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March 15, 2019

The Honorable Mike Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
U.S. Senate Committee on Banking Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Via email: submissions@banking.senate.gov

Dear Chairman Crapo and Ranking Member Brown:

The Consumer Data Industry Association ("CDIA") is pleased to offer this comment in response to your committee's February 13 [request](#) seeking "feedback...on the collection, use and protection of sensitive information by financial regulators and private companies."

CDIA is the voice of the consumer reporting industry 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. Through data and analytics, CDIA members help to ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs. While our members are consumer reporting agencies, their strength is the use of data to manage risk which empowers consumers, governments, businesses, and nonprofits for a greater purpose.

Our members market-leading innovations prevent fraud; ease people into homes, jobs, and cars with quiet efficiency. CDIA members' data and analytics are used to locate crime victims and fugitives; they reunite consumers with lost financial assets; they help keep workplaces and apartment tenants safe. Our members work every day to empower economic opportunity for consumers, businesses, government agencies, and nonprofits.

Our members' work and innovations give CDIA a unique insight into the ecosystem of data flows used to manage risk. Our experience and expertise give us an important understanding of the legislative and regulatory impact on critical industry sectors of the U.S. economy, and on consumers.

1. The Fair Credit Reporting Act offers robust consumer rights and protections, and creates substantial business obligations

Before we address the specific questions in your request, we want to offer a few baseline comments about the federal Fair Credit Reporting Act (“FCRA”).¹ CDIA’s consumer reporting agency (“CRA”) members are governed by several federal and state laws. The primary source of business regulation and consumer rights for CRAs and consumers is the FCRA. Attached, as Appendix 1, is a graphic that illustrates the layers of regulation of our members.

First enacted in 1970 and updated many times since, the FCRA stands as a critical law to guide businesses, consumers, federal and state regulators, and law enforcement as they move through the consumer reporting ecosystem. Federal Trade Commission (“FTC”) Chairman Tim Muris said that “the FCRA is an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information. At its core, it ensures the integrity and accuracy of consumer records and limits the disclosure of such information to entities that have ‘permissible purposes’ to use the information.”² A collection of consumer groups called the FCRA “a robust law that gives consumers Fair Information Practices based rights. For example, consumers have the right to know about, inspect, dispute and correct their files. The FCRA requires purpose specificity before a report can be accessed.”³ The FTC called the FCRA “an important tool that provides consumers with the right to access their own data that has been used to make such decisions, and if it is erroneous, to correct it.”⁴ To help consumers better understand their rights under the FCRA, the Consumer Financial Protection Bureau (“CFPB”) offers [more detail](#) on its website. We appreciate that your committee has repeatedly recognized – including last year with the bipartisan reforms in the Economic Growth, Regulatory Relief and Consumer Protection Act (“EGRRCPA”)⁵ – the important balance of the FCRA to the availability of credit, consumer protections, and privacy.

Our consumer reporting system protects privacy and ensures that lenders have a clear picture of an individual consumer’s propensity to repay, all of which leads to the most efficient, fair and cost-effective credit system in the world. For credit reporting, an efficient consumer reporting system lowers risk to consumers, government and business by providing extensive rights to consumers and ensuring that underwriting is conducted on a sound and

¹ 15 U.S.C. § 1681 *et seq.*

² FTC Chairman Tim Muris, October 4, 2001 before the Privacy 2001 conference in Cleveland (“Muris”).

³ Hearing on *Data Security, Data Breach Notices, Privacy and Identity Theft*, Before the Senate Comm. on Banking, Housing, and Urban Affairs, Sept. 22, 2005 (111th Cong.) (statement of Edmund Mierzwinski U.S. PIRG on behalf of Consumer Federation of America, Consumers Union, Electronic Privacy Information Center (EPIC), Privacy Rights Clearinghouse, Privacy Times, U.S. Public Interest Research Group (U.S. PIRG), and World Privacy Forum (“Consumer Groups”).

⁴ Protecting Consumer Privacy in an Era of Rapid Change, Fed. Trade Comm., March 2012, <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

⁵ Pub. L. 115-174.

secure basis; ensures that consumers can borrow, and lenders can make loans, quickly, in a cost-efficient manner with secure underwriting; and allows consumers to be judged by their individual actions, and not by who they are.

