Consumer Data Industry Association
1090 Vermont Ave., NW, Suite 200
Washington, D.C. 20005-4905

P 202 371 0910

CDIAONLINE.ORG

July 12, 2019

The Honorable Maxine Waters, Chairwoman
The Honorable Patrick McHenry, Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

Thank you for providing us with the opportunity to offer our perspective on the Accurate Access to Credit Information Act of 2019 (AACIA), legislation the Committee on Financial Services expects to mark-up on July 16, 2019. As the leading trade association representing a broad swath of companies who provide consumer reporting services, we and our members strive to ensure that: (1) consumer credit reports are accurate, (2) the information within them is protected and (3) consumers have easy access to their credit reports and other rights granted by the Fair Credit Report Act (FCRA) and other statutes.

The AACIA is primarily referred to as a proposal requiring the nationwide Consumer Reporting Agencies (CRAs) to jointly develop an online portal giving consumers unlimited and easier access to free credit scores and credit reports. The portal on its own presents significant problems for banks, credit unions, CRAs and other parts of the credit reporting system, but AACIA is a more extensive and complicated piece of legislation that goes further than establishing an online portal. Consequently, AACIA merits greater discussion and analysis, including a legislative hearing, to better ascertain its impact.

We view this legislation as a first step toward the creation of a single, government-run credit bureau, rather than multiple private sector companies competing against each other.

Online portal

Section 2 of the bill would amend the FCRA's free annual credit report provision to require the nationwide CRAs to jointly develop an online portal giving consumers unlimited free access to a number of FCRA-mandated disclosures. This would require the three nationwide CRAs to integrate their separate consumer authentication procedures in order to process requests for free credit scores, disputes, opt-outs, reports and security freezes through a single shared platform and newly-created corporate entity. CRAs current, robust authentication processes would default to a "dumbed down" and less secure common authentication platform, akin to asking the three largest banks in the U.S. to share a common authentication platform for providing consumer access to checking accounts.

A common platform would allow more fraudulent access to consumer reports and provide significant incentives for unscrupulous credit repair activity. Legitimate consumers who need to address real concerns with each CRA would be competing with these illicit activities. The vast majority of disputes received by data furnishers (such as credit unions, banks and other lenders) and the nationwide CRAs are submitted by credit repair organizations. The frivolous credit repair disputes submitted by these organizations swamp the investigative resources of the nationwide CRAs and harm consumers who have legitimate disputes. ***This legislation would super-charge the ability of unscrupulous credit repair organizations to clog the system with false disputes intended to remove accurate information from credit reports.***

Illicit credit repair activity doesn't only hurt the CRAs and consumers, it can have an impact on banks, credit unions, other lenders and the whole economy. Consumers go to credit repair companies and pay thousands of dollars in fees so that they can have *accurate*, though negative, information removed from their accounts. As a result, lenders will have less-than-accurate credit reports to work from, possibly granting loans to consumers who do not have the ability to repay the loans. One main lesson of the recent financial crisis is that we do not help consumers, banks or the economy when we focus more on "closing the loan" than making sure the right borrower is matched to the right product.

The bill also does not expressly give the nationwide CRAs the ability to verify the identity of consumers before providing access to consumer reports. This omission creates a significant risk that identity thieves could use the portal to access sensitive consumer information and harm consumers and the lenders that would be defrauded. The bill should condition access to disclosures and services available through the online portal on verification of identity.

The bill imposes substantial new burdens, including class action litigation, on nationwide CRAs, as well as community banks, credit unions and other lenders who furnish data to them. Unlimited free access means that a consumer could use a 3rd-party service, such as a digital wallet, or other screen-scraping service, to access reports dozens of times every day. The bill gives nationwide CRAs no clear recourse to restrict such abuses.

Opt-Out of Sharing

Requiring a consumer reporting agency (not limited to nationwide CRAs) to allow consumers to opt out of the sale of their information in formats other than credit reports would empower unregulated data brokers by creating an unlevel playing field that places regulated CRAs at a severe competitive disadvantage in terms of sharing or selling non-consumer report information for non-FCRA purposes. Such a restriction would result in a migration of business away from regulated CRAs to non-regulated data brokers with no consumer benefit.

CRAs regularly sell or share non-consumer report information for a variety of socially valuable purposes, including helping banks and other financial institutions comply with their USA Patriot Act duties to review Office of Foreign Assets Control Specially Designated Nationals lists, fraud prevention, identity verification and skip tracing to locate consumers. Some CRAs maintain separate non-FCRA databases from which they sell or share data for non-FCRA purposes, often

called Gramm-Leach-Bliley Act (GLBA) databases. CRAs regularly sell identifying information to government agencies and businesses for purposes such as locating parents who owe child support, check for unauthorized payments in government programs. Businesses use such data to detect fraud, prevent identity theft and locate debtors. Allowing consumers to opt out of such sales or sharing would undermine these valuable services.

