APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 20-2064

CONSUMER DATA INDUSTRY ASSOCIATION,

Plaintiff-Appellee,

v.

AARON M. FREY, in his official capacity as ATTORNEY GENERAL OF THE STATE OF MAINE; WILLIAM N. LUND in his official capacity as SUPERINTENDENT OF THE MAINE BUREAU OF CONSUMER CREDIT PROTECTION,

Defendants-Appellants.

Filed: Feb. 10, 2022

Barron and Selya, *Circuit Judges*, and Delgado-Hernández, *District Judge*.[*]

OPINION

DELGADO-HERNANDEZ, *District Judge*. In 2019, Maine's Legislature passed two laws that amended the Maine Fair Credit Reporting Act, Me. Rev. Stat. Ann. tit. 10, §§ 1306 *et seq*. ("Maine Act"), to regulate the reporting of overdue medical debt and

[*] Of the District of Puerto Rico, sitting by designation.

debt resulting from economic abuse. After a facial preemption challenge to the laws from an industry group representing credit reporting agencies, the District Court held that both laws were preempted under Section 1681t(b)(1)(E) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 *et seq*. We vacate and reverse the District Court's judgment, and remand for further proceedings addressing whether both laws may be partially preempted by Section 1681t (b)(1)(E), and whether the economic abuse debt reporting law may be separately preempted by Section 1681t(b)(5)(C).

I.

A. Background

Consumer credit reports play an important role in the lives of individuals and in the economy. As the District Court recognized, these reports influence whether, and on what terms, "a person may obtain a mortgage, a credit card, a student loan, or other financing." *Consumer Data Indus. Ass'n. v. Frey*, 495 F. Supp. 3d 10, 13 (D. Me. 2020). Mindful of this role, "Congress enacted the FCRA in 1970 as part of the Consumer Credit Protection Act 'to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.'" *Sullivan v. Greenwood Credit Union*, 520 F.3d 70, 73 (1st Cir. 2008) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007)). The FCRA "regulates the creation and the use of consumer report[s] by consumer reporting agenc[ies] for certain specified purposes, including credit transactions, insurance, licensing, consumer-initiated business transactions, and employment." *Spokeo, Inc. v. Robins*, 578 U.S.

330, 334-35 (2016) (alterations in original) (internal quotation marks omitted).[1]

Before passage of the FCRA, "there was little significant state regulation of the credit reporting industry." 2 *Consumer Law Sales Practices and Credit Regulation* § 534 (Sept. 2021). Since the passage of the FCRA, a number of states, including Maine, have enacted legislation patterned after the federal statute. *Id.* & n.3. The Maine Act was enacted in 1977. *See* Fair Credit Reporting Act, 1977 Me. Laws 945-54 (codified at Me. Rev. Stat. Ann. tit. 10, §§ 1311 *et seq.*); *Equifax Servs., Inc. v. Cohen*, 420 A.2d 189, 193-194 (Me. 1980) (describing statute). The statute's current version goes back to 2013. *See* An Act to Update the Fair Credit Reporting Act Consistent with Federal Law, 2013 Me. Laws 255-62 (codified at Me. Rev. Stat. Ann. tit. 10, §§ 1306 *et seq.*) It has been amended several times. Two such amendments are at issue here, "An Act Regarding Credit Ratings Related to Overdue Medical Expenses," 2019 Me. Laws 266 (codified at Me. Rev. Stat. Ann. tit. 10, § 1310-H(4)) ("Medical Debt Reporting Act"), and "An Act to Provide Relief to Survivors of Economic Abuse," 2019 Me. Laws 1062-

[1] Over the years, the FCRA has been subject to rnul tiple amendments, including in 2018 to regulate the reporting of veterans' medical debt. *See* Fed. Trade Comm'n, *40 Years of Experience with the Fair Credit Reporting Act* 1-16 (July 2011) "FTC Staff Report" (outlining history of FCRA and amendments); §1A *Consumer Credit Law Manual* § 16.01, at 3-4, 7-14 (summarizing amendments); *see, e.g.*, Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296, 1332-35 (2018) (amending FCRA to address certain aspects of veterans' medical debt reporting).

64 (codified at Me. Rev. Stat. Ann. tit. 10, § 1310-H(2-A)) ("Economic Abuse Debt Reporting Act").[2]

The Medical Debt Reporting Act prohibits consumer reporting agencies from reporting "debt from medical expenses on a consumer credit report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported." Me. Rev. Stat. tit. 10, § 1310-H(4)(A). Once a consumer reporting agency receives "reasonable evidence . . . that a debt from medical expenses has been settled in full or paid in full," it "[m]ay not report that debt" and "[s]hall remove or suppress the report of that debt." *Id.* § 1310-H(4)(B). And if "the consumer is making regular, scheduled periodic payments toward the debt from medical expenses reported to the consumer reporting agency as agreed upon by the consumer and the medical provider, the consumer reporting agency must report that debt . . . in the same manner as debt related to a consumer credit transaction is reported." *Id.* § 1310-H(4)(C). Driving the statute is the belief that, unlike in the case of the purchase of a house or a car, medical debt is usually unplanned and involuntarily incurred. *See* An Act Regarding Credit Ratings Related to Overdue Medical Expenses: Hearing on LO 110 Before the J. Standing Comm. on Health Coverage, Ins. & Fin. Servs., 129th Legis. (2019) (statement of Rep. Chris Johansen).

For its part, the Economic Abuse Debt Reporting Act requires a credit reporting agency to reinvestigate a debt if the consumer provides documentation that

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[2] To facilitate review, we also refer to the two Amendments as the "Amendments."

the debt is the result of economic abuse. In the event the credit reporting agency determines that the debt is the result of such abuse, it must remove any reference to the debt from the consumer report. *See* Me. Rev. Stat. Ann. tit. 10, § 1310-H(2-A). For this purpose, "economic abuse" is defined as,

> causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medications or shelter.

See Me. Rev. Stat. Ann. tit. 19-A, § 4002(3-B). Underlying the Economic Abuse Debt Reporting Act is the belief that many domestic violence cases involve economic abuse. Accordingly, the statute seeks to help domestic violence victims regain control of their finances so they can leave abusive relationships and retake control of their lives. *See* An Act to Provide Relief to Survivors of Economic Abuse: Hearing on LD 748: Hearing before J. Standing Comm. on Judiciary, 129th Legis. (2019) (statement of Jessica L. Fay).

B. Proceedings Below

In September 2019, the Consumer Data Industry Association ("CDIA"), an international trade association whose membership includes the "Big

Three" credit reporting agencies—TransUnion, Equifax, and Experian—and other agencies, sued Maine's Attorney General, Aaron M. Frey, and the Superintendent of the Maine Bureau of Consumer Credit Protection, William N. Lund (collectively the "State of Maine"), claiming that the Amendments are preempted by the FCRA.

In April 2020, the parties filed cross-motions for judgment on a stipulated record. CDIA argued in favor of a broad reading of the FCRA, claiming that the Amendments are preempted by 15 U.S.C. § 1681t(b)(1)(E), and the Economic Abuse Debt Reporting Act separately preempted by 15 U.S.C. § 1681t(b)(5)(C). *See Consumer Data Indus. Ass'n*, 495 F. Supp. 3d at 19 (summarizing arguments). To the contrary, the State of Maine argued that the operative language should be read more narrowly, preempting state law only for the specific or discrete subject matter of FCRA' s regulations. *Id.*

The District Court agreed with CDIA, concluding that the Amendments are preempted by Section 1681t(b)(1)(E). *See Consumer Data Indus. Ass'n*, 495 F. Supp. 3d at 19-21. Given that it so concluded, the District Court declined to address CDIA's alternate argument that the Economic Abuse Debt Reporting Act is also preempted by Section 1681t(b)(5)(C). *Id.* at 21. This appeal ensued.

II.

A. Standard of Review

When reviewing a district court's ruling on a motion for judgment on a stipulated record, we review legal conclusions de novo and factual findings for clear error. *Thompson v. Cloud*, 764 F.3d 82, 90 (1st Cir.

2014). Here, the dispute centers on the District Court's legal conclusion that the Amendments are preempted, a topic to which we now turn.