One key part of the consumer reporting system is credit reporting. As CFPB Director Richard Cordray said,

[credit] reporting is an important element in promoting access to credit that a consumer can afford to repay. Without credit reporting, consumers would not be able to get credit except from those who have already had direct experience with them, for example from local merchants who know whether or not they regularly pay their bills. This was the case fifty or a hundred years ago [before the FCRA, and other consumer protection laws, like the Equal Credit Reporting Act (“ECOA”)]. But now, consumers can instantly access credit because lenders everywhere can look to credit scores to provide a uniform benchmark for assessing risk. Conversely, credit reporting may also help reinforce consumer incentives to avoid falling behind on payments, or not paying back loans at all. After all, many consumers are aware that they should make efforts to build solid credit.⁶

2. The consumer reporting ecosystem is made of component parts that must all work together so that each part and the entire system can succeed

When people think of credit reports, they tend to think only of the nationwide credit bureaus, Equifax, Experian, and TransUnion. Yet, the Fair Credit Reporting Act covers much more than just “credit” and the consumer reporting ecosystem is much broader. The three nationwide credit bureaus are consumer reporting agencies, but not all consumer reporting agencies are credit bureaus. “Consumer reporting [agencies] collect information and provide reports to other companies about [consumers]. These companies use these reports to inform decisions about providing [consumers] with credit, employment, residential rental housing, insurance, and in other decision making situations.”⁷

The consumer reporting system is an ecosystem made up of parts that must all work together so that each part and the entire system can succeed. This ecosystem is made up of “data furnishers”, companies that provide information to consumer reporting agencies; consumer reporting agencies; “data users”, companies that obtain information from CRAs; and, most importantly, consumers. The consumer reporting system works best and most efficiently when all four components adhere to their legal obligations and exercise their legal

⁶ Richard Cordray, CFPB director, prepared remarks before a field hearing, Detroit, Mich., July 16, 2012, <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-on-credit-reporting/>.

⁷ List of Consumer Reporting Companies, CFPB, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list.pdf, 2019 (“List of CRAs”).

rights. This is a point echoed by CFPB Director, Richard Cordray, who said that “[a]ll of these participants play important roles in ensuring that the credit reporting system operates effectively to help consumer credit markets work better for us all.”⁸

Some have suggested that the entire consumer reporting system needs a major overhaul; that it needs to be reimagined. We respectfully disagree. Today’s consumer reporting system is structured well to serve the entire ecosystem, especially consumers. Consumer protections were at the heart of the creation of the FCRA when Congress found, in 1970, that “[t]he banking system is dependent upon fair and accurate credit reporting”, that “[i]naccurate credit reports directly impair the efficiency of the banking system,” and that “unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.” Congress also found that “There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”⁹

From the law’s introduction in 1970, to the most recent credit freeze amendments in 2018, and in every amendment in between, the FCRA has been and remains a forward-looking law that balances vigorous consumer protections with a strong risk-management system. Any reforms to the FCRA should occur within the context of the current system, which includes existing rights and responsibilities for data furnishers, CRAs, users, and consumers. Any reforms to the FCRA should recognize and work within the Act’s existing fair information principles, like notice, access, correction, and consent. Any reforms must adhere to the existing robust consumer rights, which can be exercised at no charge, and the obligations on businesses in how they operate in the ecosystem.

Consumer reporting agencies have substantial regulation under the FCRA and state versions of that Act. The FCRA can be enforced by the CFPB or FTC, state attorneys general, and by private rights of action where there is no cap on class action damages. CDIA members are also subject to unfair and deceptive trade practices litigation under Section 5 of the FTC Act and 50 state unfair and deceptive trade practice laws. State banking agencies have asserted authority to issue enforcement actions against at least one CRA.¹⁰ The majority of our members are defined as larger participants which are subject to supervision and examination requirements established by the CFPB. They also adhere to a range of established security standards, which may include International Organization for Standardization (“ISO”) and Payment Card Industry (“PCI”) standards.

For those that suggest a newly imagined system, any newly imagined system would look remarkably like the present system, but that new system would be bereft of the nearly 50-year experience of guidance, supervision, regulation, litigation, and enforcement to guide consumers, businesses, governments and regulators in a new system.

⁸ *Id.*, Cordray.

⁹ 15 U.S. Code § 1681(a)(1) and (4), § 601, Oct. 26, 1970, 84 Stat. 1128.

¹⁰ Press release, *DFS takes additional action to hold Equifax accountable for massive 2017 data breach*, N.Y. Dep’t. of Financial Services, June 27, 2018, <https://www.dfs.ny.gov/about/press/pr1806271.htm>.

3. Consumer reporting agencies play a critical role in nearly every aspect of American life, and for socially beneficial purposes

Consumer reporting agencies help consumers meet their credit needs by providing credit checks for consumers for mortgages, car loans, student loans, and more. But consumer reporting agencies are also actively engaged in preventing public and private fraud, conducting residential and employment background checks, assisting law enforcement, helping to properly align consumers with the right government benefits, and more. For example:

- The Association for Children for Enforcement of Support reports that public record information provided through commercial vendors helped locate over 75 percent of the “deadbeat parents” they sought.¹¹
- The Pew Charitable Trusts highlighted how a CDIA member’s “identity proofing” has saved New Jersey millions of dollars in improper unemployment insurance claims. According to Pew, applicants for unemployment compensation are asked a number of questions, like the kind of car they have and who lives at their address. “The information is then verified using the billions of public records that [the company] collects. The process aims to weed out potential fraudsters who might otherwise be able to collect unemployment simply by using someone’s name and Social Security number.”¹²
- Starting in 2011, another CDIA member partnered with the Maryland Department of Human Resources to cut down on public benefits fraud. As a result of that partnership, there was a 200% reduction on the Department’s payment error rate for its Supplemental Nutrition Assistance Program (SNAP).¹³
- In 2009, the Texas Attorney General’s Office stated, “We need the private sector to help protect consumers and help combat identity fraud. Moreover, we also need the private sector to assist law enforcement.”¹⁴

¹¹ *Information Privacy Act, Hearings before the Comm. on Banking and Financial Services, House of Representatives, 105th Cong., 2nd Sess. (July, 28, 1998)* (statement of Robert Glass).

¹² Blog Posting by Jake Grovum, The Pew Charitable Trusts, How 'Identity Proofing' Saved New Jersey Millions, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/07/29/how-identity-proofing-saved-new-jersey-millions>, July 29, 2014.

¹³ Rebecca Lessner, *Credit rating firm helps state validate welfare recipients*, Maryland Reporter, June 25, 2015, <http://marylandreporter.com/2015/06/30/credit-rating-firm-helps-state-validate-welfare-recipients/>.

¹⁴ *Amicus Argument of James Ho for State of Texas, Taylor v. Acxiom Corp.*, U.S. Court of Appeals (5th Cir.) Case Nos. 08-41083, 41180, 41232, (Nov. 4, 2009).

4. Introduction to the questions posed by the Senate Committee on Banking, Housing, and Urban Affairs

A. Consumer reports contain reliable, non-discriminatory information that tell a story of a consumer's financial and other decisions, and they cannot evade the requirements of the FCRA

The introduction to the committee's request for information expressed a "particular[] interest[] in what data is contained in modern consumer reports, how the information is gathered, who compiles it, how it is protected, how consumers can access it and correct it, and how privacy is respected." Each consumer's consumer report tells a unique, individual story about that consumer and the individual choices he or she makes. Credit reports, a subset of consumer reports, will contain (1) identifying information, such as a consumer's name, address, DOB, SSN and prior addresses; (2) credit account information, including account numbers, credit limits, and the positive and negative payment histories for those accounts (typically reported on a monthly basis); (3) collection accounts; and (4) inquiries, meaning a list of persons who have requested that consumer's consumer report. In addition, consumer reports will often contain public record information.¹⁵ Credit reports do not and cannot show things like race, religion, creed, color, or national origin, and they do not contain transactional information, like specific purchases or spending habits. Data furnishers do not provide transactional information to CRAs, nor do CRAs collect transactional information. Transactional information is not used by either VantageScore or FICO since transactional information is not indicative of creditworthiness.

By the terms of the FCRA, consumer reports cannot fall outside the scope of the Act. If an entity is a consumer reporting agency, it must comply with the FCRA. If an entity furnishes data a consumer reporting agency, it must comply with the FCRA. If an entity uses data from a consumer reporting agency, it must comply with the FCRA.