Social Security Number (SSN) Matching

Section 3 of the AACIA would amend FCRA Section 607(b) to require CRAs to fully match all file information with a nine-digit Social Security Number (SSN). If a consumer does not have an SSN, nationwide CRAs would have to match information that includes full legal name, date of birth, current address and at least one former address of the consumer. The SSN matching requirement for nationwide CRAs would diminish the completeness, quality and usefulness of consumer reports, and is not a practical solution for enhancing accuracy.

The practical result of such a matching requirement would mean that qualified consumers would be denied credit because a credit report could not be provided to a lender if the match is not exact, including when a consumer inadvertently transposes numbers in a credit application. Consumers who do not have an SSN would be held to a lower standard of data matching, which would facilitate fraud and illegal access to those who say they lack an SSN, with implications for lenders in lost business and more risk.

Sometimes data furnishers do not or cannot provide a full SSN when furnishing information to nationwide CRAs, such as when a consumer does not have an SSN or when an SSN is not available for reporting. While the bill attempts to address this issue, the bill's provisions are still problematic, especially in dealing with new immigrants, exacerbating the difficulties unbanked and underbanked consumers experience.

Some victims of identity theft eventually change their SSNs. The matching rule could leave these consumers temporarily without a credit file and put these victims through additional hurdles as they seek to regain control of their identity. Consequently, the proposal would lead to less complete and less accurate consumer reports, diminish the value of consumer reports, and ultimately harm consumers.

FCRA requires CRAs to maintain "reasonable procedures to ensure maximum possible accuracy," and nationwide CRAs are examined by the CFPB to ensure that the standard is met.

CFPB Ombudsperson

Section 4(b) of the AACIA would require the Consumer Financial Protection Bureau (CFPB) to establish the position of credit reporting ombudsperson, responsible for resolving "persistent errors" not resolved in a timely manner by a CRA and addressing violations of the requirements in FCRA Section 611(a)(5) to delete or modify information found to be inaccurate, incomplete or unverifiable by the CRA after a reinvestigation.

The role of the credit reporting ombudsperson is unnecessarily duplicative of CFPB's current authority to enforce and impose fines for FCRA violations. It also conflicts with CFPB's current role in being the operator of the complaint database. Vesting the ombudsperson with authority to impose civil fines is not accompanied by any administrative law or due process protections. Accordingly, the provision is deficient under the Administrative Procedures Act and the due process clause of the Constitution's Fifth Amendment.

The ombudsperson will be a separate office from CFPB's examiners, with no apparent authority to collect information from CRAs or consumers. The bill also does not give the ombudsperson a staff or other tools or powers necessary to make factual determinations necessary for finding violations of law and imposing fines. It is unclear, for example, how the ombudsperson could determine whether disputed information was in error, aside from taking the word of one party over another. As a result, the ombudsperson would not be able to make informed determinations of whether a CRA failed to resolve disputes in a timely manner.

The standards for the ombudsperson to exercise jurisdiction (resolving "persistent errors") and impose fines ("repeatedly" failing to timely resolve disputes) are vague and allow for the arbitrary exercise of power. Persistent or repetitive allegations of errors most often arise in disputes submitted by or with the assistance of credit repair organizations. These disputes are almost always frivolous efforts to remove accurate but derogatory information from consumer reports. The creation of the ombudsperson and the role such person would play is likely to be exploited by credit repair organizations in ways not intended by the bill.

Disclosures to Consumers

Section 5(b) of the AACIA would replace the FCRA's existing requirement for CRAs to provide free disclosures to consumers upon request after an adverse action, with a requirement that CRAs automatically send consumers file disclosures after an adverse action. Eliminating the consumer's request and automatically sending a credit report through the mail creates a substantial risk of aiding and abetting identity theft. The bill contains no exceptions in cases where the user suspects fraud, cannot verify the applicant's identity or cannot match the applicant's address to the address in the consumer report. The bill also does not give CRAs any opportunity to verify the consumer's identity and screen for fraudulent transactions. Under this bill identity thieves could apply for and be declined for credit, then automatically access a consumer's file. By contrast, the current request-based system weeds out fraudsters while allowing legitimate consumers, with minimal effort, to obtain access to their information.

As you know, CRAs generally have an indirect relationship with a consumer. We believe this provision will create confusion, as a consumer will apply for credit with a lender, receive the news about how their application has been processed, and then receive a document in the mail from a third party. Some consumers may not want a consumer disclosure mailed to their address: for many it is easier to look at online; others may not want household members to know a credit application was made. The disclosure requirement does not give the consumer any control and it may violate the consumer's privacy. The system we have now for disclosure after an adverse action works well and does not need this reform.

The credit score disclosure provisions in this bill would essentially require CRAs to purchase a credit score from a third party, FICO, and deliver it for free. We continue to believe it is fundamentally unfair to ask a company to purchase a product from one company, and then be forced to give that product away to someone else for free.

As in previous communications to the Committee, this letter is not meant to be a full report of every section of this bill but is meant to highlight some of the main issues we have. We urge Members of the Committee to reject the AACIA and to work with us to help those with little or no credit history access the traditional financial services system, to address abuses in the system that make it harder for disputes to be resolved, and to take real steps to make the system more comprehensive and fair.

Sincerely,

Francis Creighton
President & CEO