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July 6, 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 legislation the Committee on Financial Services expects to mark-up beginning on July 11, 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 the ability to correct inaccurate information in a timely and straightforward fashion. Our member companies have worked extensively over the past ten years to incorporate numerous reforms and enhanced consumer protections. As a result of these changes, consumers have access to data held by credit bureaus and clear processes to address potential inaccuracies. We believe, however, the legislation set for markup would weaken the credit reporting system and impose new costs to consumers and the economy. Our member companies strive every day to improve how we provide our services and we stand ready to work with you and the Committee to find ways to make our system even better for consumers and the economy.

Overview

The bills the Committee is expected to consider relating to the consumer reporting industry and the rights and obligations established under the Fair Credit Reporting Act (FCRA) are extensive and complicated. In previous instances when Congress considered such major FCRA changes, extensive hearings were held, featuring regulators, different parts of the industry and consumers. In this case only a single hearing, not focused on legislative issues, was held on February 26, 2019. We believe this is a mistake; this legislation merits more discussion before moving forward, to assess how the market works and the impacts of proposals to improve it.

The bills before the Committee, such as the Comprehensive Consumer Credit Reporting Reform Act, would undercut nearly every aspect of the consumer reporting process, a process that plays a critical role in today's economy. The negative outcomes caused by the enactment of these bills would hit consumers, employees, community banks, credit unions, automobile dealers, mortgage lenders, other non-bank lenders, data furnishers, employers, insurers, landlords and consumer reporting agencies (CRAs).

Some groups do stand to benefit from the proposed legislation. Trial lawyers will reap a windfall from their expanded ability to file frivolous lawsuits. The disreputable and exploitative credit repair industry will gain new opportunities to flood the credit system with bogus disputes and false complaints with the express purpose of deleting negative, but accurate, data from a consumer's file. Other than these two groups, it is difficult to contemplate a segment of the economy that would be left unharmed by these bills, when considering the direct and indirect effects of the various provisions.

We believe FCRA reform legislation should acknowledge two fundamental facts. First, consumer reports are a critical driver of economic growth. Our economy relies on the ability of consumer reporting agencies to interact with lenders, employers, insurers and others to enable consumers to access low-cost credit, employment opportunities and housing. Second, current law provides consumers with appropriate levels of protection. Recent debates in Congress regarding consumer privacy have shown that many, including some consumer advocates, identify the FCRA as an example of effective consumer protection legislation and a model for other segments of the economy.

The consumer reporting system continually evolves and adapts to lender needs and consumer expectations when seeking goods and services. However, the major changes to that system as proposed in this legislation offers none of the incremental improvements that industry would be glad to discuss and collaborate with the Committee to enact. Instead, the bills presuppose that the consumer reporting industry is in need of radical reforms.

Below, we describe our concerns in greater detail. The material is organized by category of the overall subject matter, as the format of what bills will be considered is still unclear. While there are many more issues that we can and will raise with the Committee with regard to specific provisions, we offer this letter as a means of providing the Committee with an overview of the industry's most pressing concerns.

Disputes

Title 1 of the Comprehensive Consumer Credit Reporting Reform Act (CCCRRA) would add complexity and procedural delays to the dispute resolution process, making it more challenging, costlier, and lengthier for consumers to resolve. The legislation would call for adding more than eleven cumbersome consumer disclosures about the dispute process that include numerous statements and copies of information.

In addition to being problematic, these provisions in Title I are also unnecessary. In 2015, the three nationwide CRAs established the National Consumer Assistance Plan (NCAP), a program developed in agreement with State Attorneys General. NCAP requires CRAs to employ specially trained employees and review all supporting documentation submitted by consumers for all disputes involving mixed files, fraud or identity theft. NCAP also requires that CRAs manually review supporting documentation whenever a creditor verifies a disputed credit item through the automated dispute resolution system.

The existing and effective safeguards under the FCRA and through NCAP render Title I of the CCCRRA redundant and potentially harmful due to the added burdens and processes that would be established if CCCRRA was enacted.

- Section 101. This section would change the dispute process and create administrative hurdles and compliance challenges that will impede the correction process to the detriment of consumers. New reinvestigation requirements, coupled with the removal of the exception for frivolous disputes, would cause disputes to go unresolved for longer periods of time, which would reduce the accuracy of the consumer's file. Mandating a written certification requirement for disputes and responses that are processed electronically will compound the delay.

- Section 102. This section would require CRAs to maintain a website dedicated to the dispute process. It is entirely unnecessary in light of legislation enacted last year that called for the establishment of a substantially similar mechanism. The portal described in this proposal would add layers of complexity for no purpose.

- Section 105. The appeal process described in this section largely exists today. Consumers are currently permitted to dispute the outcome of a reinvestigation. The proposed new process, however, will increase the time it takes to resolve disputes, and create inaccuracies and uncertainties in consumers' files. Furthermore, the proposed appeal process does not account for, or protect against, misuse of the system to challenge in bad faith legitimate and accurate information in consumers' files. Such mischief wreaks havoc on the credit reporting system and drives up the cost of credit for all consumers. The result could be accurate information being removed from credit reports, which will make it harder for lenders to assess risk, and could become a safety and soundness issue.