Consumer reports, including credit reports, are made up of reliable information that provide, among others, lenders, creditors, property managers, government agencies, and nonprofits an opportunity to make a lawful decision about whether a person is likely to repay

¹⁵ See, generally, Report to Congress under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2012, (hereinafter "FTC Report"), 3, <http://www.ftc.gov/os/2013/02/130211factareport.pdf>.

a loan on time, pay rent on time, will pose a physical risk to his apartment neighbors,¹⁶ create a risk of financial loss to a business (especially a small business),¹⁷ meet the eligibility requirements for a public benefit,¹⁸ or pose a threat to a nonprofit's vulnerable constituents.¹⁹

B. The FCRA is a nearly 50-year old law with many modern adaptations to meet the needs of a modern economy

The introduction to the Committee's request for information said that "[o]utdated privacy laws don't address the complex surveillance schemes these businesses profit from today. Congress should make it easy for consumers to find out who is collecting personal information about them, and give consumers power over how that data is used, stored and distributed." The FCRA, by its terms, prohibits "surveillance" and that is discussed below. As to the vibrancy and modernity of the FCRA, that Act has been amended 13 times since 1996 at an average rate of nearly once every two years.²⁰ Under this law, Congress has made it easy for consumers to find out who is collecting personal information about them by requiring CRAs to provide a record of all persons who, within a one- or two- year period, as applicable, request consumer reports about consumers.²¹ Congress also made it easy to allow consumers to opt-out of prescreened offers of credit under the FCRA.²² The FCRA and its many amendments over time, assure the FCRA is built for today's economy.

¹⁶ Consumer reports, for example, are used to help a property manager measure risk of criminal activity against other tenants or the rental property. "Criminal record screening is an essential function which helps owners and operators mitigate risk and ensure the safety and security of residents and community staff." Nat'l. Apartment Assn. website, <https://www.naahq.org/advocacy/policy-issues/criminal-screening-residents>.

¹⁷ The median loss suffered by organizations with fewer than 100 employees was \$200,000 per scheme. This was higher than the median loss in even the largest organizations. The most common occupational frauds in businesses involve employees writing fraudulent company checks, skimming revenues, and processing fraudulent invoices. *Report to the Nationals, 2018 Global Study on Occupational Fraud and Abuse*, Association of Certified Fraud Examiners ("ACFE"), 20, <https://s3-us-west-2.amazonaws.com/acfepublic/2018-report-to-the-nations.pdf>.

¹⁸ See, *infra*, 15-16.

¹⁹ League Network, website, <https://www.leaguenetwork.com/background-screening-coaches-volunteers-important-youth-sports/>.

²⁰ Consumer Credit Reporting Reform Act of 1996 (Pub. L. 104-208, the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1), Section 311 of the Intelligence Authorization for Fiscal Year 1998 (Pub. L. 105-107), the Consumer Reporting Employment Clarification Act of 1998 (Pub. L. 105-347), Section 506 of the Gramm-Leach-Bliley Act (Pub. L. 106-102), Sections 358(g) and 505(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107-56), the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (Pub. L. 108-159), Section 719 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109-351), Section 743 (Div. D, Title VII) of the Consolidated Appropriations Act of 2008 (Pub. L. 110-161), the Credit and Debit Card Receipt Clarification Act of 2007 (Pub. L. 110-241), and Sections 205 and 302 of the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (Pub. L. 111-24), the Consumer Financial Protection Act of 2010 (CFPA) (Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203), and the Red Flag Program Clarification Act of 2010 (Pub. L. 111-203), and Sections 301, 302, and 602 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115-174).

²¹ 15 U.S.C. § 1681g.

²² *Id.*, § 1681c-1(i)(6)(a)(v).

C. The FCRA is the nation's first national privacy law that offers, among other things, consumer control over information

The introduction to the committee's request for information expresses interest in consumer control of information in consumer reports. There are places where an opt-out makes sense, like from preapproved offers of credit. To limit access to consumer reports, the FCRA has a strict set of permissible purposes that control when a data user may obtain a consumer report and under what circumstances. Without a statutory permissible purpose, no one can obtain a consumer report.²³ This set of strict information controls prevents the "surveillance" over which the introduction to the committee's request was concerned. The transparency contained in the FCRA allows a consumer to easily see, at any time, who was accessing her report and when. The Gramm-Leach-Bliley Act ("GLBA") also requires disclosures about an ability to opt-out of certain data sharing practices.

