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Derek Standarowski, Office of Financial Institutions and Business Liaison
External Affairs
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

Tiffany George, Staff Attorney
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Consumer Reporting Agency COVID-19 Concerns and Request for Emergency
Interim Final Rule and Guidance

Dear Mr. Standarowski and Ms. George,

I write on behalf of the Consumer Data Industry Association ("CDIA") to support an emergency interim final rule for public records reinvestigations affected by court closures and delays, as proposed by the Professional Background Screening Association ("PBSA") in its April 15, 2020 letter to your office.¹

As you know, the Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

¹ Letter, Professional Background Screeners Assn. to the Consumer Fin. Protection Bureau and the Fed. Trade Comm., April 15, 2020, <https://files.constantcontact.com/0401b957001/a69d8a62-4443-4e99-9240-154f4ded119b.pdf>.

During the current pandemic, court closures and lack of remote electronic access to court records in several states have burdened consumer applicants, employers, housing providers, and the consumer reporting entities that serve them. Several states have suspended statutory public records disclosure deadlines² and suspended certain public record request fulfillment processes.³ State court closures have substantially delayed or cut off altogether responses to background check inquiries, often due to lack of court staffing, substantial workload, inaccessibility to necessary documents. Experienced industry monitors of court response times report that court turnaround times for public records fulfillment even now, several weeks after the onset of the pandemic, remain historically slow or stopped altogether in hundreds of affected counties across the U.S.

An emergency interim final rule provides narrowly targeted relief to promote accurate dispute resolution to benefit consumers, users, and CRAs facing closed and delayed public records jurisdictions. Under the proposal, statutory FCRA reinvestigation deadlines under 15 U.S.C § 1681i would be tolled for background checks involving jurisdictions where public records are not reasonably available, until such time as the records became available. This targeted flexibility would ensure that disputed information could be accurately addressed as soon as the relevant public records became available again. Under the emergency interim rule, users and consumers alike would have confidence that the accuracy and currency of any disputed public record information, such as criminal history, was fully investigated.

While the CFPB's April 1, 2020 policy statement helpfully recognizes the need for flexibility in applying traditional FCRA rules considering the challenges consumer reporting agencies face operating in the current environment,⁴ additional relief is needed to promote dispute investigations involving public records. Promulgation of an interim emergency final rule would provide a clearer rule than now exists to guide the unique, ongoing circumstances of public record reinvestigation processes during the pandemic. Rather than leave these interpretations to piecemeal litigation, the agencies have a unique opportunity now to clarify applicable rules in a narrow but important area.

² *Memo from Att'y. Gen. Jeff Landry to Public Bodies*, March 25, 2020, <https://www.ag.state.la.us/Files/Article/9745/Documents/PublicRecordsGuidanceCOVID-19.pdf>.

³ Proclamation 20-28, Wash. Gov. Jay Inslee, <https://www.governor.wa.gov/sites/default/files/proclamations/20-28%20-%20COVID-19%20Open%20Govt%20Laws%20Waivers%20%28tmp%291.pdf>.

⁴ *Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act*, Consumer Fin. Protection Bureau, April 1, 2020, https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

There is a strong public interest to remove the barriers to hiring and housing arising from court closures and delays. Faster accurate background checks in all jurisdictions will deliver the economic benefits of jobs and housing to everyone. Consumers hailing from areas with court systems slowed by the pandemic need not be at a disadvantage.

CDIA has worked with the National Center for State Courts (“NCSC”), court administrators, judges, and state legislators to increase awareness of the use of court data in background checks. CDIA continues to point to models that work in state court public access administration - such as Alabama’s AlaCourts - so that state courts can better leverage automation and remote access in their public access system upgrades to fulfill timely, accurate background checks at scale. CDIA’s Public Access Software Specification (“PASS”), developed with PBSA, is a technical reference for courts and court public access vendors to use to better deploy technology in public access for enhanced accuracy and reduced demands on court/clerk burdens.

In addition to releasing the proposed public record reinvestigation rule on an emergency basis, we invite FTC and CFPB to engage further with us in this education and improvement of public record access systems. Integrating thousands of sources over many decades into a widely used, timely, and accurate public safety product system has given the background screening industry unique and valuable insight into improvements in public records administration and relevant regulation.

We would be happy to discuss the interest of CDIA and its members in this issue at your convenience.

Sincerely,



Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs