



# What States Can Do About Credit Repair Abuses

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Credit repair organizations (CROs) charge a fee to improve consumers' credit scores, including by removing errors. There is an epidemic of disreputable CROs that charge exorbitant fees for promises they can't keep. To prevent these abuses, there are a number of measures states can adopt:

## PROHIBIT UNFAIR TACTICS

**Prohibit CROs from charging fees until the CRO gives the consumer a copy of their credit report that:**

- shows that the promised results have been achieved; *and*
- is issued at least six months after the results were achieved.

The most common abuse is taking money upfront for work that is never done or making promises to consumers that can't be sustained. Often CROs will use tricks or misrepresentations to get a credit reporting agency to remove accurate but negative tradelines temporarily – only for them to be restored to the credit report within a couple months. That's why the six-month aspect of this recommendation is so important.

Some states let CROs charge fees upfront if they post a bond, but that is *not* an adequate alternative. This puts the burden on customers to police the CRO, rather than requiring the CRO to live up to its contractual promises. Once the CRO has the consumer's money, it is very difficult to get it back. Making a claim against a bond is a difficult and lengthy process, and the worse a company is, the greater the risk that the bond will be exhausted before all consumers are made whole.

Existing federal laws aren't enough to protect consumers. The Credit Repair Organizations Act prohibits advance fees, but it lets CROs require payment immediately after a tradeline is removed. Then, if it comes back in a few months, they can charge the consumer to remove it again. The Telemarketing Sales Rule prohibits charging until the consumer is given a corrected credit report issued six months after the service was provided. But the Rule only applies to telemarketers, and consumers can only sue under the rule if they have at least \$50,000 in damages. The rule does not apply to many internet-based CROs.

**Prohibit the payment of referral fees.**

Referral fees interfere with markets because they encourage people and other businesses to make referrals based on the fee rather than the quality of the service provided. In a normal market, good businesses get more customers by word of mouth. But a bad actor can get referrals by paying for them. If a CRO can only stay in business by paying people for referrals, that means it's probably not delivering on its promises.

## PUT A COP ON THE BEAT

### **Designate and fully fund a regulator to supervise the CRO industry.**

Each state should have a regulator specifically tasked with supervising the CRO industry. Too much money is involved to let this responsibility languish in a department overburdened with other duties. The CRO regulator should have rulemaking and enforcement authority. It should be staffed by state employees, who are more likely to be impartial than a board of industry representatives. CROs should be required to regularly submit statistical data on their services so the regulator can identify bad actors. The regulator should be required to issue regularly-scheduled reports to the legislature and the public on the quality of services provided by CROs in the state.

Strong rules are meaningless if they are not enforced. A designated CRO regulator with teeth will protect both consumers and honest businesses and will be able to develop expertise that legislators and more general regulators cannot. Rulemaking authority will enable the regulator to fine-tune laws adopted by the legislature as the industry evolves.

Regularly-scheduled reports are important to educate the public and lawmakers. Without regular, impartial reporting, the industry will continue making unreliable and unverifiable promises to consumers.

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### **Require CROs to file statistical proof of any advertised data with the regulator.**

It is common for disreputable actors to attract business by advertising high success rates, but even when such advertisements are not outright lies, they are often deceptive because they use inappropriate statistical methodologies, are based on non-representative data, or omit tradelines that re-appeared later. Existing laws that broadly prohibit deceptive advertising have failed to solve this problem. States should require CROs to provide their regulator with the data supporting any advertised statistics and the regulator should be adequately funded and staffed to routinely audit all such advertisements for accuracy and deception.

## GIVE CONSUMERS THE POWER TO PROTECT THEMSELVES

**Courts should be required to award attorney fees for successful consumer claims because bad actors often prey on the poor, knowing that they can't afford to fight back.**

**Create a private right of action for consumers injured by violations of credit repair laws. An effective law must include the right to seek injunctive relief, actual and statutory damages, and attorney fees for successful consumer claims.**

A law that cannot be enforced by victims or that can only be enforced by a regulator will be toothless and ignored. A strong private right of action will promote compliance with the law. Statutory damages are important because of their deterrent effect. If the only penalty for cheating consumers is returning ill-gotten gains, dishonest CROs will just treat lawsuits and actual damages as a cost of business. Statutory damages also protect consumers in situations where proving actual damages is difficult. Allowing injured consumers to

ask for injunctive relief will enable courts to permanently stop misconduct. Courts should be required to award attorney fees for successful consumer claims because bad actors often prey on the poor, knowing that they can't afford to fight back.

**Require CROs to give consumers a contemporaneous copy of all communications sent on the consumer's behalf.**

Consumers have a right to know what CROs are saying to credit reporting agencies in the consumer's name. Dishonest CROs send form letters with false or inaccurate information to credit reporting agencies, and this could come back to harm the consumer. If consumers are given copies of all letters when they are sent, they will have an opportunity to catch misconduct and errors.

**Provide that violating the federal Telemarketing and Consumer Fraud and Abuse Prevention Act (TCFAPA) and its implementing regulations is an unfair and deceptive act or practice under state law.**

The federal Telemarketing Sales Rule (TSR), which implements the TCFAPA, includes strong consumer protections for credit repair customers. But the rule lacks a private right of action for most consumers, and the FTC lacks the resources to police every violation. As a result, CROs routinely violate the TSR. If consumers could sue violators under their state law, CROs would have an incentive to comply with the law and injured consumers could get their money back.

**Specify that proof of reliance is not required to sustain a claim based on misrepresentation, false statements, or the omission of any material fact.**

It can be unreasonably hard for consumers to prove they relied on something a scammer said and even harder to prove reliance on the absence of something they weren't told or a disclosure they weren't given. Dishonest CROs should not be allowed to break the law just because their customers can't prove reliance. A good consumer protection statute will clearly state that proof of reliance is not required.

For a description of common abuses and more background on the credit repair industry see chapter 17 of NCLC's Fair Credit Reporting treatise.

*For more information, please contact National Consumer Law Center attorney Andrew Pizor ([apizor@nclc.org](mailto:apizor@nclc.org)).*