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# Introduction

The United States' economic prosperity and the public's standard of living depend in large part on the availability of $7 trillion in outstanding mortgages and other consumer loans. Consumer credit finances homes and cars, funds college educations, and provides the credit cards that consumers use every day to purchase goods and services. Consumer credit is critical for large purchases (for example, homes, cars, college educations) and distance transactions (for example, purchases via telephone, mail, and the Internet). U.S. consumers have access to more credit, from a greater variety of sources, more quickly, and at lower cost than consumers anywhere else in the world.

The "almost universal reporting" of personal information about consumers is, in the words of economist Walter Kitchenman, the "foundation" of consumer credit in the United States and a "secret ingredient of the U.S. economy's resilience."[1] The U.S. credit reporting system makes possible what U.S. Federal Trade Commission (FTC) chairman Timothy J. Muris has called the "miracle of instant credit." According to Muris, "this 'miracle' is only possible because of our credit reporting system. The system works because, without anybody's consent, very sensitive information about a person's credit history is given to the credit reporting agencies."[2] In this way individual creditworthiness can be evaluated quickly and efficiently, and

consumers can qualify for credit, insurance, and other financial services based on their past payment experience.

Since 1971 the U.S. credit reporting system has operated under the Fair Credit Reporting Act (FCRA).[3] In 1996, Congress amended the FCRA to address various concerns related to the proper uses of credit report information, its accuracy, and consumer privacy.[4] The amendments that Congress enacted after years of hearings and debate reflected a careful balancing of these interests. A critical component of that balance was preemption of state laws affecting core elements of the credit reporting system and its privacy protection provisions. In the face of ongoing and dramatic changes in technologies, commerce, and markets, however, Congress provided that preemption would expire on January 1, 2004.

As that date nears, some legislators and privacy advocates have suggested that states be allowed to alter the balance struck in 1996 by imposing their own restrictions on the content and use of consumer credit reports. These advocates have also advanced proposals for Congress to impose new limits on specified uses of credit reports by conditioning those uses—particularly "prescreening" and affiliate sharing—on opt-in consent. These proposals have generated significant controversy.

This book examines the emerging debate over privacy and preemption, in the FCRA context and more broadly. We seek to move beyond the rhetoric of the political arena to provide a thoughtful analysis of what is at stake in this debate and the likely impact on consumers and the economy of new state or federal restrictions on credit reporting. Much of the analysis is applicable to proposed new restrictions on the use and sharing of personal information generally, especially in connection with financial products and services.