B. Overview

The Supremacy Clause provides that federal law "shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. This Clause gives Congress "the power to preempt state law." *Capron v. Off. of Att'y Gen. of Mass.*, 944 F.3d 9, 21 (1st Cir. 2019). In general, there are "three different types" of preemption—"express," "conflict," and "field." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1480 (2018). Express preemption occurs "when congressional intent to preempt state law is made explicit in the language of a federal statute." *Tobin v. Fed. Exp. Corp.*, 775 F.3d 448, 452 (1st Cir. 2014). Conflict preemption takes place when state law imposes a duty that is "inconsistent—i.e., in conflict—with federal law." *Murphy*, 138 S. Ct. at 1480. Field preemption comes about when federal law occupies a field of regulation "so comprehensively that it has left no room for supplementary state legislation." *Id.*

In this setting, our inquiry reduces to whether the Amendments are swept into the maw of FCRA preemption, and in particular, that of express preemption. We concentrate on congressional intent, "the touchstone" of any effort to map the boundaries of an express preemption clause. *Tobin*, 775 F.3d at 452. That intent may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992). "To illuminate this intent, we start with

the text and context of the provision itself." Tobin, 775 F.3d at 452.

C. Scope of Preemption

Congress formulated a general rule against preemption in the FCRA. To this end, the FCRA,

> [e]xcept as provided in subsections (b) and (c), does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

15 U.S.C. § 1681t(a). Simultaneously, Congress provided for exceptions to this general rule. One of the exceptions is set in Section 1681t(b)(1)(E), which reads,

> No requirement or prohibition may be imposed under the laws of any State-
>
> (1) with respect to any subject matter regulated under
>
> . . . .
>
> (E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996.

15 U.S.C. § 1681t(b)(1)(E) (emphasis added). Section 1681c details specific information that must be excluded from consumer reports, *see* 15 U.S.C. § 1681c(a)(1)-(8), as well as information that must be disclosed in consumer reports, *see* 15 U.S.C. § 1681c(d)-(f).

The parties disagree over how broadly the phrases "relating to information contained in consumer reports" and "with respect to any subject matter regulated under [Section 1681c]" should be understood. CDIA homes in on the phrase "relating to. "And because the Amendments impose requirements or prohibitions that relate to information contained in consumer reports, CDIA claims they are preempted by the FCRA.

We are not persuaded by CDIA' s argument that Section 1681t(b)(1)(E) preempts all state laws "relating to information contained in consumer reports," regardless of whether they regulate subject matter regulated by Section 1681c. That is not the most natural reading of the statute's syntax and structure. Congress drafted the line breaks in the statute so that a sentence describing what was preempted as well as the phrase "subject matter regulated under" would be completed by reference to a statutory section or subsections, suggesting that it wanted to give the statutory references a functional role in describing the regulated "subject matter". Such an approach also makes intuitive sense because—apart from field preemption, for which there is no persuasive evidence here—the usual function of preemption provisions is to protect Congress' enactments from interference by state laws. Had

Congress intended the "relating to" phrase alone to delimit the subject matter preempted, it could have drafted the statute differently, with the "relating to" clause directly following "subject matter" and setting off references to statutory sections with a comma.

The "relating to" clause can be plausibly read either as purely descriptive of the content of the statutory provisions or as modifying "subject matter" jointly with "regulated under section 1681c." In either case, though, the effect is the same: the content of the statutory provision plays a functional role in defining the scope of the subject matter preempted. By contrast, CDIA's proposed interpretation—which treats the phrase "subject matter" as defined only by the phrase "relating to"—renders the entire phrase, "regulated under section 1681c" surplusage. A statute, however, ought to be construed in a way that "no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quoting *Market Co. v. Hoffman*, 101 U.S. 112, 115 (1879)).

Furthermore, the impact of adopting CDIA's interpretation would not be isolated. Congress used the same statutory structure as that found in Section 1681t (b) (1) (E) throughout Sections 1681t(b)(1)(A)-(K). Thus, embracing CDIA's construction would make reference to all of the provisions listed in those sections surplusage, contrary to the well-known canon that, if possible, "every word and every provision" in a statute is to be given effect, none should be ignored, and none should be given an interpretation that causes it to have no consequence. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of*

Legal Texts 174 (2012). Each word Congress uses "is there for a reason." *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017).

In the statutory provisions listed in Section 1681t(b)(1), Congress has legislated extensively but often narrowly—addressing particular kinds or uses of information or particular practices. Not only would CDIA's proposed interpretation render the references to the statutory provisions surplusage but it would also disregard the care and specificity with which Congress drafted those provisions.

That leads to the other component of this statutory structure, Section 1681t(b)(1)(E) and its mandate that no requirement or prohibition is to be imposed under the laws of any State "with respect to" any subject matter regulated under Section 1681c. In *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013), the Supreme Court considered the preemptive scope of a provision in the Federal Aviation Administration Authorization Act ("FAAAA"), which prohibited enforcement of state laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." *Id.* at 261. The Court observed that for purposes of FAAAA preemption, it is not sufficient that a state law relate to the "price, route, or service" of a motor carrier, but that it also concern a motor carrier's "transportation of property." *Id.* The Court concluded that the phrase "with respect to" narrows the scope of preempted subject matter to its referent or referents. *See id.*

Following the same path, Section 1681t(b)(1)(E)'s mandate expresses Congress' intent only to preempt those claims that concern subject matter regulated

under Section 1681c. *See Galper v. JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 445-446 (2d Cir. 2015) (reaching similar conclusion in the context of identical language in Section 1681t(b)(1)(F)); *Fishback v. HSBC Retail Servs. Inc.*, No. 12-0533, 2013 WL 3227458, at *16 (D.N.M. June 21, 2013) (Section 1681t(b) preempts state law concerning specific subject matters regulated under Sections 1681b, 1681c, 1681g, 1681i, 1681j, 1681m, 1681s and 1681w).[3] So construed, the preemption clause necessarily reaches a subset of laws narrower than those that merely relate to information contained in consumer reports.

CDIA argues that the phrase "any subject matter" is "a descriptive phrase, not a limiting one," and that by including in Section 1681t(b)(1)'s various subsections the specific provisions of the FCRA such as Section 1681c, Congress merely made "reference to the FCRA Section that governs the topic described." The plain wording of a preemption clause "contains the best evidence of Congress' pre-emptive intent." *Sprietsma v. Mercury Marine*, 537 U.S. 51, 62-63 (2002) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)). In *Dan's City Used Cars, Inc.*, the Supreme Court noted that the addition of the words "with respect to" in the FAAAA "massively limit [ed] the scope of preemption" ordered by the statute. 569 U.S. at 261. And while the preemption provision

[3] *See also* Elizabeth D. De Armond, *Preventing Preemption: Finding Space for States to Regulate Consumer Credit Reports*, 2016 B.Y.U. L. Rev. 365, 402 & n.176 (2016) ("While the FCRA uses 'relating to' in its preemption section, it does so only to describe the content of the specific preempting provisions. It uses 'with respect to' to describe the relationship between the state law and the preempting subject matter.").

at issue here arises in a different federal statute, there is no basis to conclude that the effect of the language in each provision was not intended to be the same. *See Galper*, 802 F.3d at 446 (so noting in applying *Dan's City Used Cars, Inc.*'s reading of the phrase "with respect to," to the same phrase under the FCRA).

As well, if as CDIA claims, Congress intended to preempt all state laws relating to information contained in consumer reports, it could have easily so stated. Congress knows how to preempt states from regulating entire subject areas. *See e.g.*, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378-79 (1992) (explaining that "[t]o ensure that the States would not undo federal deregulation with regulation of their own, the [Airline Deregulation Act] included a pre-emption provision, prohibiting the States from enforcing any law 'relating to rates, routes, or services' of any air carrier" (quoting 49 U.S.C. app. § 1305(a)(1))).

Yet, that is not what happened with the FCRA. When legislators "did not adopt obvious alternative language, the natural implication is that they did not intend the alternative." *Advocate Health Care Network*, 137 S. Ct. at 1659 (internal quotation marks omitted) (quoting *Lozano v. Montoya Alvarez*, 572 U.S. 1, 16 (2014)). A legislature "says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). Besides, as noted earlier, CDIA's construction would divest the phrase "regulated under" and the statutory references" of any real meaning, in contravention of the "surplusage" canon. We cannot treat those words "as stray marks on a page—

notations that Congress regrettably made but did not really intend." *Advocate Health Care Network*, 137 S. Ct. at 1659.

CDIA posits that "[i]f Congress intended states to be able to adopt laws governing the content of consumer reports," then there would have been no need for the savings clause found in Section 1681t(b)(1)(E). The clause provides that preemption as set forth therein "shall not apply to any State law in effect on September 30, 1996." Because the provision preempts states from enacting laws with respect to subject matters regulated under that Section, the clause serves to preserve pre-existing state laws even if they relate to regulated subject matters otherwise preempted by the FCRA. For that reason, there is no surplusage problem here.