- Section 107. This section undoes dispute procedures that are well-developed and provide the flexibility necessary to address changes in technology and consumer preferences. The FCRA currently requires "reasonable procedures", which is an appropriate benchmark. Section 107, however, would undo this approach in favor of prescriptive provisions that prevent future adaptation.

- Section 108. This section contains two related provisions that pose serious concerns.

    - First, the section proposes to change the fundamental standard governing consumer information embedded in CRA by adding the concept of "completeness." Such an approach represents a serious departure from the "maximum possible accuracy" standard that has formed the foundation of CRAs' practices and procedures for decades. As the FCRA has been read and interpreted, CRAs are not required to include all existing derogatory or favorable information about a consumer in their reports. Moreover, the provision does not define the term "completeness," but rather asks the CFPB to issue a rule establishing procedures on this topic. The FCRA already requires all consumer reporting agencies to have reasonable procedures to assure maximum possible accuracy of the information in the credit file, making this rulemaking exercise duplicative. The nationwide CRAs and major data furnishers are already supervised and examined by the CFPB on the issue of data accuracy. Furthermore, NCAP includes requirements to promote the accuracy of the data maintained by the CRAs, as well as increasing their requirements for data furnishers.

  - Second, the provision calls for the development of a rule that would require "matching" consumer data in the consumer report with the personal information furnished to the CRA. Simply put, this concept is entirely unworkable and would impose unforeseen negative consequences on the furnishing process. Consumers, particularly those involved in in-person, same-day credit situations, such as point-of-sale credit or obtaining an auto loan when purchasing a new car, often benefit from fuller and more predictive credit reports that include all of their information, despite an imperfect "match." According to the Federal Trade Commission (FTC), "because the data provided by furnishers is imperfect and unlikely to allow precise matching, the proposal [of requiring an exact match of all nine digits] also would likely lead to more 'fragmented files.' If this occurred, credit reports would be less informative and the cost of credit could increase substantially."

- Section 110. This section would grant consumers the ability to obtain injunctive relief to require compliance with any FRCA requirement. In essence, the section would export the enforcement of the FCRA from the Federal Trade Commission to the federal court system, where judges would be burdened with resolving these disputes. Addressing the many individual and factually-specific claims would undoubtedly lead to divergent interpretations of applicable FCRA provisions and drastically increase the uncertainty facing CRAs, furnishers, and users of credit reports attempting to comply with the law. On top of that, the proposal itself could mean that otherwise-accurate information would be withheld from consumer reports over the course of litigation, reducing the accuracy of a consumer report. Moreover, the FCRA includes statutory penalties up to $1,000 for each violation, along with damages and attorney fees. There is no limit on this liability in a class action. This provision would create significantly greater civil and injunctive liability for lenders, employers, furnishers, and others in addition to the credit reporting agencies.

Banning "Unfair and Misleading Consumer Reporting Practices"

Title 7 of the CCCRRA presents serious concerns to CDIA members. As drafted, it would place restrictions on the delivery of credit reporting and scoring products and services, impose an outright ban on CRA use of an otherwise widespread marketing method, and grant the federal government the ability to set pricing, among other problematic provisions.

- Section 701. This provision would unfairly target CRAs by banning their use of auto renewal membership practices. No evidence has been presented to justify why CRAs uniquely should be prevented from employing an enrollment method that is used across the service economy by countless industries.

- Section 702. This section would require the CFPB to prescribe specific disclosure requirements for "any products or services offered, advertised, marketed, or sold to consumers" by the CRAs and resellers. These entities already are governed by state and federal advertising laws and prohibitions on unfair and deceptive practices. There is no justification for mandating that the CFPB, in addition to these other laws, issue an additional set of rules on disclosures affecting the entire set of products that each of these businesses offer. The effect of this section would be to divert significant resources from other parts of the businesses (dispute resolution, R&D, etc.) to focus on compliance with a set of duplicative rules on advertising and marketing. Violations of these unnecessary and costly requirements would be subject to class action liability.

- Section 703. This provision grants the government—the CFPB—the authority to set a fair and reasonable maximum fee for all products and services offered by CRAs, effectively giving a government agency price-setting authority. Government price-setting runs counter to time-honored free market principles and deprives businesses the right to recover profits from investment in research and development of new products and services. This approach has already been put in place in a limited context under the FACT Act, which provides for the FTC to establish fair and reasonable prices for credit reports and scores offered to consumers. In addition, the market has already shifted to meet the demand of consumers, with a number of entities already providing consumers with free access to credit reports, scores, and other related services.

- Section 704. This section would require the CFPB to issue a rule mandating that CRAs make all disclosures "or other communications with consumers" in "each of the 10 most commonly spoken languages, other than English." Companies should look to their markets and customer base, as well as size and technical capabilities, to determine the number of languages in which to offer disclosures. The way this provision is drafted sets CRAs up to fail-- opening the door to class action lawsuits. "Other communications" with consumers is poorly defined and could be read to include every phone call and email sent by the tens of millions of consumers each day should a CRA fail to respond in the following languages: Spanish, Chinese (including Mandarin and Cantonese), Tagalog (including Filipino), Vietnamese, Arabic, French, Korean, Russian, German, and Haitian Creole. Further, it is unclear whether there are enough translators in many of these languages to supply all the CRAs with sufficient coverage. Federal and state agencies do not have this burden, nor do other industries. This section imposes onerous, punitive, or even impossible burdens upon these companies and would open the door for trial lawyers to extract payment through class action lawsuits.

Restricting the Private Sector Use of Credit Reports in Employment Decisions

This Title would remove one of the most important tools that private employers have to evaluate and compare different candidates being considered for a job, despite the fact that the use of credit reports for pre-employment screening is regulated by the FCRA, state credit reporting statutes and a robust body of employment law. Consumer credit information can provide useful and important information about a potential employee in appropriate circumstances. Restricting private employers from using this information will greatly impede their ability to make fully-informed hiring decisions.

Due to the potential impact of this change, we encourage the Committee to seek input from employer groups such as the U.S. Chamber of Commerce, National Federation of Independent Business and Society of Human Resource Management before taking action. Furthermore, while we are ready to entertain regulation that meets employer needs, we believe that this proposal is unworkable for employers and our members. Relatedly, this Title is also unclear with regard to non-credit-related consumer report information, such as background checks and criminal history. It should be made clear that non-credit-related consumer information would still be permitted even under this Title.

We note that this Title permits the federal government to continue using credit reports for employment decisions. Private sector companies should have the same ability to use this important tool as the federal government.

Removing Accurate, Predictive Information from Credit Reports

Title 3 of the CCCRRA would remove adverse information for certain defaulted or delinquent private education loan borrowers who demonstrate a history of loan repayment. While federal loans can be held in default, private student loans do not have a similar status; rather the loans are current or delinquent. This provision would remove a default status and any past loan delinquencies if a borrower makes nine on-time payments on the student loan during a ten-month period.

The provision would cause problems for the credit system. Setting aside the fact that Congress already addressed this issue in Title 6 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), it would encourage the removal of accurate and predictive information from many thousands of credit reports, and lead to the creation of inaccurate, incomplete and non-transparent credit files. Users of these inaccurate files would pass the risk on to consumers by increasing the cost of credit and rates for all consumers. The credit reporting process is fundamental to the modern underwriting process and the financial system and relies on complete and accurate information. This is not a concern about pricing fairness, it is also a credit quality and safety & soundness concern.

Title 4 of the CCCRRA would shorten the period that negative data would stay on a consumer's credit report and mandate the removal of fully paid or settled debt from consumer reports. It would seek to remove medical debts and items associated with predatory lending for mortgage loans. It would also establish rights for victims of financial abuse to have adverse information associated with an abuser's fraudulent activity removed from their credit file and prohibits the treatment of credit restoration and rehabilitation as adverse data. For a variety of reasons, the provisions in this Title would have a negative effect on the administration of the credit reporting system.

- Section 401. By shortening the period of time that negative, but accurate information can be displayed on a consumer's credit file and drastically limiting certain other information, such as paid off or settled debt, Title 4 would remove predictive information from the credit file and in doing so diminish the otherwise substantial value of consumer reports to consumers. Users of consumer reports can make the best decisions when they have access to all reasonably available and accurate information. The window of accessible consumer data should extend for as long as the data is deemed to be reliable. For most consumer data, this has been determined to be 7 years. In the absence of any justification to the contrary, we believe it is ill advised to make such a dramatic change to the system.

- Sections 402 and 403. Mandating the removal of fully paid or settled debt, including medical debt, removes predictive information from the consumers' credit files. Because of this, credit report users will not be able to predict risks as comprehensively and will pass this risk on to consumer via increased costs. Moreover, the nationwide CRAs have already taken steps to address issues related to disputes between consumers and their insurers with respect to medical debt. The NCAP prohibits medical debts from being reported on credit reports until after a 180-day waiting period to allow for insurance payments to be applied. Further, under the agreement the CRAs remove from credit reports any previously reported medical collections that have been paid by insurance.

Protecting Vulnerable Consumers

Title 8 of the CCCRRA proposes amendments to credit freezes and identity theft protections that were addressed in Title III of EGRRCPA. We believe amendments to these new protections are not yet ripe for consideration. We also do not believe it is appropriate to extend fraud alerts and free credit scores to persons whose financial or personally identifiable information has been subject to an unauthorized disclosure but who cannot point to any tangible harm. Nor do we believe it is necessary to expand the fraud alert process to include free credit reports, scores, and other notices and services currently provided at reasonable cost by CRAs, or eliminate important exceptions to the credit freeze process.

Furthermore, Title III of EGRRCPA established a national standard regarding security freezes that ensures all Americans receive equal protections. Section 804 challenges this national standard by creating incentives for states to create a patchwork of state laws regarding security freezes. This patchwork approach is confusing to consumers and creates unnecessary compliance burdens on CRAs that provide no real benefits to consumers. A national standard is necessary.

- Section 803. This section proposes to remove firm offers of credit or insurance (also known as "prescreened offers") and employment, tenant and background screening from the categories of uses that are exempted from the credit freeze provisions. We strongly disagree that this should be done. The credit freeze exceptions are important, and consumer-friendly, limitations on the credit freeze requirements. These exceptions target uses of consumer reports with no risks of fraud due to identity theft and were designed to ensure that consumers were not inadvertently, and adversely, affected by a credit freeze.

- Section 804. This section would revise state law preemption under the credit freeze provisions of the FCRA. As proposed, the credit freeze provisions would set a minimum standard, but state laws consistent with the FCRA could put stricter rules in place. State law preemption is critically important for the consumer reporting industry. Consumer report products and services are offered by a variety of CRAs and other companies on substantially identical terms nationwide. Uniform federal laws provide a single set of rules that level the playing field and reduce regulatory uncertainties. However, without state law preemption, CRAs would be required to comply with a potentially large number of varying laws that do not yield consistency or certainty to consumers or CRAs.

    - Section 804 also proposes to narrow the creditor exceptions for credit freeze and would remove, among other exceptions, assignees and potential assignees. These parties are critical components of the consumer credit ecosystem and rely on credit report information to operate in a safe and sound manner. Such parties may not have an authorized account, contract, or debtor creditor relationship with a consumer, yet still require access to consumer reports for the purpose of reviewing accounts and prospective investments. The FCRA has historically recognized this use of consumer reports, which presents little to no risk of consumer harm due to identity theft. The current exceptions need not be amended.

- Section 808. This proposal would undo a careful bargain struck in EGRRCPA by opening the door for trial attorneys to sue for violations of the active duty credit monitoring provision. The proposed language also would grant the CFPB full rulemaking authority to "establish classes of consumers eligible to receive credit monitoring and identity theft protection services free of charge." The proposed language would simply allow the government to decide when and how private companies, the CRAs in this case, must give away their product for free to groups of people that the government determines are worthy. For reasons that should be obvious, we strongly oppose such language as un-American and, more importantly, almost surely unconstitutional.

    - Section 808 also proposes to amend state law preemption regarding credit monitoring. Weakening preemption may result in a fractured, state-by-state compliance regime that serves only to increase costs and create confusion regarding the provision of these services, and should be avoided for the reasons discussed above regarding Section 804.

Credit Scores

Title 5 of the CCCRRA would: (1) give the CFPB federal oversight of the development of credit scoring models, and (2) require a CFPB study and report to Congress on the impact of using non-traditional data. At a time when policymakers are seeking innovation in lending to boost consumer and small business access to affordable credit, having the government tinker and weigh in on the development of credit scoring models would likely have unintended consequences including inhibiting innovation and reducing the ability of lenders to properly assess credit risk.

- Section 501. This provision would provide the CFPB with the ability to control the development of credit scoring models and matching technology. It could have dire consequences for the safety and soundness of the consumer credit markets. This provision could significantly skew the credit risk models used in lending decisions and force lenders to limit the availability of affordable credit for consumers and small business owners. Furthermore, such oversight is largely duplicative of existing laws and authorities—credit scoring models for nationwide CRAs are subject to both CFPB supervision and the requirements of the Equal Credit Opportunity Act.

- Sections 502 and 503. These provisions would establish reviews and congressional reports on alternative data. They are unnecessary and duplicative of existing governmental reviews. Within the past three years, the Federal Reserve, the Department of the Treasury and the CFPB have each conducted studies regarding alternative data. These reports have highlighted the benefits that alternative data can provide consumers with thin or no credit files. Rather than continued studies, the government should take steps to encourage continued experimentation with alternative data to facilitate the extension of credit and other services to consumers that have limited or no traditional credit history.

- H.R. 2753, the Free Credit Score Act of 2019 would require nationwide CRAs to include a credit score and explanation of how credit scores are calculated along with the free annual disclosure mandated by the FCRA. This proposal repeats an exercise that Congress engaged in when it considered the FACT Act in 2003 and when it passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Both times, and as it should now, Congress determined that a requirement to provide a free credit score unfairly strips the nationwide CRAs of their intellectual property, but provides no benefit to consumers.

    - Unlike the factual statements about a consumer's lending history contained in a credit report, credit scores are the product of a proprietary analysis of those facts. A credit score is generated from a patented process of statistical analysis based on the raw data included in a credit file. Credit scoring models require significant investment to develop and maintain and are owned by the developers. It is unjust to force the CRAs to give away proprietary credit scores, and from models that they may not even own.

- Providing a single credit score, even with an explanatory disclaimer, will confuse and mislead consumers because their lenders and other users of credit reports do not use one single credit score. While all credit scores are designed to predict probability of default, lenders use a variety of third party and internal credit scores. They also interpret these scores differently depending upon their own appetite for risk and the type of loan they are offering (*e.g.*, credit cards, automobile loans, residential mortgage loans, and other loan products). A single credit score at a single point in time provides little to no meaningful information to consumers.

Credit Report Portal

Legislation titled the "Accurate Access to Credit Information Act of 2019" (AACIA) has recently been circulated and is expected to be considered at the mark-up as well. AACIA has been described as a proposal requiring the nationwide CRAs to develop jointly an online consumer portal ("online portal") that gives consumers unlimited free access to a number of FCRA-mandated disclosures. As currently proposed, however, AACIA is an extensive and complicated piece of legislation that goes much further than establishing an online portal. AACIA includes many of the same proposals, with similar attendant consequences, as the CCCRRA. Consequently, AACIA merits greater discussion and analysis to better ascertain its impact.

Section 2 of the bill would amend the free annual credit report provision applicable to the nationwide CRAs in Section 612(a)(1) of the FCRA. Specifically, the bill would require each nationwide CRA to develop jointly an online portal that gives each consumer unlimited free access to a number of FCRA-mandated disclosures, including some new ones, such as a credit score.

- The online portal would require the three nationwide CRAs to integrate their separate processes for disclosures, disputes, opt-outs and security freezes into a single shared platform. Two of the functional elements would require the nationwide CRAs to develop completely new disclosures. One new disclosure would explain the differences between a security freeze and other products offered for identity theft. The other new disclosure relates to who has accessed consumer reports and for what permissible purpose.

- The bill 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. The bill should condition access to disclosures and services available through the online portal on verification of identity.

- The unlimited free access requirement potentially would result in violations if, for example, the portal had to be taken offline for maintenance or other circumstances, such as a power outage, cyberattack or other incident. The bill should provide exceptions for routine maintenance and other various circumstances beyond the control of the nationwide CRAs.

- Unlimited free access to consumer reports and credit scores contradicts and reads out of the FCRA existing provisions that generally allow nationwide CRAs to charge reasonable fees for consumer reports and credit scores.

- The bill imposes substantial costs on nationwide CRAs. Unlimited free access means that a consumer could request consumer reports and credit scores from each of the nationwide CRAs each and every day (or even multiple times per day, as through a 3rd-party service, such as a digital wallet). The bill gives nationwide CRAs no recourse to restrict such abuses. This constitutes an unlawful taking of the property of the nationwide CRAs.

- The unlimited ability to initiate disputes fails to adjust or account for disputes that are frivolous or irrelevant, particularly disputes submitted by credit repair organizations. The vast majority of disputes received by the nationwide CRAs are submitted by credit repair organizations. The frivolous credit repair disputes submitted by these organizations swamps the investigative resources of the nationwide CRAs and works to the detriment of consumers who have legitimate disputes. The online portal would simply provide these credit repair organizations another mechanism to abuse and undercut the dispute process.

Opt-Out of Sharing

Section 2 of the AACIA would require a consumer reporting agency (not limited to nationwide CRAs) that sells or shares consumer information in a manner that is not a consumer report to provide each consumer with a method to opt out of such sale or sharing, free of charge. The method may include a website, phone or writing. The consumer's election to opt-out has no expiration date but remains effective until revoked through a website, by phone, or in writing. Proposed Section 612(a)(1)(E).

- CRAs regularly sell or share non-consumer report information. Some CRAs maintain separate non-FCRA databases from which they sell or share data for non-FCRA purposes. These databases are often called Gramm-Leach-Bliley Act (GLBA) databases and the data they contain is often referred to as GLBA data. Many CRAs also sell or share credit header data from FCRA databases. The proposed opt-out right would apply to the sale or sharing of both types of data.

- CRAs sell or share non-consumer report information for a variety of socially valuable purposes, including fraud prevention, identity verification, and skip tracing to locate consumers. Allowing consumers to opt out of such sales or sharing would undermine these valuable services. CRAs regularly sell credit header data (identifying information), for example, to law enforcement, government agencies, and businesses for important social purposes. For example, many government agencies use non-consumer report data provided by CRAs to locate missing children or parents who owe child support and to check for fraud or unauthorized payments under government programs. Law enforcement uses such data to track down criminals. Businesses use such data to detect fraud, prevent identity theft, and locate debtors.

- The bill would create an unlevel playing field that places regulated CRAs at a severe competitive disadvantage compared to unregulated data brokers 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 without enhancing consumer protection.

- Unlike GLBA and other opt-out regimes, the bill does not provide any exceptions to the opt-out requirement. At a minimum, the bill should incorporate the same or a very similar and extensive list of exceptions to the GLBA opt-out to avoid impacting socially valuable uses of the data.

- The bill should define "consumer information" and expressly exempt de-identified or anonymized data from the scope of the opt out.

- The opt-out provision should not apply to sharing among the CRA's affiliates.

Section 3 of the AACIA would amend Section 607(b) of the FCRA to supplement the maximum possible accuracy standard with a requirement to fully match all file information with a nine-digit Social Security Number (SSN) and to require periodic audits for accuracy. The bill would make what appear to be non-substantive changes to the maximum possible accuracy standard. To satisfy the maximum possible accuracy standard, the bill would require each nationwide CRA to ensure that, when including information in a consumer's file, it matches all nine (9) digits of the SSN of the consumer with the information it is including in the file. 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 bill would require each CRA (not limited to nationwide CRAs) to perform periodic audits on a representative sample of consumer reports to check for accuracy on a schedule determined by the (CFPB).

- The SSN matching requirement for nationwide CRAs would significantly diminish the completeness, quality, and usefulness of consumer reports, and is not a practical solution for enhancing accuracy.

    - First, many public records from which the nationwide CRAs obtain information to include in consumer reports do not contain full, nine-digit SSNs for security reasons. As a result, the bill would require CRAs to suppress a large amount of accurate and valuable public record information from consumers' files.

- Second, sometimes furnishers do not or cannot provide a full SSN when furnishing information to nationwide CRAs. This can occur, for example, when a consumer does not have a SSN or when a SSN is not available for reporting. The bill requires in this case that each CRA match information that includes, but is not limited to, full legal name, date of birth, current address, and at least one former address of the consumer. This is not always possible and would require nationwide CRAs to suppress a large amount of accurate information from consumers' files for consumers who do not have SSNs, such as new immigrants, thereby exacerbating the difficulties unbanked and underbanked consumers experience when seeking to access credit or other financial services.

