. Short title

"This title may be cited as the Fair Credit Reporting Act.

"§ 602. Findings and purpose

"(a) The Congress makes the following findings:

"(1) 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.

"(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

"(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

"(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

"(b) It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

"§ 603. Definitions and rules of construction

"(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

"(b) The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

"(c) The term 'consumer' means an individual.

"(d) The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the. consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section

604. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615.

"(e) The term 'investigative consumer report' means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor or the consumer or from the consumer.

"(f) The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports

to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"(g) The term 'file', when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"(h) The term 'employment purposes' when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

"(i) The term 'medical information' means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

"§ 604. Permissible purposes of reports

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

"(1) In response to the order of a court having jurisdiction to issue such an order.

"(2) In accordance with the written instructions of the consumer to whom it relates.

"(3) To a person which it has reason to believe—

"(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involv-

ing the extension of credit to, or review or collection of an account of, the consumer; or

"(B) intends to use the information for employment purposes; or

"(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

"(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

"(E) otherwise has a legitimate business need for the information in, connection with a business transaction involving the consumer.

"§ 605. Obsolete information

"(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

"(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

"(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

"(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

"(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

"(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

"(6) Any other adverse item of information which antedates the report by more than seven years.

"(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

"(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;

"(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

"(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal 20,000, or more.

"§ 606. Disclosure of investigative consumer reports

"(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise

delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

"(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

"(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

"(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b).

"§ 607. Compliance procedures

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of

the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604.

"(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

"§ 608. Disclosures to governmental agencies

"Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name address, former addresses, places of employment, or former places of employment, to a governmental agency.

"§ 609. Disclosures to consumers

"(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

"(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

"(2) The sources of the information; except that the sources of information acquired solely for use in prepar-

ing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

"(3) The recipients of any consumer report on the consumer which it has furnished—

"(A) for employment purposes within the two-year period preceding the request, and

"(B) for any other purpose within the six-month period preceding the request.

"(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

"§ 610. Conditions of disclosure to consumers

"(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.

"(b) The disclosures required under section 609 shall be made to the consumer—

"(1) in person if he appears in person and furnishes proper identification; or

"(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone

call is prepaid by or charged directly to the consumer.

"(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.

"(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

"(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumer.

"§ 611. Procedure in case of disputed accuracy

"(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is

found to be inaccurate or can no longer verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

"(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

"(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumers statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicu-

ously disclose to the consumer his rights to make such a request. Such disclosure shall he made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

"§ 612. Charges for certain disclosures

"A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 609, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 611(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

"§ 613. Public record information for employment purposes

"A consumer reporting, agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

"(1) at the time such public record information is reported to the user of such consumer report, notify the consumer ox the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

"(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

"§ 614. Restrictions on investigative consumer reports

"Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subse-

quent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

"§ 615. Requirements on users of consumer reports

"(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

"(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increases either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

"(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the ev-

idence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b),

"§ 616. Civil liability for willful noncompliance

"Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

"(1) any actual damages sustained by the consumer as a result of the failure;

"(2) such amount of punitive damages as the court may allow; and

"(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

"§ 617. Civil liability for negligent noncompliance

"Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

"(1) any actual damages sustained by the consumer as a result of the failure;

"(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

"§ 618. Jurisdiction of courts; limitation of actions

"An action to enforce any liability created under this title 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, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"§ 619. Obtaining information under false pretenses

"Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both.

"§ 620. Unauthorized disclosures by officers or employees

"Any officer or employee, of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be lined not more than $5,000 or imprisoned not more, than one year, or both.

"§ 621. Administrative enforcement

"(a) Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with

respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subjection, irrespective of whether that person is engaged in. commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

* * * * *

EFFECTIVE DATE

SEC. 602. Section 504 of the Consumer Credit Protection Act is amended by adding at the end thereof the following new subsection:

"(d) Title VI takes effect upon the expiration of one hundred and eighty days following the date of its enactment.

Approved October 26, 1970.