CDIA maintains that legislative history reflects that Congress intended to expand the preemptive scope of the FCRA by establishing a uniform national standard related to information contained in credit reporting with which states could not interfere. We see no reason to presume that Congress intended, in providing some federal protection to consumers regarding the information contained in credit reports, to oust all opportunity for states to provide more protections, even if those protections would not otherwise be preempted as "inconsistent" with the FCRA as under 15 U.S.C. § 1681t(a). This is not a case in which the federal government ousted states from regulating the field of consumer credit reports, and then stepped in to provide limited protections to consumers. The FCRA was first enacted to provide federal protections for consumers, including its

prohibition on the reporting of obsolete "items of information" such as "[a]ny other adverse item of information which antedates the report by more than seven years," and states were at the same time free to provide additional protections, subject only to the prohibition on "inconsistent" state laws that now appears in Section 1681t(a). *See* FCRA, Pub. L. 91-508 §§ 605, 622, 84 Stat. 1130, 1136 (1970) (codified as amended at 15 U.S.C. §§ 1681t, 1681c); *see also Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) ("The legislative history of the FCRA reveals that it was crafted to protect consumers from the transmission of inaccurate information about them . . ."). And even where Congress has chosen to preempt state law, it is not ousting states of regulatory authority; state regulators have concurrent enforcement authority under the FCRA, subject to some oversight by federal regulators. *See* 15 U.S.C. § 1681s(c).

In any case, given that the language of the statute is unambiguous, we find it unnecessary to dwell further on its legislative history. *See Conn. Nat'l Bank*, 503 U.S. at 254 ("When the words of a statute are unambiguous, then, th[e] first canon [of statutory construction] is also the last: 'judicial inquiry is complete.'" (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). What is more, if Congress intended to impose that degree of uniformity, it could have accomplished this objective by prohibiting all state regulation of content of consumer reports. But "Congress did not write the statute that way." *Russello v. United States*, 464 U.S. 16, 23 (1983). Instead, it inserted the phrase "regulated under" to delimit the operative range of preemption. We "cannot revisit that

choice." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 16 (2014).

CDIA directs our attention to the possible negative effects that a ruling favoring the State of Maine on this issue might have on the national economy and the difficulties that the consumer-credit industry might face if credit reporting agencies have to comply with what it refers to as a "patchwork of state laws."[4] In response, the State of Maine argues that CDIA overstates those effects. With a statutory text and structure such as we have examined, weighing of policy is up to Congress. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U. S. 1, 13-14 (2000) ("Achieving a better policy outcome . . . is a task for Congress, not the courts."); *United States v. Noland*, 517 U.S. 535, 541 n.3 (1996) ("Noland may or may not have a valid policy

[4] Along the same line, *Amici* American National Financial Services Association and United States Chamber of Commerce assert that: allowing States to disturb the national consumer-reporting industry with state-specific standards runs the risk of upsetting the carefully balanced interests under the FCRA, in their view returning the industry to its limited, local focus that obtained generations ago; the cost of determining which state law or laws applied and of complying with those laws, could easily compel a consumer lender to operate solely within a single State, or to exit the lending industry altogether; State regulations may inhibit the assembly of comprehensive credit reports, undermining their predictive value and increasing lending risk; and individual state regulation would frustrate consumers as they move, commute, and deal with business from across state lines, all of which would reduce lending competition across the country, driving up interest rates for some consumers, and foreclosing access to credit for others.

argument, but it is up to Congress, not this Court, to revise that determination if it so chooses."); *Madison Cnty., N. Y. v. U.S. Dep't. of Just.*, 641 F.2d 1036, 1041 (1st Cir. 1981) ("Whatever may be thought to be sound public policy should be up to Congress.").

D. Areas of Regulation

Having identified the domain of preemption under Section 1681t(b)(1)(E), we look into the statutory provisions that define its scope, for those separate what Congress preempted from what it did not preempt. In this endeavor, we zero in on Sections 1681c(a)(1)-(5), 1681c(b), 1681c(a)(7) and 1681c(a)(8).

i. Sections 1681c(a)(1)-(5) and 1681c(b)

To begin, pursuant to Section 1681c(a), no consumer reporting agency may make any consumer report "containing any of the following items of information:"

> (1) Cases under Title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.
>
> (2) Civil suits, civil judgments, and records of arrest that, 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 the date of payment, antedate the report from date of 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) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.[5]

See 15 U.S.C. § 168lc(a)(1)-(5). The list covers information to be excluded from credit reports, in a progression that moves from bankruptcy cases (Section 1681c(a)(1)), to civil suits, judgments and arrests (Section 1681c (a)(2)), paid tax liens (Section 1681c(a)(3)), and accounts placed for collection (Section 1681c(a)(4)).

Fairly read, all of these categories comprise adverse items of information, and immediately precede Section 1681c(a)(5), which adds to the category of material to be excluded from reports, "[a]ny other adverse item of information, other than records of conviction of crimes[,] which antedates the report by more than seven years." *Id.* § 1681c(a)(5). The catch-all language is broad enough to cover medical debt and debt resulting from domestic abuse, which consist of adverse items of information not covered by the immediately preceding provisions. *See* FTC Staff Report, *supra* at 57 (Section 1681c(a)(5)

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[5] We note that "there is a simple scrivener's error" in Section 1681c(a)(5). *Moran v. Screening Pros., LLC*, 943 F.3d 1175, 1183 n.6 (9th Cir. 2019). Thus, a comma should be included to separate the exclusionary clause as follows, "Any other adverse item of information, other than records of convictions of crimes[,] which antedates the report by more than seven years." *Id.*

applies to "all adverse information that is not covered" by Sections 1681c(a)(1)-(4)).[6]

Measuring the reach of preemption, Section 1681c(a)(5) points to age. Subject to three exceptions found in Section 1681c(b), it prohibits consumer reporting agencies from reporting adverse information that is more than seven years old.[7] Correspondingly, agencies may report that information, provided it does not predate the report for more than seven years. *Id.* But they are not required to do so. *See* FTC Staff Report, *supra* at 55 (Section 1681c(a)(5) does not

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[6] As originally legislated as part of the FCRA in 1970, Section 1681c(a)(5) was enacted as Section 1681c(a)(6) . *See Moran*, 943 F. 3d at 1182 (describing original enactment). In 1990, the Federal Trade Commission (FTC), the agency with original interpretative authority over the FCRA, released a report providing guidance on the statute. *See* Fed. Trade Comm'n, Commentary on the Fair Credit Reporting Act, 55 Fed. Reg. 18,804 (May 4, 1990) ("FTC Staff Commentary"). The Commentary states that the catch-all provision applied "to all adverse information that is not covered" by Section 1681c(a)(1)-(5). *Id.* at 18,818. In 1998, Congress amended the FCRA, including Section 1681c(a)(6). As a result, the catch-all provision became Section 1681c(a)(5). *See Moran*, 943 F.3d at 1183 (noting change). In 2011, as primary interpretative authority was being handed over from the FTC to the Consumer Financial Protection Bureau, the FTC issued a staff report withdrawing the 1990 Commentary. *See* FTC Staff Report, *supra* at 8. As noted in the text, for Section 1681c(a)(5) the Staff Report maintained the position the Commentary had adopted in 1990 in connection with then Section 1681c(a)(6). *Id.* at 57.

[7] *See* De Armond, *supra* at 408 ("[T]he FCRA provision is less about the substantive character of the information and much more about its age. The provision establishes that information is sufficiently 'fresh' only for the designated period of time, without governing the content itself.").

require consumer reporting agencies "to report all adverse information within the time period[] set forth, but only prohibits them from reporting adverse items beyond [that] time period[]").

In drafting (a)(1)-(a)(5) of Section 1681c, Congress defined the subject matter, the kinds and uses of information, it was regulating narrowly and with specificity: information older than seven years relating to bankruptcies, civil suits, civil judgments, records of arrest, paid tax liens, accounts in collection, or that is otherwise adverse.