- Finally, 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.

- The periodic audit requirement is unnecessary. CRAs regularly audit their files for accuracy in numerous ways. Having the Bureau determine a schedule for such audits reduces flexibility and does not account for variations in business models and cycles among CRAs. There is no guidance on what constitutes "a representative sample of consumer reports."

CFPB Ombudsperson

Section 4(b) of the AACIA would require the CFPB, not later than 180 days after the date of enactment, to establish the position of credit reporting ombudsperson. The credit reporting ombudsperson would be 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 and to comply with provisions related to the reinsertion of such data. In addition to any penalties that the CFPB could impose, the ombudsperson could levy any applicable fine per violation on a CRA for repeated failure to resolve disputes in a timely manner or comply with FCRA Section 611(a)(5).

- The role of the credit reporting ombudsperson is unnecessarily duplicative of CFPB's current authority to enforce and impose fines for FCRA violations. Vesting the ombudsperson with authority to impose civil fines is not accompanied by any administrative law or due process protections. Under the bill, CRAs have no right to notice, a hearing with the opportunity to rebut the allegations, or any opportunity to seek administrative or judicial review. The ombudsperson essentially gets to operate like a Star Chamber, acting as prosecutor, judge and jury all in one. Accordingly, the provision is deficient under the Administrative Procedures Act and the due process clause of the Fifth Amendment to the U.S. Constitution.

- The ombudsperson will be a separate office from CFPB's CRA 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's not clear, for example, how the ombudsperson could determine whether disputed information was, in fact, in error, aside from taking the word of the consumer or the CRA. 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 or violated subsection 611(a)(5).

- 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 and imposition of fines.

- 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

Injunctive Relief (Civil Liability)

This section is bracketed in the version of the bill received at 4:11pm July 3, 2019, suggesting it might be removed.

Section 5 of the AACIA would amend the FCRA's civil liability provisions, FCRA Sections 616 and 617, to give courts the authority to award injunctive relief to require compliance with requirements of the FCRA "with respect to any consumer" in addition to any other remedy (damages) available under those sections. In addition, a court, in "any successful action for injunctive relief," could award to the prevailing party costs and reasonable attorney's fees incurred by the prevailing party.

Section 5 of the bill also would revise enforcement of the FCRA by: (1) permitting civil actions against users of consumer reports for most requirements of FCRA Section 615, and (2) limiting exclusive administrative enforcement to the risk-based provisions in FCRA Section 615(h).

- Injunctive relief empowers any court to make itself the de facto regulator of consumer reporting agencies and require changes in the business practices of CRAs. It creates the risk of a court interpreting the FCRA differently than the CFPB, the regulatory agency principally charged with interpreting and enforcing the statute. With a statute as complex and technical as the FCRA, it is important to have a single authoritative source of interpretation, not a fragmented scheme where courts not steeped in the FCRA's intricacies can undermine settled business practices without a full appreciation of the statutory scheme. Cole v. U.S. Capital Inc., 389 F.3d 719 (7th Cir. 2004), for example, was a case where the Seventh Circuit at first badly misconstrued the FCRA's requirements for firm offers of credit (prescreening) and only reversed course and limited its decision four years and many hundreds of lawsuits later. *See also* Murray v. New Cingular Wireless Servs., Inc., 523 F.3d 719 (7th Cir. 2008).

- Injunctive relief may be awarded "with respect to any consumer." It's not clear how this standard would apply in class actions. Arguably, injunctive relief for an FCRA violation would have to be prospective in nature, thus apply to and bind consumers who are not members of the class. Again, this would turn courts into rulemakers, not adjudicators.

- Under the bill, costs and attorney's fees could only be awarded to the prevailing party in "any successful action for injunctive relief." This provision only allows plaintiffs to qualify as the prevailing party. Plaintiffs could be awarded costs and attorney's fees, but companies that successfully defend individual or class action lawsuits seeking injunctive relief could not be awarded their costs and attorney's fees. This unbalanced remedial structure would promote aggressive and irresponsible use of the injunctive relief mechanism by plaintiffs' lawyers who do not share any downside risk if they lose a claim for injunctive relief.

- The proposed amendments to FCRA Section 615(h)(8) creating private rights of action against users of consumer reports for violations of most provisions of FCRA Section 615, would substantially increase the risk to users of consumer reports and expand FCRA litigation. The proposed changes would allow private rights of action for violations of the adverse action notice provisions and for certain identity theft provisions, including the red flag guidelines and the handling of debts caused by identity theft.

Disclosures to Consumers

Section 6(a) of the AACIA would amend FCRA Section 609(a) to require CRAs to include in file disclosures the following additional information about each person that procured a consumer report within the prior one-year period (two years in case of employment purposes): (1) the address and telephone number of the person; and (2) the permissible purpose for the person for obtaining the consumer report, including the specific type of credit product that is extended, reviewed, or collected, *as available*.