8. Consumer Credit Reporting Reform Act of 1996, Pub. L. No. 104-208, Subtit. D, 110 Stat. 3009-426, provides in pertinent part:

Subtitle D—Consumer Credit

CHAPTER 1—CREDIT REPORTING REFORM

SEC. 2401. SHORT TITLE.

This chapter may be cited as the "Consumer Credit Reporting Reform Act of 1996".

* * * * *

SEC. 2403. FURNISHING CONSUMER REPORTS; USE FOR EMPLOYMENT PURPOSES.

(a) FURNISHING CONSUMER REPORTS FOR BUSINESS TRANSACTIONS.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) by inserting "(a) IN GENERAL.—" before "A consumer reporting agency"; and

(2) in subsection (a)(3) (as so designated by paragraph "(1) of this subsection), by striking subparagraph and inserting the following:

"(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

"(F) otherwise has a legitimate business need for the information—

"(i) in connection with a business transaction that is initiated by the consumer; or

"(ii) to review an account to determine whether the consumer continues to meet the terms of the account.".

(b) FURNISHING AND USING CONSUMER REPORTS FOR EMPLOYMENT PURPOSES.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended by adding at the end the following new subsection:

"(b) CONDITIONS FOR FURNISHING AND USING CONSUMER REPORTS FOR EMPLOYMENT PURPOSES.—

"(1) CERTIFICATION FROM USER.—A consumer reporting agency may furnish a consumer report for employment purposes only if—

"(A) the person who obtains such report from the agency certifies to the agency that—

"(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3)

with respect to the consumer report if paragraph (3) becomes applicable; and

"(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

"(B) the consumer reporting agency provides with the report a summary of the consumer's rights under this title, as prescribed by the Federal Trade Commission under section 609(c)(3).

"(2) DISCLOSURE TO CONSUMER.—A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

"(A) a clear and conspicuous disclosurehas been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

"(B) the consumer has authorized in writing the procurement of the report by that person.

"(3) CONDITIONS ON USE FOR ADVERSE ACTIONS.—In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—

"(A) a copy of the report; and

"(B) a description in writing of the rights of the consumer under this title, as prescribed by the

Federal Trade Commission under section 609(c)(3).".

* * * * *

SEC. 2411. DUTIES OF USERS OF CONSUMER REPORTS.

(a) DUTIES OF USERS TAKING ADVERSE ACTIONS.—Section 615(a) of the Fair Credit Reporting Act (15 U.S.C. 1681m(a)) is amended to read as follows:

"(a) DUTIES OF USERS TAKING ADVERSE ACTIONS ON THE BASIS OF INFORMATION CONTAINED IN CONSUMER REPORTS.—If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall—

"(1) provide oral, written, or electronic notice of the adverse action to the consumer;

"(2) provide to the consumer orally, in writing, or electronically—

"(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

"(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

"(3) provide to the consumer an oral, written, or electronic notice of the consumer's right—

"(A) to obtain, under section 612, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

"(B) to dispute, under section 611, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.".

(b) DUTIES OF USERS MAKING CERTAIN CREDIT SOLICITATIONS.— Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

"(d) DUTIES OF USERS MAKING WRITTEN CREDIT OR INSURANCE SOLICITATIONS ON THE BASIS OF INFORMATION CONTAINED IN CONSUMER FILES.—

"(1) IN GENERAL.—Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 604(c)(1)(B), shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that—

"(A) information contained in the consumer's consumer report was used in connection with the transaction;

"(B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;

"(C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;

"(D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

"(E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e).

"(2) DISCLOSURE OF ADDRESS AND TELEPHONE NUMBER.— A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 604(e).

"(3) MAINTAINING CRITERIA ON FILE.—A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year

period beginning on the date on which the offer is made to the consumer.

"(4) AUTHORITY OF FEDERAL AGENCIES REGARDING UNFAIR OR DECEPTIVE ACTS OR PRACTICES NOT AFFECTED.—This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.".

(c) DUTIES OF USERS MAKING OTHER SOLICITATIONS.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following new subsection:

"(e)

(d) CONFORMING AMENDMENT.—Section 615(c) of the Fair Credit Reporting Act (15 U.S.C. 1681m(c)) is amended by striking "subsections (a) and (b)" and inserting "this section".