On appeal to us, CDIA has not developed any argument as to whether and how the Amendments might trench on this more circumscribed "subject matter"—i.e., the "items of information" listed in Section 1681c(a). Thus, given the arguments made to us, we vacate the District Court judgment finding that Section 1681t(b)(1)(E) preempts the Maine Amendments in their entirety, and remand to the District Court for further proceedings consistent with this opinion.[8]

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[8] CDIA has not developed on appeal any argument that Section 1681c preempts the Amendments based on a theory of implied preemption (of either the field, obstacle, or impossibility variety). *See Murphy*, 138 S. Ct. at 1480 (describing different theories of implied preemption). Any such argument is therefore waived. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived."). We focus, as did the District Court, on whether Section 1681t(b) expressly preempts the Amendments. *See Consumer Data Indus. Ass'n*, 495 F. Supp. 3d at 19-20 ("Plaintiff's chief argument is that the two Maine Amendments are expressly preempted . . . . the

ii. Sections 1681c(a)(7) and 1681c(a)(8)

CDIA posits that the Medical Debt Reporting Act is preempted because it regulates the same subject matter as Sections 1681c(a)(7) and 1681c(a)(8). These sections regulate the reporting of veterans' medical debt. To CDIA's way of thinking, because regulation of veterans' medical debt is regulation of medical debt, it is preempted by the FCRA. But that these sections carry special rules when it comes to veterans' medical debt as regulated in the statute, does not mean that they more broadly regulate the subject matter of medical debt reporting, given that medical debt afflicting veterans is not the only type of medical debt Congress could have regulated.

Consider medical debt besetting law enforcement officers, firefighters, health-care workers, education workers, construction workers, manufacturing workers, transportation workers, retail-sale workers, public employees, individuals in other labor markets, as well as that burdening independent contractors, retirees and a myriad of persons found in other sectors of the U.S. economy. If Congress had intended to regulate the reporting of all those instances of medical debt it could simply have said so, without textually limiting the field of regulation to veterans' medical debt. And that is not what it did.[9] In consequence, we

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Maine Amendments intrude upon a subject matter that Congress has recently sought to expressly preempt from state regulation.").

[9] In 2013, Senator Merkley and others presented an amendment to Section 1681c(a) to delete from credit reports "[a]ny information related to a fully paid or settled medical debt that had been characterized as delinquent, charged off, or in collection which, from the date of payment or settlement,

conclude that Sections 1681c(a)(7) and 1681c(a)(8) only regulate the reporting of veterans' medical debt, not medical debt in general.

Although it is clear to us that Sections 1681c(a)(7) and 1681c(a)(8) have no preemptive effect for non-veterans' medical debt, the scope of their partial preemptive effect on the Maine Medical Debt Reporting Act as it applies to veterans' medical debt is less obvious. Because the parties have not heretofore briefed in any detail the issue of the partial preemptive scope and effect of Sections 1681c(a)(7) and 1681c(a)(8) on the Maine Medical Reporting Act, we think it best to permit the parties to develop those arguments in the District Court. We take no view of

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antedate[d] the report by more than 45 days." *See* Medical Debt Responsibility Act of 2013, S. 160, 113th Cong. (2013). Similarly, in 2018 Senator Merkley proposed an amendment to Section 1681c(a) to exclude from consumer reports "[a]ny information related to a medical debt if the date on which such debt was placed for collection, charged to profit or loss, or subjected to any similar action antedate[d] the report by less than 180 days," and "[a]ny information related to a fully paid medical debt that had been characterized as delinquent, charged off, or in collection which, from the date of payment or settlement, antedate [d] the report by more than 45 days." *See* 164 Cong. Rec. S 1482 (March 7, 2018). As the District Court observed, neither bill made it out of committee. By way of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, Congress did amend the FCRA to create protections for veterans in the reporting of certain medical collection debts, "to rectify problematic reporting of medical debt included in a consumer report of a veteran due to inappropriate or delayed payment for hospital care, medical services, or extended care services provided in a non-Department of Veterans Affairs facility under the laws administered by the Secretary of Veterans Affairs," and "to clarify the process of debt collection of such medical debt." *Id.* § 302, 132 Stat. at 1332.

the extent of partial preemption of the Medical Debt Reporting Act at this time. Consequently, we vacate the District Court judgment, reverse the holding that regulation of non-veteran medical debt reporting is preempted, and remand for further proceedings addressing the partial preemptive effect of Sections 1681c(a)(7) and 1681c(a)(8) on the Maine Medical Debt Reporting Act.

E. 15 U.S.C. § 1681t(b)(5)(C)

CDIA contends that the Economic Abuse Debt Reporting Act is separately preempted by Section 1681t(b)(5)(C). This Section preempts any state law "with respect to the conduct required by the specific provisions of [S]ection 1681c-2." In turn, Section 1681c-2 provides that "a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of [certain supporting documentation]." 15 U.S.C. § 1681c-2.

According to CDIA, the definition of economic abuse under the Economic Abuse Debt Reporting Act includes conduct that qualifies as identity theft under the FCRA and requires consumer reporting agencies to "reinvestigate" allegations of identity theft and "block reporting of that information." And given that the FCRA already regulates identity theft in its Section 1681c-2 and establishes how consumer reporting agencies must respond in such cases, CDIA argues that the Economic Abuse Debt Reporting Act is preempted by Section 1681t(b)(5)(C).

The State of Maine disputes CDIA's thesis on two grounds. First, it posits that "economic abuse is not synonymous with identity theft." From its perspective, "there is little, if any, overlap between these two definitions."[10] Second, it observes that the conduct required by the Economic Abuse Debt Reporting Act is not the same conduct required by Section 1681c-2.[11] In its view, because both "the triggers for taking action" and "the actions that then must be taken are different," the Economic Abuse Act does not impose requirements or prohibitions regarding conduct

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[10] The State of Maine maintains that the "economic abuse" definition under the Economic Abuse Debt Reporting Act "is far broader because it includes all manner of conduct that would not be considered 'identity theft' under [the] FCRA" and, at the same time, "it is narrower because conduct that would be considered 'identity theft' under [the] FCRA" would qualify as economic abuse under the EAA "only if it was done for the purpose of 'causing or attempting to cause an individual to be financially dependent.'" It submits that "the run of the mill identity theft addressed by [the] FCRA is committed for financial gain and not to control another person."

[11] On this account, the State of Maine observes that the Economic Abuse Debt Reporting Act "requires a consumer reporting agency, after being provided with specified documentation by a consumer that the debt is the result of economic abuse, to reinvestigate the debt and remove any reference to the debt it determines to be the result of economic abuse." Section 1681c-2, instead, "requires a consumer reporting agency, after being provided with specified documentation by a consumer that certain information was the result of alleged identity theft, to block that information and notify the furnisher." So, the State of Maine argues that under Section 1681c-2 the agency is not required to conduct any investigation, although it can remove the block in certain circumstances.

required by Section 1681c-2 and is thus not preempted by Section 1681t(b)(5)(C).

The District Court did not evaluate this issue given its decision that the Amendments were preempted by Section 1681t(b)(1)(E). As we are vacating the Judgment, we leave it to the District Court to determine in the first instance whether the Economic Abuse Debt Reporting Act is preempted by Section 1681t(b)(5)(C).

III.

In sum, we conclude that Section 1681t(b)(1)(E) narrowly preempts state laws that impose requirements or prohibitions with respect to the specific subject matters regulated under Section 1681c. Along this line, the Amendments are not preempted in their entirety by Sections 1681c(a)(5) and 1681c(b). We do not address whether the Medical Debt Reporting Act or the Economic Abuse Debt Reporting Act is partially preempted by Section 1681t(b)(1)(E). Sections 1681c(a)(7) and 1681c(a)(8) do not preempt the Medical Debt Reporting Act insofar as it regulates non-veterans' medical debt. We take no position as to whether or to what extent those sections partially preempt the Medical Debt Reporting Act and remand that issue to the District Court for briefing by the parties. We likewise express no opinion on whether the Economic Abuse Debt Reporting Act is preempted by Section 1681t(b)(5)(C) and leave it to the District Court to evaluate that issue in the first instance. Therefore, we vacate and reverse the Judgment, and remand for further proceedings consistent with this opinion. No costs awarded.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 20-2064

CONSUMER DATA INDUSTRY ASSOCIATION,

Plaintiff-Appellee,

v.

AARON M. FREY, in his official capacity as ATTORNEY GENERAL OF THE STATE OF MAINE; WILLIAM N. LUND in his official capacity as SUPERINTENDENT OF THE MAINE BUREAU OF CONSUMER CREDIT PROTECTION,

Defendants-Appellants.

Filed: July 5, 2022

Barron, *Chief Judge,* Selya, Lynch,[*] Thompson, Kayatta,[*] Gelpí, *Circuit Judges*, and Delgado-Hernández,[**] *District Judge*.

ORDER

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has

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[*] Judge Lynch and Judge Kayatta are recused and did not participate in the consideration of this matter.