Section 6(a) also would amend the FCRA's credit score disclosure provision in two respects. First, amended subsection (7)(A) would require CRAs to supply the consumer with a credit score through the online portal or upon the consumer's request, as applicable, that either: (1) is derived from a credit scoring model widely distributed to users by that CRA for the purpose for any extension of credit or other transaction designated by the consumer who is requesting the credit score, or (2) is widely distributed to lenders of common consumer loan products and predicts the future credit behavior of the consumer. Second, the bill would gut the ability for CRAs, particularly nationwide CRAs, to charge a fair and reasonable fee in subsection (8) by creating an exception that requires free credit score disclosures if requested in connection with a free annual consumer report under FCRA Section 612(a) or through the online portal. This section would also amend FCRA Section 609(g) to eliminate the ability of mortgage lenders to disclose a credit score obtained from a CRA when the lender uses a credit score other than a score provided by a CRA.

- The requirement to include additional information in file disclosures is problematic in the following respects:

    - First, the addresses and telephone numbers of persons who recently procured a consumer report can change as companies move or switch telephone numbers. CRAs have no mechanism for keeping such information current. This means that, in some cases, the information will no longer be accurate when it is provided to consumers.

    - Second, consumers likely know the address and telephone number of persons who recently procured a consumer report since these are persons from whom the consumer has obtained or applied for credit. Therefore, the additional information will impose costs and burdens on CRAs with no corresponding benefit to consumers.

    - Third, the requirement to disclose the permissible purpose of the user for obtaining the consumer report is simply not feasible. CRAs do not know and do not collect information about the specific type of credit product a user is extending, reviewing, or collecting. The FCRA does not require the collection of such information. Moreover, many users of consumer reports offer various types of credit products so CRAs cannot determine, from the user's identity, the type of product with which a consumer report will be used. Finally, users often certify more than one permissible purpose and CRAs do not necessarily know which permissible purpose a user is relying upon for each pull of a consumer report.

    - The addition of the phrase "as available" to the section (in the bill text received at 4:11pm on July 3rd, 2019), does not obviate these problems.

- The credit score disclosure provisions would essentially require disclosure of a FICO score. Scores provided through the online portal or at the consumer's request would have to be either: (1) derived from a credit scoring model widely distributed to users by that CRA for the purpose for any extension of credit or other transaction designated by the consumer who is requesting the credit score, or (2) widely distributed to lenders of common consumer loan products and predictive of future credit behavior of the consumer. In the first instance, the consumer would get to designate the score they will receive, provided the score is widely distributed to users by the CRA. In most cases, consumers would request FICO scores by name. And such score must be derived from a model widely distributed to users by that CRA for credit eligibility purposes. This makes no sense because CRAs do not distribute credit scoring models to users; however, the intent appears to be to require disclosure of FICO scores. Without such a consumer designation, the score must be widely distributed to lenders of common consumer loan products. Here, again, this provision would tend to reinforce the dominant position of FICO scores in the market and prevent developers of competing scores from gaining traction in the market.

- The credit score disclosure provisions would essentially eliminate any ability for CRAs to charge a fair and reasonable fee of providing credit scores to consumers. The proposed exception would require free credit scores to be provided with free annual consumer report disclosures and through the online portal. As noted above, the online portal gives each consumer unlimited free access to the consumer's credit score, leaving no room for charging fair and reasonable fees.

- The elimination of mortgage lenders' ability to provide a credit score obtained from a CRA rather than a proprietary score will generate consumer confusion, but other trade associations and constituencies may be better suited to addressing this issue.

Free Disclosures to Consumers after Adverse Action or Risk-Based Pricing
Section 6(b) of the AACIA would replace the existing requirement in FCRA Section 612(b) for CRAs to provide free file disclosures to consumers upon the consumer's request with a requirement that CRAs automatically send consumers file disclosures after adverse action or risk-based pricing. To trigger such automatic file disclosures, users taking adverse action under FCRA Section 615(a) or using a consumer report to engage in risk-based pricing by offering consumers less than the most favorable material terms under FCRA Section 615(h) would be required to direct the CRA that supplied the consumer report to provide the consumer with a file disclosure under FCRA Section 612(b). The requirement would also be triggered by notice from a debt collection agency affiliated with the CRA. Not later than 30 days after receipt of such notice, the CRA must disclose to consumers, free of charge, all disclosures made to a user of a consumer report in accordance with rules prescribed by the CFPB.

- Eliminating the consumer's request and automatically providing free file disclosures following adverse action creates a substantial risk of aiding and abetting and furthering identity theft. Creditors often deny credit applications when they suspect that the application is fraudulent or that the application is the result of identity theft. A simple example would be when the address on the application does not match the address on the consumer report, a scenario addressed in FCRA Section 605(h) and Regulation V Section 1022.82.

- The bill would provide fraudsters and identity thieves with a powerful new tool to steal consumer identities and harm innocent consumers. The bill would require users to direct CRAs to provide file disclosures to fraudsters/identity thieves who could then use that information to do further damage to the victim's identity and good name. The bill contains no exceptions in cases where the user suspects fraud or identity theft, 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. The bill's provisions would make it *more* valuable for fraudsters/identity thieves to get declined for credit since that would enable them to access all of the information in the consumer's file automatically. By contrast, the current request-based system weeds out fraudsters while allowing legitimate consumers, with minimal effort, to obtain access to their information.