In nearly every situation where a permissible purpose exists, some affirmative action is first required by a consumer, like an application for credit, a job, or a government benefit.²⁴ Yet, if a consumer was permitted to opt-out of the consumer reporting system, the people with the most to hide will be the ones that hide the most. FTC Chairman Tim Muris spoke of the "miracle of instant credit" whereby a consumer can walk in to an auto dealer and "can borrow \$10,000 or more from a complete stranger, and actually drive away in a new car in an hour or less." Muris also noted that this

'miracle' is only possible because of our credit reporting system. The system works because, without *anybody's* consent, very sensitive information about a person's credit history is given to the credit reporting agencies. If consent were required, and consumers could decide - on a creditor-by-creditor basis - whether they wanted their information reported, the system would collapse.²⁵

This point is echoed in a 2012 report by the CFPB. In that report, the CFPB observed that "[t]he consumer reporting system enables creditors and other providers of consumer services to pool information about their respective customers and use that pooled information to inform their credit and other risk decisions about new applicants and existing customers."²⁶ This pooled information allows consumers access to low-cost credit and allows financial institutions to bring more people in to the financial mainstream.

²³ *Id.*, 15 U.S.C. § 1681b.

²⁴ *Id.*, § 1681b(a)(3)(A), (B), and (D).

²⁵ *Muris*.

²⁶ CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data*, Dec. 2012, 7, https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

5. The questions posed by the Senate Committee on Banking, Housing, and Urban Affairs

Having offered important preliminary insights regarding consumer reporting and the FCRA, we now turn to the five specific questions on which the committee invited comments.

- 1) *What could be done through legislation, regulation, or by implementing best practices that would give consumers more control over and enhance the protection of consumer financial data, and ensure that consumers are notified of breaches in a timely and consistent manner?*

The risk management data flows regulated by FCRA and GLBA should not be at the center of a debate about privacy or surveillance. As we have discussed, these laws afford consumers many options for control. Your committee has been a leader in establishing statutory regimes that protect consumers and offer them choices while still preserving the critical data flows necessary for the socially beneficial transactions that have been the hallmarks of the FCRA and GLBA. We noted above that a consumer report cannot be issued without a statutory permissible purpose. We also noted how the FCRA requires a consumer report to include the names of the persons who have requested the report and how a consumer can opt-out of prescreened offers of credit. An important and unique part of the FCRA is the powerful provision that allows a consumer to dispute anything in the report he or she thinks is inaccurate or incomplete.²⁷ Another important element of consumer control, passed by Congress in 2018, is a national, free credit freeze for adults and minors.²⁸

There are additional consumer controls over financial information in the federal GLBA. Title V of the Act²⁹

[r]equires clear disclosure by all financial institutions of their privacy policy regarding the sharing of non-public personal information with both affiliates and third parties[; r]equires a notice to consumers and an opportunity to ‘opt-out’ of sharing of non-public personal information with nonaffiliated third parties subject to certain limited exceptions...[and requires] that the disclosure of a financial institution's privacy policy is required to take place at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship.³⁰

The FCRA and the GLBA both serve as models of how laws can both protect consumers and allow socially beneficial data flows to continue. These data flows empower economic opportunity, prevent fraud, and meet consumer expectations. As we said before, if consumers were permitted to opt-out, the ones with the most to hide will be the ones that hide the most. A world where people can hide their adverse credit history, or the delinquent

²⁷ 15 U.S.C. § 1681i.

²⁸ *Id.*, § 1681-c(i).

²⁹ *Id.*, § 6801.

³⁰ *Financial Services Modernization Act, Gramm-Leach-Bliley, Summary of Provisions*, Fed. Financial Institutions Examination Council (“FFIEC”), https://www.ffiec.gov/exam/InfoBase/documents/o2-con-g-l-b_summary_of_provisions-010416.pdf.

child support, or their recent criminal past is a world where consumers must absorb higher costs, less credit, and higher risks in their living and working environments. We encourage your committee to maintain a steady course in legislating. Any new legislation needs a thoughtful approach to protecting consumers while wisely advancing that which is good and helpful about data flows. There are strong interests in both protecting consumers and making markets work for consumers, businesses, governments, and nonprofits. The FCRA and the GLBA have balanced those interests well and any legislation should be allowed to continue to meet those dual missions of consumers protections and market functions.

The committee also asked what would give consumers more control over and enhance the protection of consumer financial data and ensure that consumers are notified of breaches in a timely and consistent manner. CDIA supports a national data breach notification law that operates in a consistent and uniform manner for all consumers across state lines, and one that applies broadly to breached entities that might not now be subject to federal data security requirements.