[**] Of the District of Puerto Rico, sitting by designation.

also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for hearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

No. 19-cv-00438

CONSUMER DATA INDUSTRY ASSOCIATION,
Plaintiff,
v.
AARON M. FREY, et al.,
Defendants.

Filed: Oct. 8, 2020

ORDER

Before the Court are two motions: Plaintiff's Motion for Judgment (ECF No. 15) and Defendants' Motion for Judgment on a Stipulated Record (ECF No.16). Via these cross-motions, the parties ask the Court to resolve this matter in which Plaintiff, Consumer Data Industry Association ("COIA"), seeks a declaratory judgment against Maine's Attorney General, Aaron M. Frey, and the Superintendent of Maine's Bureau of Consumer Credit Protection, William N. Lund (together, the "State Defendants"). As explained herein, the Court GRANTS Plaintiff's Motion (ECF No. 15) and DENIES the State Defendants' Motion (ECF No. 16).

I. LEGAL STANDARD

When facing cross-motions for judgment on a stipulated record, the Court, in addition to resolving any legal disputes, "may 'decide any significant issues of material fact that [it] discovers' in the stipulated record." *Thompson v. Cloud*, 764 F.3d 82, 90 (1st Cir. 2014) (quoting *Boston Five Cents Sav. Bank v. Secretary of Dep't of HUD*, 768 F.2d 5, 11-12 (1st Cir. 1985) (discussing differences between a motion for summary judgment and a motion for judgment on a stipulated record)). Here, the Court notes at the outset that there are no material factual disputes, rather this case presents a dispute as to statutory interpretation. Ultimately, the cross-motions and record filed here queue up this matter for resolution in accordance with Federal Rule of Civil Procedure 52.[1] *See OneBeacon America Ins. Co. v. Johnny's Selected Seeds Inc.*, No. 1:12-cv-00375-JAW, 2014 U.S. Dist. LEXIS 53098 (D. Me. April 17, 2014). With this procedural lens set, the Court first explains the statutes at issue and then briefly summarizes the undisputed facts.

II. STATUTORY BACKGROUND

As the State Defendants explain in their Motion, consumer credit reports "can determine whether, and on what terms, a person may obtain a mortgage, a

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[1] Although Plaintiff recites the summary judgment standard in its Motion (ECF No. 15, PageID # 149), the parties previously agreed to this alternative procedure and thereafter submitted a stipulated record (ECF Nos. 13 & 14) along with motions titled to reflect that each seeks "judgment" on that record (ECF Nos. 15 & 16). *See* 1/6/20 Procedural Order (ECF No. 12) (noting parties' agreement to "submit this matter to the Court on a stipulated record").

student loan, a credit card, or other financing." (Defs. Mot. (ECF No. 16), PageID # 166.) Given this impact, it is no surprise that these reports have been the subject of both federal and state regulation. The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.,* was enacted by Congress in 1970 to "ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007) (citing 15 U.S.C. § 1681). The FCRA "regulates the creation and the use of consumer report[s] by consumer reporting agenc[ies] for certain specified purposes, including credit transactions, insurance, licensing, consumer-initiated business transactions, and employment." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1545 (2016) (internal quotation marks omitted).

In Maine, the current version of the Maine Fair Credit Reporting Act, 10 M.R.S.A. § 1306 *et seq.,* was enacted in 2013 with the Legislature's announced purpose being to supplement the FCRA and "[r]equire consumer reporting agencies to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance and other information in a manner that is fair and equitable to the consumer, with regard for confidentiality, accuracy, relevancy and proper use of this information . . . ." 10 M.R.S.A. § 1307. In this case, Plaintiff seeks a declaration that two specific 2019 amendments to Maine's Fair Credit Reporting Act (the "Maine Amendments") are preempted by the FCRA.

A. FCRA

The text and history of two sections of the FCRA, 15 U.S.C. §§ 1681c & 1681t, are central to this

preemption question. Until 1996, § 1681t comprised only a short savings clause, limiting federal preemption to the extent a state law was inconsistent with a provision of the FCRA:

> This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

15 U.S.C. § 1681t (1995). As to § 1681c, it was then titled "Reporting of obsolete information," and, true to its title, set out time periods beyond which certain information could not be reported on consumer reports. 15 U.S.C. § 1681c (1995).

In 1996, Congress amended both sections. As to § 1681t, new subsections were added and a series of exceptions were carved out of the savings clause, now labeled § 1681t(a), which was amended as follows:

> **Except as provided in subsections (b) and (c),** this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, **or for the prevention or mitigation of identity theft,** except to the extent that those laws are inconsistent with any provision of this

> subchapter, and then only to the extent of the inconsistency.

15 U.S.C. § 1681t(a) (1998). Contained within "subsection (b)" was § 1681t(b)(1)(E), in substantially its present form:

> (b) General exceptions. No requirement or prohibition may be imposed under the laws of any State—
>
> > (1) with respect to any subject matter regulated under— . . .
> >
> > > (E) [15 U.S.C. § 1681c], relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996;

The changes to § 1681t also included a sunset provision on the new subsections reading, in relevant part, as follows:

> (d) Limitations. Subsections (b) and (c)— . . .
>
> > (2) do not apply to any provision of State law (including any provision of a State constitution) that—
> >
> > > (A) is enacted after January 1, 2004;
> > >
> > > (B) states explicitly that the provision is intended to supplement this subchapter; and
> > >
> > > (C) gives greater protection to consumers than is provided under this subchapter.

15 U.S.C. § 1681t(d) (1998). In parallel, § 1681c was retitled "Requirements relating to information contained in consumer reports." Its first subsection, § 1681c(a), still only pertained to obsolete information, but was retitled "Information excluded from consumer reports." New subsections were added containing requirements not relating to obsolescence, including a subsection titled "Information required to be disclosed,"§ 1681c(d).

In 2003, both sections were again amended. As to § 1681t, new additions included § 1681t(b)(5)(C), while the sunset provision was deleted. Section 1681t(b)(5)(C) states:

> (b) General exceptions. No requirement or prohibition may be imposed under the laws of any State— . . .
>
> > (5) with respect to the conduct required by the specific provisions of—. . .
> >
> > > (C) [15 U.S.C. § 1681c-2].

As relevant here, § 1681c-2 requires credit reporting agencies to "block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft." 15 U.S.C. § 1681c-2(a). As to § 1681c, additions included § 1681c(a)(6), which restricts when the contact information of medical information furnishers can be included in a consumer report.[2] However, § 1681c(a)(6) does not limit the reporting of medical

[2] "Medical information furnisher" is elsewhere defined as "[a] person whose primary business is providing medical services, products, or devices . . . who furnishes information to a consumer reporting agency on a consumer . . . . " 15 U.S.C. § 1681s-2.

debts, but instead seeks to prevent the incidental disclosure of information from which a consumer's medical information can be inferred.

In 2018, § 1681 c was again amended, adding restrictions on when a *veteran's* medical debt can first be reported and requiring the removal of such debt once fully paid and settled.[3] 15 U.S.C. § 1681c(a)(7) & (8).

B. The Maine Amendments

In 2019, the Maine Legislature passed two amendments to the Maine Fair Credit Reporting Act, both of which became effective on September 19, 2019. The first amendment was titled "An Act Regarding Credit Ratings Related to Overdue Medical Expenses" (the "Medical Debt Provision"). *See* 2019 Me. Laws 266, P.L. 2019, ch. 77. As enacted, the Medical Debt Provision places restrictions on when a medical debt may be included in a consumer report:

> Notwithstanding any provision of federal law, a consumer reporting agency shall comply with the following provisions with respect to the reporting of medical expenses on a consumer report.

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[3] Since 2019, nearly twenty bills have been introduced to further amend § 1681c. One House bill contains both restrictions on the reporting of medical debts and a procedure for removing debts that were the product of "financial abuse" from credit reports. *See* Comprehensive Credit Reporting Enhancement, Disclosure, Innovation, and Transparency Act of 2020, H.R. 3621, 116th Cong. (2020); *see also, e.g.*, Patient Credit Protection Act of 2020, S. 4037, 116th Cong. (2020); Corona virus Credit Lapse Forgiveness Act, H.R. 6413, 116th Cong. (2020); Medical Debt Relief Act of 2020, H.R. 6470, 116th Cong. (2020).