- Giving consumers the right to a free file disclosure following adverse action upon request requires minimal effort by consumers and does not impair access. The current, request-based approach to free file disclosures limits the costs and burdens on CRAs to circumstances where the consumer wants the information while substantially reducing the risk that file disclosures will be accessed by fraudsters or other unauthorized persons. The notion of a consumer making some minimal effort to request a file disclosure is also consistent with the FCRA's structure as a self-help statute.

- The requirement for CRAs to make "all disclosures made to a user of a consumer report" available is not feasible because consumer files and consumer reports are constantly changing as new information is received and CRAs do not maintain snapshots of each consumer report provided to users. Thus, the information provided to a consumer following adverse action most likely will not be identical to the information originally provided to and relied upon by the user. Moreover, disclosures made to users typically are provided in the form of computerized codes that would not be meaningful if provided to a consumer. File disclosures to consumers instead are provided in a form designed to be understandable to consumers. The bill should be revised to account for these issues. Perhaps this is why the bill would require the CFPB to prescribe rules regarding this requirement.

- Regarding the CFPB rulemaking, the bill should clarify that the new provisions do not become effective until at least two-years after the CFPB issues final rules. It will be costly and time-consuming to build a new infrastructure to receive and act upon user directions to provide file disclosures. This requires coordination between CRAs and a wide range of users. And the new infrastructure can't begin to be built until a final rule is issued. The CFPB should also be directed to issue rules specifying when users should not direct CRAs to provide free file disclosures, *i.e.*, in cases of suspected fraud or identity theft, where the applicant's identity cannot be verified, or where there is not an exact match between the applicant's address and the consumer's address in the consumer report obtained by the user.

- The bill should clarify that CRAs must provide free file disclosures only when directed by a user. User noncompliance should not be imputed to CRAs. Moreover, as noted above, users should be prohibited from providing such directions to CRAs in cases of suspected fraud or identity theft, lack of verification of the applicant's identity, or lack of an address match.

- Applying free file disclosures to risk-based pricing could result in an unnecessary and exponential proliferation of free file disclosures. The bill would require a person who uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person to "notify and direct" the CRA that provided the consumer report to provide a file disclosure to the consumer.

    - Most creditors engaged in risk-based pricing do not determine which consumers received materially less favorable terms compared to others, but simply provide a credit score disclosure notice to all credit applicants as permitted by the CFPB's risk-based pricing rules. These rules reflect the difficulty of comparing the terms offered to different consumers and determining what differences are material.

    - Requiring CRAs to provide file disclosures when creditors provide credit score disclosure notices would result in free file disclosures to every applicant for credit. Such a result would be costly and burdensome for CRAs with little benefit to consumers. Such a rule also would mean that consumers denied credit would receive two file disclosures—one when the credit score disclosure notice is provided and another when adverse action is taken. Such a result is wasteful, duplicative, and costly without any incremental benefit to consumers.

    - The free file disclosure requirement should not be extended to risk-based pricing notices. If it is, the requirement should only apply when a creditor provides risk-based pricing notices to a subset of consumers it has determined received materially less favorable terms than other consumers based on a consumer report, but should not apply when the creditor generally relies on the credit score disclosure notice exception to provide credit score disclosure notices to applicants (or provides the credit score not available notice, as applicable, when it would otherwise provide a credit score disclosure notice).

    - Finally, it is not clear why the risk-based pricing provision requires creditors to "notify and direct" the CRA to provide a file disclosure while the adverse action provision requires creditors to "direct" the CRA to do the same.

Consumer Reporting Agency Registry
Section 7 of the AACIA would require the FTC to establish a publicly available registry of consumer reporting agencies, not later than 180 days after the date of enactment, that includes

each nationwide, nationwide specialty, and other CRA, and links to any relevant websites of these CRAs. Proposed FCRA Section 621(h). The FTC would have to establish a deadline of not later than 180 days after the date of enactment by which each CRA must register in the registry.

This provision is unnecessary. The CFPB, not the FTC, is the primary regulator of CRAs post-Dodd-Frank, so the CFPB is the right agency to maintain any such registry. More importantly, the CFPB already publishes on an annual basis a List of Consumer Reporting Companies, which contains the name, telephone number, address, and links to the web sites of CRAs. The latest edition, current as of January 2019, is available on the CFPB's web site.

Authority of the CFPB
Section 8 of the bill would amend Section 1024 of the Dodd-Frank Act to provide the CFPB with the authority to supervise and examine the nationwide CRAs.

This provision is unnecessary. The CFPB already has the authority under the Dodd-Frank Act to issue rules to supervise larger non-bank participants in markets for consumer financial services, 12 U.S.C. § 5514(a)(1)(B). The first market in which the CFPB exercised this authority was the consumer reporting market. See 12 C.F.R. § 1090.100-.104; 77 Fed. Reg. 42,874 (July 20, 2012). Each of the nationwide CRAs are covered by the larger participant rule, subject to CFPB supervision, and have undergone CFPB examinations regularly since 2012.

This letter is not meant to serve as a comprehensive report of every section of the bills to be considered but is meant to highlight some of the main issues we have with the legislation. We urge Members of the Committee to reject these bills and to work with us to help those with little or no credit history to 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

Francis Creighton
President & CEO