On broader issues of control, the nationwide CRAs have taken action on their own to provide tools for consumers to have more control over their financial data, including mobile applications and updated web-based consumer portals.

- 2) *What could be done through legislation, regulation, or by implementing best practices to ensure that financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) provide adequate disclosure to citizens and consumers about the information that is being collected about them and for what purposes?*

When a consumer requests a copy of her consumer disclosure (often called a credit report when obtained from a nationwide credit bureau) the FCRA requires the consumer reporting agency to provide to the consumer “all information in the consumer’s file at the time of the request...”³¹ In 2018, consumers requested over 23 million copies of their credit reports from the nationwide credit bureaus through the free credit report website, www.annualcreditreport.com and the associated mail and phone options. This service is one of the many channels where consumers can go to obtain credit reports and it represents a small portion of the credit reports requested by consumers last year.

Government agencies may access individual consumer reports only with a statutory permissible purpose. Government agencies like the Federal Reserve can also access depersonalized, anonymized data for economic purposes, but these uses do not get down to the level of individual consumers. Government use of depersonalized data for macro- and micro-prudential analyses and trends reports is vital to the American economy.³²

³¹ 15 U.S.C. § 1681g (emphasis added).

³² For example, the CFPB “use[s] credit report information] to monitor conditions in consumer credit markets, to analyze the effects of [the CFPB’s rules, and to conduct research into issues affecting consumers. These dashboards draw from a nationally representative sample of credit records maintained by one of the three nationwide consumer reporting agencies (NCRAs)...Before being provided to the Bureau, the records are stripped

Consumers can learn about consumer reporting agencies in several ways. If a consumer is the subject of an adverse action notice, the data user must provide the consumer with the name of and contact information for the CRA that provided the consumer's information that that data user used to make that adverse decision. In this situation, the consumer is entitled to the consumer report (commonly called a consumer disclosure) at no charge.³³

Adverse actions are not the only ways consumers can obtain financial information about them for free. The FCRA offers remarkable transparency for consumers in many ways. For example, consumers are entitled to free reports if they are unemployed and seeking employment, if they are on public assistance; or if when they obtain initial or extended alerts. In the employment context, consumers are entitled to not just an adverse action notice, if that applies, but they are also entitled to a pre-adverse action notice.³⁴

Consumers are entitled to a free credit score from a lender “[w]hen the lender grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.”³⁵ Also, under the FCRA, consumers can obtain credit scores from a CRA at a fair and reasonable fee,³⁶ and at no charge from a mortgage lender.³⁷ When a financial institution extends credit and furnishes information to a nationwide consumer reporting agency that financial institution must provide a clear and conspicuous notice to the consumer that the institution may furnish negative information to one or more nationwide CRAs.³⁸

Another way a consumer can learn about consumer reporting agencies and the information they maintain for that consumer is through the CFPB. The CFPB maintains a list of consumer reporting agencies and updates this annually.³⁹

Title V of the GLBA also provides a set of limitations on the use of a consumer's financial information. A summary of these limitations has been discussed above.

of any information that might reveal consumers' identities, such as names, addresses, and Social Security numbers.” CFPB website, <https://www.consumerfinance.gov/data-research/consumer-credit-trends/>.

³³ *Id.*, § 1681m(a).

³⁴ *Id.*, § 1681b(B)(3).

³⁵ 12 CFR § 1022.72 (the “Risk-Based Pricing Rule”).

³⁶ 15 U.S.C. § 1681g(f).

³⁷ *Id.*, § 609(g).

³⁸ *Id.*, 1681s-2(a).

³⁹ List of CRAs.

- 3) *What could be done through legislation, regulation, or by implementing best practices to give citizens and consumers control over how financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) use consumer data?*

As noted above, the FCRA contains very specific requirements for and limitations on the use of consumer report information. These requirements and prohibitions apply broadly across the consumer reporting ecosystem. Title V of the GLBA also provides a set of limitations on the use of a consumer's financial information. A summary of these limitations has been discussed above. Also noted above is the different treatment of depersonalized, anonymous information used by government agencies.