> A. A consumer reporting agency may not report debt from medical expenses on a consumer's consumer report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported.
>
> B. Upon the receipt of reasonable evidence from the consumer, creditor or debt collector that a debt from medical expenses has been settled in full or paid in full, a consumer reporting agency:
>
> > (1) May not report that debt from medical expenses; and
> >
> > (2) Shall remove or suppress the report of that debt from medical expenses on the consumer's consumer report.
>
> C. As long as the consumer is making regular, scheduled periodic payments toward the debt from medical expenses reported to the consumer reporting agency as agreed upon by the consumer and medical provider, the consumer reporting agency shall report that debt from medical expenses on the consumer's consumer report in the same manner as debt related to a consumer credit transaction is reported.

10 M.R.S.A. § 1310-H(4).

At Maine's legislative hearings on the Medical Debt Provision, Superintendent Lund, although not taking a position on the legislation, expressed concern

over the effect the amendment would have on the accuracy of consumer reports. (Joint Ex. C (ECF No. 13-3), PageID # 46.) Additionally, multiple testifiers, including the Superintendent, expressed uncertainty over what was encompassed by "regular, scheduled periodic payments." (*Id.*, PageID #s 43, 45.) As it related to the three nationwide credit reporting agencies, the Superintendent also noted that the first two sub-provisions would not change the status quo, because they had agreed to the same terms in a settlement with New York's attorney general.[4] (*Id.*, PageID # 45.)

The second amendment came via a state law titled "An Act to Provide Relief to Survivors of Economic Abuse" (the "Economic Abuse Provision"). *See* 2019 Me. Laws 1062, P.L. 2019, ch. 407. Under the Economic Abuse Provision, if a consumer provides evidence to a credit reporting agency that a debt is the product of "economic abuse," the agency is required to reinvestigate the debt and, if the allegation is borne out, remove references to the debt from the consumer's report:

> Except as prohibited by federal law, if a consumer provides documentation to the consumer reporting agency . . . that the debt or any portion of the debt is the result of economic abuse . . . the consumer reporting agency shall reinvestigate the debt. If after

[4] The Court infers from this testimony that the three nationwide consumer reporting agencies adopted the reporting practices required under 10 M.R.S.A. § 1310-H(4)(A) & (B) prior to Maine's enactment of the Medical Debt Provision in accordance with this settlement.

> the investigation it is determined that the debt is the result of economic abuse, the consumer reporting agency shall remove any reference to the debt or any portion of the debt determined to be the result of economic abuse from the consumer's credit report.

10 M.R.S.A. § 1310-H(2-A). Economic abuse is defined as follows:

> "Economic abuse" means causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medications or shelter.

19 M.R.S.A. § 4002(3-B). Credit reporting agencies can be subject to both administrative enforcement and private party litigation for violating the Maine Fair Credit Reporting Act. *See* 10 M.R.S.A. § 1310-A. An agency may not be held liable, however, if it "shows by a preponderance of the evidence that at the time of the alleged violation the [agency] maintained reasonable procedures to ensure compliance with the provisions of' the amendments. 10 M.R.S.A. § 1310-H(3).[5]

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[5] It appears that there are two versions of this provision due to the separate passage of the Medical Debt Provision and the

As reflected m the stipulated record, the majority of the testimony concerning the Economic Abuse Provision focused on the policy considerations associated with economic abuse and its connection to domestic violence. *See generally* Joint Ex. D (ECF No. 13-4).

III. STIPULATED FACTUAL BACKGROUND

In September 2019, CDIA filed the instant action to challenge the just-described amendments to the Maine Fair Credit Reporting Act.[6] CDIA is a trade association whose membership includes the three nationwide consumer credit reporting agencies—Experian, Equifax, and Trans Union—and other agencies. The parties stipulate that (1) CDIA's members will have to take affirmative steps and revise procedures to comply with the Maine Amendments; (2) members may be subject to both administrative enforcement and private party litigation if they fail to take such steps; and (3) Superintendent Lund has the authority to investigate and enforce the amendments, which may include a civil action with penalties for noncompliance. (Joint Stipulation of Facts (ECF No. 14), PageID #s 144-45.)

Economic Abuse Provision; the first applying to "subsections 1, 2 and 4" and the latter applying to "subsections 1, 2 and 2-A." 10 M.R.S.A. § 1310-H(3).

[6] Plaintiff is also litigating parallel preemption challenges to state laws in New Jersey and Texas. *See Consumer Data Indus. Ass'n v. Grewal*, D. N.J. 3:19-cv-19054-BRM-TJB; *Consumer Data Indus. Ass'n v. Texas*, W.D. Tex. 1:19-cv-00876-RP.

IV. DISCUSSION

Before addressing the substantive preemption arguments raised in the parties' briefing,[7] the Court initially considers the issue of subject matter jurisdiction.

A. Subject Matter Jurisdiction

"Federal courts . . . cannot act in the absence of subject matter jurisdiction, and they have a sua sponte duty to confirm the existence of jurisdiction . . . ." *United States ex rel. Willette v. University of Mass.*, 812 F.3d 35, 44 (1st Cir. 2016). Acknowledging that the State Defendants had previously raised both standing and ripeness as potential defenses to this action, Plaintiff asserts that it has standing to pursue this challenge on behalf of its members and that the matter is ripe. (Pl. Mot. (ECF No. 15), PageID #s 150-53.) The Court agrees on both points.

As to standing, "[w]hen an unincorporated association seeks to open the doors of a federal court, it must demonstrate that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the

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[7] In addition to the parties' briefing, the Court has reviewed and considered amicus briefs filed by the Maine Coalition to End Domestic Violence (ECF Nos. 18 & 30), the National Consumer Law Center and Maine Equal Justice (ECF No. 29), and the American Financial Services Association (ECF No. 33). The Court notes that, to the extent some of these briefs offered compelling descriptions of the policy considerations underlying the Maine Amendments, these policy considerations are not relevant to the preemption questions raised by the pending Motions. *See, e.g.*, Pl. Response (ECF No. 40), PageID #s 350-53.

organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Merit Constr. All. v. City of Quincy*, 759 F.3d 122, 126-27 (1st Cir. 2014) (quoting *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). Here, the Court agrees with Plaintiff that these three factors are satisfied on the stipulated facts and notes that the State Defendants have not responded to Plaintiffs assertion of standing.[8] (*See* Pl. Mot., PageID # 150-53.)

As the party raising a statutory challenge, Plaintiff also has the burden of demonstrating

[8] Regardless of the lack of developed argument on this issue of standing, the Court acknowledges that "subject matter jurisdiction claims are not waivable." *Elgin v. United States Dep't of the Treasury*, 641 F.3d 6, 9 (1st Cir. 2011). Thus, the Court has independently considered CDIA's standing as a trade association, particularly as to the Medical Debt Provision. As it relates to that provision, it is not apparent that CDIA's members are not already required to substantially handle reporting of medical debts in accordance with 10 M.R.S.A § 1310-H(4) due to a preexisting settlement, which was noted in Superintendent Lund's testimony on the legislation. *See* Joint Ex. C, PageID # 45. At minimum, COIA has not identified a member not bound by that settlement's restrictions on the reporting of medical debts. Nonetheless, on the record presented, the Court notes that § 1310-H(4)(C) creates additional information removal obligations for CDIA's members beyond what seems to be encompassed by the settlement. Additionally, the Court finds that CDIA's members would suffer the requisite harm from the State Defendants' independent enforcement of 10 M.R.S.A § 1310-H(4). *See Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016) (explaining that associational standing on behalf of its members "requires, among other things, that at least one of the group's members have standing as an individual. To satisfy this requirement, the association must, at the very least, identify a member who has suffered the requisite harm.'") (internal citations, quotation marks & alterations omitted).

ripeness. *Reddy v. Foster*, 845 F.3d 493, 501 (1st Cir. 2017). "The basic rationale of the ripeness inquiry is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements in violation of Article III's case or controversy requirement." *Labor Rels. Div. of Constr. Indus. of Mass. v. Healey*, 844 F.3d 318,326 (1st Cir. 2016). "A claim is ripe only if the party bringing suit can show both that the issues raised are fit for judicial decision at the time the suit is filed and that the party bringing suit will suffer hardship if court consideration is withheld." *Id.* (internal quotation marks omitted). "Even a facial challenge to a statute is constitutionally unripe until a plaintiff can show that federal court adjudication would redress some sort of imminent injury that he or she faces." *Reddy*, 845 F .3d at 501.