(e) DUTIES OF PERSON TAKING CERTAIN ACTIONS BASED ON INFORMATION PROVIDED BY AFFILIATE.—Section 615(b) of the Fair Credit Reporting Act (15 U.S.C. 1681m(b)) is amended—

(1) by striking "(b) Whenever credit" and inserting the following:

(b) ADVERSE ACTION BASED ON INFORMATION OBTAINED FROM THIRD PARTIES OTHER THAN CONSUMER REPORTING.—

"(1) IN GENERAL.—Whenever credit";

(2) by adding at the end the following new paragraph:

"(2) DUTIES OF PERSON TAKING CERTAIN ACTIONS BASED ON INFORMATION PROVIDED BY AFFILIATE.—

"(A) DUTIES, GENERALLY.—If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall—

"(i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and

"(ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (i), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

"(B) ACTION DESCRIBED.—An action referred to in subparagraph (A) is an adverse action described in section 603(k)(1)(A), taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 603(k)(1)(B).

"(C) INFORMATION DESCRIBED.—Information referred to in subparagraph (A)—

"(i) except as provided in clause (ii), is information that—

"(I) is furnished to the person taking the action by a person related by common owner-

ship or affiliated by common corporate control to the person taking the action; and

"(II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and

"(ii) does not include—

"(I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or

"(II) information in a consumer report.".

SEC. 2412. CIVIL LIABILITY.

(a) CIVIL LIABILITY FOR WILLFUL NONCOMPLIANCE.— Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681n) is amended by striking "Any consumer reporting agency or user of information which" and inserting "(a) IN GENERAL.—Any person who".

(b) MINIMUM CIVIL LIABILITY FOR WILLFUL NONCOMPLIANCE.— Section 616(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681n(1)), as so designated by subsection (a) of this section, is amended to read as follows:

"(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

"(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;".

(c) CIVIL LIABILITY FOR KNOWING NONCOMPLIANCE.—Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681n) is amended by adding at the end the following new subsection:

"(b) CIVIL LIABILITY FOR KNOWING NONCOMPLIANCE.—Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.".

(d) CIVIL LIABILITY FOR NEGLIGENT NONCOMPLIANCE.—Section 617 of the Fair Credit Reporting Act (15 U.S.C. 1681o) is amended by striking "Any consumer reporting agency or user of information which" and inserting "(a) IN GENERAL.—Any person who".

(e) ATTORNEY'S FEES.—

(1) WILLFUL NONCOMPLIANCE.—Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681n) is amended by adding at the end the following new subsection:

"(c) ATTORNEY'S FEES.—Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.".

(2) NEGLIGENT NONCOMPLIANCE.—Section 617 of the Fair Credit Reporting Act (15 U.S.C. 1681o) is amended by adding at the end the following new subsection:

"(b) ATTORNEY'S FEES.—On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.".

SEC. 2413. RESPONSIBILITIES OF PERSONS WHO FURNISH INFORMATION TO CONSUMER REPORTING AGENCIES.

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) by redesignating section 623 as section 624; and

(2) by inserting after section 622 the following:

SEC. 623. RESPONSIBILITIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES.

"(a) DUTY OF FURNISHERS OF INFORMATION TO PROVIDE ACCURATE INFORMATION.—

"(1) PROHIBITION.—

"(A) REPORTING INFORMATION WITH ACTUAL KNOWLEDGE OF ERRORS.—A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.

"(B) REPORTING INFORMATION AFTER NOTICE AND CONFIRMATION OF ERRORS.—A person shall not furnish information relating to a consumer to any consumer reporting agency if—

"(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

"(ii) the information is, in fact, inaccurate.

