



Shady Business: Understanding Predatory Credit Repair Practices

CBA Community Webinar Series

March 17, 2022

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Housekeeping



This webinar is being recorded. The recording and presentation slides will be shared with a week.



Attendees will remain in listen-only mode. Interact with us via the chat.



Closed captions are available for the event.



Questions? Type them into the Q&A box.



CBA's Training Institute



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SAVE THE DATE



ANNOUNCING THE 9TH ANNUAL

2022

CBA

Credit Building Symposium

BLUEPRINTS FOR BUILDING CREDIT

June 22–24

The Mayflower Hotel
Washington, DC

Register at: bit.ly/CBA2022Sym



Meet the Presenters



Ricki Lowitz

co-Founder and co-CEO
Working Credit NFP



Andrew Pizor

Staff Attorney
National Consumer Law Center



Mary Joyce Nunn

Community Outreach Worker
Westside Health Authority



Working Credit NFP

Mission

We partner with individuals and communities to interrupt structural racism by providing credit building education, one-on-one counseling, and access to the products people need to thrive financially.

- **2014:** Workplace-based services (employee benefit)
- **2020:** Expanded our reach through replicable strategic partnerships:

City/Community Colleges (young adults)



Funder Collaboratives (small business owners of color)



Department of Corrections (returning citizens)



Emerging Partnerships:

- HBCUs
 - Public Housing Residents
 - Homebuyers
 - Workforce Development Programs
 - Utility Customers
- **2022:** Opening a D2C channel – consumer-facing website

How does Credit Repair Work?

What do they promise?

- To “fix your credit” (for approximately \$100/month, or \$500 - \$1,500 upfront)

How do they operate?

- They dispute “negative items” again and again (**whether they’re accurate or not**)
- They wait for the bureaus to miss the 30-day deadline they have (by law) to respond
 - When that happens, they know the item will get “removed”
- They contact you → announce / celebrate the “removal”

What’s the problem?

- If the item was **accurate**, it’s back on your report within 2-3 months



What’s happening?

- Credit Repair Organizations (CROs) leverage a loophole in the **Fair Credit Reporting Act** of 1970
- Makes it possible to get ANY negative item removed TEMPORARILY



How Does the Loophole Work?

Fair Credit Reporting Act of 1970 (15 U.S. Code § 1681)

Intention was to Protect Consumers:

- Gives consumers the right to dispute an item with the bureaus free of charge
 - Obligates the bureaus to conduct an investigation - and respond - within 30 days
 - Obligates the bureaus to remove the disputed item, if they miss the 30-day deadline
 - Authorizes creditors to “reinsert” an item, if the data is complete and accurate
 - Obligates creditors to inform the consumer, within 5 days, if an item is “reinserted”
-
- Credit Repair Organizations Watch Closely
- Data Furnishers Watch Closely
- Consumers Don't Know to Watch Closely

Years of Operating with No Real Pushback

- Offer a FREE Upfront Consultation
- Use this time to SELL
- Built a \$3,000,000,000 industry
- With 46,000 businesses
 - a few large
 - most are small proprietors

The image shows a screenshot of the CreditRepair.com website. The top navigation bar includes the logo, links for 'Fix my credit', 'Credit education', and 'About us', along with 'Login' and a 'Sign up' button. The main banner features a woman smiling while looking at her phone, with the headline 'Credit doesn't have to be confusing'. Below this, it says 'CreditRepair.com can show you exactly what's hurting your score & how you can work to fix it' and 'See what's impacting your score'. A 'Get started' button is present, along with a link 'or sign up online >>'. Below the banner, a section titled 'Get your FREE online credit evaluation now' lists three benefits: 'FREE credit score', 'FREE negative item summary', and 'FREE recommended credit solution'. It then asks 'First, we need some info to pull your credit.' and includes a reassurance: 'Don't worry—this is completely secure and won't hurt your score. And did we mention it's FREE?'. A large red oval is drawn around the bottom section of the page.

CreditRepair.com Fix my credit Credit education About us Login Sign up

Credit doesn't have to be confusing

CreditRepair.com can show you exactly what's hurting your score & how you can work to fix it

See what's impacting your score

Get started

or sign up online >>

Get your FREE online credit evaluation now

- ✓ FREE credit score
- ✓ FREE negative item summary
- ✓ FREE recommended credit solution

First, we need some info to pull your credit.

Don't worry—this is completely secure and won't hurt your score.
And did we mention it's FREE?

Industry Hinges on this Predatory Practice

Credit Repair Organizations

- Celebrate Removals
- Keep the process a mystery
- Go to great lengths to hide reinsertions



When Consumers Call to Complain

- “Keep on paying”
- “We’ll get it off for good”
 - Draw the process out for as long as possible
 - Keep the consumer focused on # of removals
 - NOT the credit score

From: Lexington Law Firm <email@mail.lexingtonlaw.com>

Date: August 21, 2020 at 1:05:39 PM CDT

To:

Subject: Good News from Lexington Law - Negative Item Removed

Reply-To: LEX Servicing



LexingtonLaw.

Login Now

Hi Harry,

Good news – you have positive updates on your credit reports.

1

Removal
Detected

The following items are no longer on
your Experian credit report.

1 ▲

Account	Account Type	Date	Status
	Collection	08/19/2020	Removed

Evidence of Disproportionate Marketing of Credit Repair in Communities of Color?



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Industry and markets

Disputes on Consumer Credit Reports

NOV 02, 2021

Because of the importance of credit reporting to the consumer finance system, the accuracy of credit reports is a perennial policy concern. Studies have found that a substantial minority of consumers have errors on their credit reports with the three nationwide consumer reporting agencies (CRAs), including errors substantial enough to meaningfully affect consumers' credit scores. Since the start of the COVID-19 pandemic, complaints to the CFPB about credit reporting issues have spiked, with credit reporting complaints increasing year-to-year by 129 percent in 2020 and becoming the most common complaint topic. This report uses data on auto loan, student loan, general purpose credit card, and retail card accounts opened between 2012 and 2019, and looks at the demographic characteristics of disputers and the outcomes for accounts with dispute flags.



Excerpt:

In its report, the CFPB did not say whether the consumer-disputed items were truly inaccurate information, but a higher rate of disputes among Black and Hispanics "is an indication that they have more errors," Wu said.

Are federal agencies aware of what's happening?

12 CFR Part 1022 – Fair Credit Reporting (Regulation V)

2011 Regulation by the Consumer Financial Protection Bureau (CFPB)

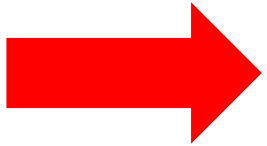
- Relieves the creditor from having to investigate disputes submitted by CROs
- Relieves the creditor from having to investigate “frivolous and irrelevant” disputes
- Helps the creditor, NOT the consumer

Federal Efforts to Curb Credit Repair Abuses

1996: Credit Repair Organizations Act (CROA)

15 USC CHAPTER 41, SUBCHAPTER II-A: § 1679b

- **Doesn't address the problem** (items being removed, and then added back)
- Prohibits CROs from charging or receiving payment until the service is “fully performed”



1995: Telemarketing Sales Rule (TSR)

16 CFR § 310.4 (part of the **Telemarketing and Consumer Fraud and Abuse Prevention Act**)

- **Exacting language that poses a real threat to the CROs**
 - Prohibits CROs from charging or receiving payment without first providing **PROOF** an item was **removed from, and stayed off, a consumer's credit report for 6 months** (two reports needed)
- Enacted in 1995 → Leveraged in 2019 by the CFPB
 - 2019 – Sues Lexington Law (among others) for violating the TSR
 - 2021 – Sues Credit Repair Cloud for violating the TSR
 - Shaking up the industry

Shady Business: Understanding Predatory Credit Repair Practices *The Telemarketing Sales Rule & What States Can Do*



National
Consumer Law
Center
*Fighting Together
for Economic Justice*

Andrew G. Pizor

March 17, 2022

Telemarketing Sales Rule - Overview

- Only applies to **telemarketers**
- Requires certain disclosures
- Prohibits misrepresentations;
- Sets limits on when telemarketers may call consumers;
- Do Not Call list
- *Sets payment restrictions for the sale of certain goods and services.*
 - Debt relief services
 - **CREDIT REPAIR**

TSR – Rules Specific to Credit Repair

16 CFR 310.4(a)(2)

- Can't ask for or receive payment until—

1) Time frame in which the seller said “all of the goods or services will be provided to that person has expired;”

TSR – Rules Specific to Credit Repair

16 CFR 310.4(a)(2)

- Can't ask for or receive payment until—
 - 2) Provide credit report that—
 - Shows results were achieved
 - Was issued at least 6 months after results were achieved
- “The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved.”

TSR - Limitations

- Only telemarketers
- Face-to-face exemption
- Doesn't apply to internet-only
- Private enforcement very difficult

Who is a Telemarketer?

- Makes or receives calls in connection with telemarketing
- What's telemarketing? (short version)
 - Ad campaign to induce purchases via telephone
 - Requires at least 1 interstate call
- Excludes deals closed in face-to-face meeting
- Excludes internet-only transactions (no phone call)

Private Enforcement

- Requires at least \$50,000 in damages

What Can States Do to Fill Gaps in TSR

- Pass a law that does same thing as TSR without the gaps:
 - Prohibit charging anything until give consumer a copy of report that
 - Shows results have been achieved
 - Was issued at least 6m after results were achieved
- Applies to all credit repair providers
 - no telemarketing requirement

What Can States Do to Fill Gaps in TSR

- Make it is enforceable!
 - Has a private right of action
 - Statutory and actual damages
 - If consumer wins, defendant pays attorney fees

What Can States Do to Fill Gaps in TSR

- Prohibit the payment of referral fees
 - Good businesses will get referrals anyway
 - Don't let bad businesses buy referrals
- Designate and fully fund a regulator to supervise the CRO industry.
 - Require CROs to file statistical proof of any advertised data with the regulator.
- Require CROs to give consumers a contemporaneous copy of all communications sent on the consumer's behalf.

What Can States Do to Fill Gaps in TSR

- Make violations of the Telemarketing & Consumer Fraud & Abuse Prevention Act and its regulations an unfair and deceptive act or practice under state law.
- For more ideas:
 - NCLC's [*What States Can Do About Credit Repair Abuses*](#) at NCLC.org
 - Chapter 17 of NCLC's [*Fair Credit Reporting*](#) treatise



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Thank You!

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