Despite the case being in a pre-enforcement posture, the Court deems Plaintiffs claims sufficiently ripe. First, Plaintiffs claims involve "purely legal questions, where the matter can be resolved solely on the basis of the state and federal statutes at issue." *Capron v. Office of the Att'y Gen. of Mass.*, 944 F.3d 9, 20 n.4 (1st Cir. 2019) (quoting *Labor Rels. Div.*, 844 F.3d at 327). There also does not appear to be any question that the State Defendants intend to enforce the Maine Act amendments. *See id.*[9]

[9] While the parties have not stipulated that the State Defendants actually intend to enforce the amendments, on the record presented the Court concludes that the State Defendants intend to do so. *Cf. June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2118 (2020) ("The State's unmistakable concession of standing as part of its effort to obtain a quick decision from the

Satisfied that this Court has the requisite subject matter jurisdiction, the Court next turns to the merits.

B. Federal Preemption

"The Supremacy Clause supplies a rule of priority. It provides that the 'Constitution, and the Laws of the United States which shall be made in Pursuance thereof,' are 'the supreme Law of the Land . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.' Art. VI, cl. 2." *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1901 (2019). "This Clause gives Congress 'the power to preempt state law,' which Congress may exercise either expressly or impliedly." *Capron*, 944 F.3d at 20-21. "Congressional intent is the touchstone of any effort to map the boundaries of an express preemption provision. To illuminate this intent, [the Court] start[s] with the text and context of the provision itself[,] [as] . . . informed by the statutory structure, purpose, and history." *Tobin v. Federal Express Corp.*, 775 F.3d 448, 452-53 (1st Cir. 2014). Ultimately, "all preemption arguments, must be grounded in the text and structure of the statute at issue." *Kansas v. Garcia*, 140 S. Ct. 791, 804 (2020) (internal quotation marks omitted)).

The burden to prove preemption rests with Plaintiff. *Capron*, 944 F .3d at 21. When considering a preemption challenge, the Court begins with the "presumption that a federal act does not preempt an otherwise valid state law, and [the Court] set[s] aside that postulate only in the face of clear and contrary

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District Court on the merits of the plaintiffs' undue-burden claims bars our consideration of it here.").

congressional intent." *Antilles Cement Corp. v. Fortuno*, 670 F.3d 310, 323 (1st Cir. 2012). This "presumption against pre-emption is rooted in respect for the States as independent sovereigns in our federal system and assume[s] that Congress does not cavalierly preempt state laws." *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614,631 n.10 (2013) (internal quotation marks omitted). However, preemption is also "not a matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect." *Wos v. E.M.A.*, 568 U.S. 627, 636 (2013).

1. 15 U.S.C. § 1681t(b)(1)(E)

Plaintiffs chief argument is that the two Maine Amendments are expressly preempted by 15 U.S.C. § 1681t(b)(1)(E). The parties primarily disagree over how broadly the following language in§ 1681t(b)(1)(E) should be understood: "with respect to any subject matter regulated under . . . [15 U.S.C. § 1681c], relating to information contained in consumer reports . . . ." Plaintiff contends that this language should be read to encompass all claims relating to information contained in consumer reports, with the phrase "relating to information contained in consumer reports" effectively acting as a description of the subject matter § 1681c regulates. The State Defendants, by contrast, argue that the Court should read§ 1681c as an itemized list of narrowly delineated subject matters, some of which relate to information contained in consumer reports, and only find preemption where a state imposes a requirement or

prohibition that spills into one of those limited domains.

In further support of their narrow reading, the State Defendants argue that Plaintiffs reading of § 1681t(b)(1)(E) would result in surplusage. Namely, Plaintiffs reading would render the words "regulated under . . . [§ 1681c]" unnecessary. (*Id.*, PageID # 180-82.) Rather, the State Defendants contend, the true inquiry, as further informed by a historic presumption against preemption, is whether a specific subsection of § 1681c "actually regulates the same duties as the state law." (*Id.*, PageID # 176.) They contend that, under this narrow construction, the Maine Amendments do not impose prohibitions or requirements with respect to a subject matter regulated under § 1681c.

In considering these two different readings, the Court looks to the various amendments made to 15 U.S.C. §§ 1681t & 1681c. As to § 1681t, under the unamended savings clause, preemption expressly applied only "to the extent that [state] laws [were] inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency." 15 U.S.C. § 1681t (1995). However, through amendments enacted in 1996 and 2003, Congress carved a number of general exceptions from the savings clause. *See* 15 U.S.C. § 1681t(b). Key here, § 1681t(b)(1) now presents a list of eleven "subject matter[s]" "regulated under" other sections of the FCRA that are reserved to the federal government.

In parallel with the 1996 amendments to § 1681t, § 1681c was also amended using language similar to, or outright duplicative of, the language in

§ 1681t(b)(1)(E). Section 1681c was retitled "Requirements *relating to information contained in consumer reports"* (emphasis added), and § 1681c(a) was retitled "Information excluded from consumer reports." Via these retitlings, Congress appears to have deliberately clarified the subject matters encompassed by § 1681c(a) and each of its subsections in order to coordinate its operation with § 1681t. *See Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) ("Congress may indicate pre-emptive intent through a statute's . . . structure and purpose."). In the Court's reading, the amended language and structure of § 1681c(a) and § 1681t(b) reflect an affirmative choice by Congress to set "uniform federal standards" regarding the information contained in consumer credit reports. *See Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019) ("[Section 1681t(b)(1)(E)] assures that the Act establishes uniform federal standards for contents of credit reports-unless a state law in force in 1996 provides otherwise."); *Simon v. DIRECTV, Inc.*, No. 09-cv-00852-PAB-KLM, 2010 U.S. Dist. LEXIS 35940, at *10 (D. Colo. Mar. 19, 2010) ("The CCCRA and FCRA provisions at issue concern the same subject matter, i.e. the type of information that can be legally disclosed in consumer reports."), *report and recommendation adopted,* 2010 U.S. Dist. LEXIS 35970 (D. Colo. Apr. 12, 2010); *cf. Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1172 (9th Cir. 2009) ("The legislative history surrounding § 1681t(b)(1)(F) is murky, but there is evidence that the statutory scheme, which establishes national requirements and preempts most state regulation, was motivated at least in part by a desire for uniformity of reporting obligations."); *Ritchie v.*

Northern Leasing Sys., No. 12-cv-4992-KBF, 2016 U.S. Dist. LEXIS 40537, at *60 (S.D.N.Y. Mar. 28, 2016) ("It is also unlikely that Congress intended FCRA § 1681m(a), the [FCRA's] notice provision, to be substantially made broader by patchwork state statutes, especially since it specifically listed § 1681m(a) as one of the provisions that would preempt state statutes on the same subject matter."). By seeking to exclude additional types of information, the Maine Amendments intrude upon a subject matter that Congress has recently sought to expressly preempt from state regulation.[10]

Further, with respect to the Medical Debt Provision specifically, it is notable that§ 1681c contains a provision concerning veterans' medical debt, which was added by Congress in 2018. *See* 15 U.S.C. § 1681c(a)(5), (8). Plaintiff asserts that this provision reflects that Congress has "expressly considered" the extent to which medical debts ought to be reported on consumer reports. (Def. Mot. (ECF No. 15), PageID # 161.) In response, the State Defendants argue that Plaintiffs assertion that

[10] The Court further notes that the since-deleted sunset provision stated that § 1681c(b) would not apply to state laws enacted after January 1, 2004 that both expressly stated their intent to supplement the FCRA and provided greater protections. Conversely, this language suggests that§ 1681t(b)(1)(E), prior to the sunset provision, was not intended to allow for supplementation to the protections provided by § 1681c. Although the sunset provision was later retired, it is still evidence of the intended effect of§ 1681t(b)(l)(E). *See also Islam v. Option One Mortg. Corp.*, 432 F. Supp. 2d 181, 188 n.6 (D. Mass. 2006) ("[I]n 2003 Congress repealed the eight-year sunset provision of Section 1681t. The desire for uniformity again seemed to be the main concern . . . ." (internal citation omitted)).

Congress has spoken on the question of regulating medical debt is "something of an exaggeration." (Defs. Response (ECF No. 39), PageID # 330-31.) The Court disagrees. To be clear, a regulation of veterans' medical debt *is* a regulation of medical debt. To hold otherwise, and to say a regulation within a subject matter is not a regulation of a subject matter, would lead to untenable outcomes when applied to the rest of§ 1681c. For instance, § 1681c(a)(3) prohibits the reporting of "[p]aid tax liens which, from date of payment, antedate the report by more than seven years." Under the State Defendants' interpretation, where regulation of the part does not imply the regulation of the whole, a state could still exclude paid tax liens generally.[11] The Court declines to adopt this interpretation and thereby rejects the State Defendants' limited view of preemption.[12]

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[11] In a similar vein, § 1681c(a)(5) explicitly excludes "[a]ny other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years," and both medical debt and debt resulting from economic abuse would fall within the subject matter of "[a]ny other adverse item of information."