"(C) NO ADDRESS REQUIREMENT.—A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

"(2) DUTY TO CORRECT AND UPDATE INFORMATION.—A person who—

"(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

"(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

"(3) DUTY TO PROVIDE NOTICE OF DISPUTE.—If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

"(4) DUTY TO PROVIDE NOTICE OF CLOSED ACCOUNTS.—A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

"(5) DUTY TO PROVIDE NOTICE OF DELINQUENCY OF ACCOUNTS.—A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

"(b) DUTIES OF FURNISHERS OF INFORMATION UPON NOTICE OF DISPUTE.—

"(1) IN GENERAL.—After receiving notice pursuant to section 611(a)(2) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

"(A) conduct an investigation with respect to the disputed information;

"(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2);

"(C) report the results of the investigation to the consumer reporting agency; and

"(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

"(2) DEADLINE.—A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) within which the consumer reporting agency is required to complete actions required by that section regarding that information.

"(c) LIMITATION ON LIABILITY.—Sections 616 and 617 do not apply to any failure to comply with subsection (a), except as provided in section 621(c)(1)(B).

"(d) LIMITATION ON ENFORCEMENT.—Subsection (a) shall be enforced exclusively under section 621 by the Federal agencies and officials and the State officials identified in that section.".

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SEC. 2415. INCREASED CRIMINAL PENALTIES FOR OBTAINING INFORMATION UNDER FALSE PRETENSES.

(a) OBTAINING INFORMATION UNDER FALSE PRETENSES.— Section 619 of the Fair Credit Reporting Act (15 U.S.C. 1681q) is amended by striking “fined not more than $5,000 or imprisoned not more than one year, or both” and inserting “fined under title 18, United States Code, imprisoned for not more than 2 years, or both”.

(b) UNAUTHORIZED DISCLOSURES BY OFFICERS OR EMPLOYEES.— Section 620 of the Fair Credit Reporting Act (15 U.S.C. 1681r) is amended by striking “fined not more than $5,000 or imprisoned not more than one year, or both” and inserting “fined under title 18, United States Code, imprisoned for not more than 2 years, or both”.

SEC. 2416. ADMINISTRATIVE ENFORCEMENT.

(a) AVAILABLE ENFORCEMENT POWERS.—Section 621(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by adding at the end the following new paragraph:

“(2)(A) In the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

“(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account

the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

"(3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

"(4) Neither the Commission nor any other agency referred to in subsection (b) may prescribe trade regulation rules or other regulations with respect to this title.".

(b) AGENCIES RESPONSIBLE FOR ENFORCEMENT.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(1) in subsection (a), by inserting "ENFORCEMENT BY FEDERAL TRADE COMMISSION.—" before "Compliance with the requirements";

(2) in subsection (b), by striking the matter preceding paragraph (1) and inserting the following:

"(b) ENFORCEMENT BY OTHER AGENCIES.—Compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) or (e) of section 615 shall be enforced under—"; and

(3) in subsection (c), by adding at the end the following: "Notwithstanding the preceding, no agency referred to in subsection (b) may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this title, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this title, in which case, the agency may conduct an examination as necessary to investigate the complaint. If an agency determines during an investigation in response to a complaint that a violation of this title has occurred, the agency may, during its next 2 regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this title.".

SEC. 2417. STATE ENFORCEMENT OF FAIR CREDIT REPORTING ACT.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) STATE ACTION FOR VIOLATIONS.—

"(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

"(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

"(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

"(i) damages for which the person is liable to such residents under sections 616 and 617 as a result of the violation;

"(ii) in the case of a violation of section 623(a), damages for which the person would, but for section 623(c), be liable to such residents as a result of the violation; or

"(iii) damages of not more than $1,000 for each willful or negligent violation; and

"(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

"(2) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein;

"(C) to remove the action to the appropriate United States district court; and

"(D) to file petitions for appeal.

"(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

"(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this title that is alleged in that complaint.

"(5) LIMITATIONS ON STATE ACTIONS FOR VIOLATION OF SECTION 623(a)(1).—

"(A) VIOLATION OF INJUNCTION REQUIRED.— A State may not bring an action against a person

under paragraph (1)(B) for a violation of section 623(a)(1), unless—

"(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

"(ii) the person has violated the injunction.

"(B) LIMITATION ON DAMAGES RECOVERABLE.—In an action against a person under paragraph (1)(B) for a violation of section 623(a)(1), a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.".

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