[12] The Court also notes Plaintiffs assertion that the exclusion of medical debts was "expressly considered" by Congress is supported by the Court's own research into the history of the various FCRA amendments. In 2013—between the 2003 and 2018 amendments (the latter of which introduced the veterans' medical debt provision)—bills were introduced in both chambers of Congress to amend§ 1681c to restrict the reporting of "[a]ny information related to a fully paid or settled medical debt that had been characterized as delinquent, charged off, or in collection which, from the date of payment or settlement, antedates the report by more than 45 days." *See* Medical Debt Responsibility

2. 15 U.S.C. § 1681t(b)(5)(C)

Plaintiff also contends that the Economic Abuse Provision is separately preempted, to the extent it requires a consumer reporting agency to reinvestigate "allegations of what amounts to identify theft and block reporting of that information," under 15 U.S.C. § 1681t(b)(5)(C). (PL Mot. (ECF No. 15), PageID # 162-64.) The Court declines to address this alternative argument in light of the above conclusion that both Maine Amendments are preempted under § 1681t(b)(1)(E).

V. CONCLUSION

For the reasons just given, the Court concludes as a matter of law that the Maine Amendments are preempted by 15 U.S.C. § 1681t(b)(1)(E).

Accordingly, the Court GRANTS Plaintiffs Motion for Judgment (ECF No. 15) and DENIES the State Defendants' Motion (ECF No. 16).

SO ORDERED.

/s/George Z. Singal

United States District Judge

Dated this 8th day of October, 2020.

Act of 2013, S. 160, H.R. 1767, 113th Cong. (2013). Neither bill made it out of committee.

Appendix D

RELEVANT STATUTORY PROVISIONS

15 U.S.C. § 1681c. Requirements relating to information contained in consumer reports

(a) Information excluded from consumer reports

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

(1) Cases under Title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, 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) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless--

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(7) With respect to a consumer reporting agency described in section 1681a(p) of this title, any information related to a veteran's medical debt if the date on which the hospital care, medical services, or extended care services was rendered relating to the debt antedates the report by less than 1 year if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(8) With respect to a consumer reporting agency described in section 1681a(p) of this title, any information related to a fully paid or settled veteran's medical debt that had been characterized as delinquent, charged off, or in collection if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic

Growth, Regulatory Relief, and Consumer Protection Act.

(b) Exempted cases

The provisions of paragraphs (1) through (5) 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 $150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or more.

(c) Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date

Paragraph (1) shall apply only to items of information added to the file of a consumer on or

after the date that is 455 days after September 30, 1996.

(d) Information required to be disclosed

(1) Title 11 information

Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under Title 11 shall include in the report an identification of the chapter of such Title 11 under which such case arises if provided by the source of the information. If any case arising or filed under Title 11 is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(2) Key factor in credit score information

Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 1681g(f)(2)(B) of this title) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.

(e) Indication of closure of account by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(4) of this title that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(3) of this title that information regarding a consumer who[1] was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

[1] So in original. Probably should be "which".

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date

This subsection shall become effective--

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

(h) Notice of discrepancy in address

(1) In general

If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 1681a(p) of this title, the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) Regulations

(A) Regulations required

The Bureau shall, in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(B) Policies and procedures to be included

The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user

of a consumer report--

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly

furnished by the user for the period in which the relationship is established.

15 U.S.C. 1681t. Relation to State laws

(a) In general

Except as provided in subsections (b) and (c), this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State--

(1) with respect to any subject matter regulated under--

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply--

> **(i)** with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or
>
> **(ii)** with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(G) section 1681g(e) of this title, relating to information available to victims under section 1681g(e) of this title;

(H) section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes;

(I) section 1681m(h) of this title, relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;

(J) subsections (i) and (j) of section 1681c-1 of this title relating to security freezes; or

(K) subsection (k) of section 1681c-1 of this title, relating to credit monitoring for active duty military consumers, as defined in that subsection;

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996);

(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, except that this paragraph--

(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on December 4, 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);

(B) shall not apply with respect to sections 5-3-106(2) and 212-14.3-104.3 of the Colorado

Revised Statutes (as in effect on December 4, 2003); and

(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

(4) with respect to the frequency of any disclosure under section 1681j(a) of this title, except that this paragraph shall not apply--

(A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on December 4, 2003);

(B) with respect to section 10-1-393(29)(C) of the Georgia Code (as in effect on December 4, 2003);

(C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on December 4, 2003);

(D) with respect to sections 14-1209(a)(1) and 14-1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on December 4, 2003);

(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on December 4, 2003);

(F) with respect to section 56:11-37.10(a)(1) of the New Jersey Revised Statutes (as in effect on December 4, 2003); or

(G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on December 4, 2003); or

(5) with respect to the conduct required by the specific provisions of--

(A) section 1681c(g) of this title;

(B) section 1681c-1 of this title;

(C) section 1681c-2 of this title;

(D) section 1681g(a)(1)(A) of this title;

(E) section 1681j(a) of this title;

(F) subsections (e), (f), and (g) of section 1681m of this title;

(G) section 1681s(f) of this title;

(H) section 1681s-2(a)(6) of this title; or

(I) section 1681w of this title.

(c) "Firm offer of credit or insurance" defined

Notwithstanding any definition of the term "firm offer of credit or insurance" (or any equivalent term) under the laws of any State, the definition of that term contained in section 1681a(1) of this title shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

(d) Limitations

Subsections (b) and (c) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on September 30, 1996.

Me. Rev. Stat. Ann. tit. 10, § 1310-H

1. Fee for disclosure. In addition to any rights to which a consumer is entitled under federal law, a consumer reporting agency may not impose a fee for a consumer report provided to a consumer upon request once during any 12-month period. For a 2nd or subsequent report provided during a 12-month period, a consumer reporting agency may charge a consumer a fee not to exceed $5.

2. Time to reinvestigate. Notwithstanding any provision of federal law, if a consumer disputes any item of information contained in the consumer's file on the grounds that it is inaccurate and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall reinvestigate and record the current status of the information within 21 calendar days of notification of the dispute by the consumer, unless it has reasonable grounds to believe that the dispute by the consumer is frivolous.

2-A. (TEXT EFFECTIVE UNTIL 1/01/23) Economic abuse. Except as prohibited by federal law, if a consumer provides documentation to the consumer reporting agency as set forth in Title 14, section 6001, subsection 6, paragraph H that the debt or any portion of the debt is the result of economic abuse as defined in Title 19-A, section 4002, subsection 3-B, the consumer reporting agency shall reinvestigate the debt. If after the investigation it is determined that the debt is the result of economic abuse, the consumer reporting agency shall remove any reference to the debt or any portion of the debt

determined to be the result of economic abuse from the consumer's credit report.

2-A. (TEXT EFFECTIVE 1/01/23) Economic abuse. Except as prohibited by federal law, if a consumer provides documentation to the consumer reporting agency as set forth in Title 14, section 6001, subsection 6, paragraph H that the debt or any portion of the debt is the result of economic abuse as defined in Title 19-A, section 4102, subsection 5, the consumer reporting agency shall reinvestigate the debt. If after the investigation it is determined that the debt is the result of economic abuse, the consumer reporting agency shall remove any reference to the debt or any portion of the debt determined to be the result of economic abuse from the consumer's credit report.

3. Nonliability. A person may not be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to ensure compliance with the provisions of subsections 1, 2, 2-A and 4.

4. Reporting of medical expenses on a consumer report. Notwithstanding any provision of federal law, a consumer reporting agency shall comply with the following provisions with respect to the reporting of medical expenses on a consumer report.

A. A consumer reporting agency may not report debt from medical expenses on a consumer's consumer report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported.

B. Upon the receipt of reasonable evidence from the consumer, creditor or debt collector that a debt

from medical expenses has been settled in full or paid in full, a consumer reporting agency:

(1) May not report that debt from medical expenses; and

(2) Shall remove or suppress the report of that debt from medical expenses on the consumer's consumer report.

C. As long as the consumer is making regular, scheduled periodic payments toward the debt from medical expenses reported to the consumer reporting agency as agreed upon by the consumer and medical provider, the consumer reporting agency shall report that debt from medical expenses on the consumer's consumer report in the same manner as debt related to a consumer credit transaction is reported.