- 4) *What could be done through legislation, regulation, or by implementing best practices by credit bureaus to protect consumer data and to make sure that information contained in a credit file is accurate?*

Accuracy is the life-blood of the credit reporting system and credit bureaus already have a high degree of accuracy. Consumer reporting agencies strive to be as accurate as possible, and lenders rely on accurate consumer reports to support effective decision-making. Our members' hard work is proven by several reports and studies. The FTC said that there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports."⁴⁰ The Federal Reserve Board said that "[o]verall, research and creditor experience has consistently indicated that credit reporting company information...generally provides an effective measure of the relative credit risk posed by prospective borrowers."⁴¹

A high accuracy rate has also been proven in several studies. In 2011, PERC, the Policy and Economic Research Council ("PERC") looked at over 81,000 credit accounts on consumers' credit reports. This study was the most comprehensive and statistically sound study to ever be performed on the accuracy of data collected and maintained by Equifax, Experian and TransUnion. The study was also the first (and only) third-party, peer-reviewed study dealing with credit report errors and their material effect on the creditworthiness of consumers. In this study, just 0.93% of all credit reports examined by the consumers prompted a dispute that resulted in a credit report correction and an increase of a credit score of 25 points or greater.⁴²

⁴⁰ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2004, 7, <http://www.ftc.gov/reports/facta/041209factarpt.pdf>.

⁴¹ *An Overview of Consumer Data and Consumer Reporting*, *Federal Reserve Bulletin*, Feb. 2003, 50-51 (citations omitted), <http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf>; See also, *Credit Reporting Accuracy and Access to Credit*, *Federal Reserve Bulletin*, Summer 2004, 320.

⁴² Turner, Michael A., Robin Varghese, and Patrick D. Walker (2011). U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts ("PERC Study"). Policy and Research Council (PERC).

A 2012 study conducted by the FTC showed that 98.7% of all credit reports are materially accurate.⁴³ The FTC data showed that just 2.2% of participants had errors in their reports that lowered their score tier by one or more tiers, like moving from nonprime to subprime. By contrast, the CFPB has routinely reported a high rate of complaints filed by consumers against credit bureaus, but the CFPB cautions that “we [the CFPB] don’t verify all the facts alleged in these complaints [that consumers report to the CFPB].”⁴⁴ It is important to note that a “complaint” may not consist of any actual dispute on a consumer’s file, and a sizable majority of errors (74%⁴⁵ or 88%⁴⁶) on credit reports come from the data furnishers to the credit bureaus but are not caused by the credit bureaus themselves. Everyone in the consumer reporting ecosystem has an obligation to keep errors as low as possible. It is a key value for CRAs to keep errors to a minimum.

A key challenge for credit bureaus in servicing consumers comes from credit clinic demands on the bureaus. The nationwide credit bureaus report that somewhere between 30% - 40% of all disputes filed with credit bureaus are from credit clinics. These credit clinics are encouraging consumers to pay them to have accurate but adverse information removed from credit reports. Forcing credit bureaus to respond to credit clinic disputes the same way they must respond to legitimate disputes detracts from a credit bureau’s ability to devote the full weight of its consumer assistance resources to consumers who have real disputes and need real help. A good summary of what a credit clinic is and how it takes services away from consumers in real need is as follows:

The goal [of a credit clinic] is to flood the [credit bureaus’] processing centers and to try to get a dispute to fall through the cracks. Credit reporting agencies call the practice ‘jamming’ because they say it jams up the credit report dispute process. In ‘jamming,’ a repair clinic will challenge everything, including records of debts that the consumer failed to pay. If the review isn’t complete because, as commonly happens, a data furnisher doesn’t get back to the credit bureau in time, the agency is obligated to remove the disputed record. On Day 31, the credit report is cleansed of disputed but unverified items, and the bad debt vanishes from the consumer’s report.⁴⁷

⁴³ *FTC Report*, <http://www.ftc.gov/os/2013/02/130211factareport.pdf>.

⁴⁴ <http://www.consumerfinance.gov/complaintdatabase/>. The Federal Reserve’s Office of Inspector General (“OIG”) “found examples of noticeable inaccuracies in our analysis of the 254,835 complaints in the Consumer Complaint Database [when it looked at the complaint database in 2014]. *Opportunities Exist to Enhance Management Controls Over the CFPB’s Consumer Complaint Database*, Office of the Inspector General, Federal Reserve, Sept. 2015, <http://oig.federalreserve.gov/reports/cfpb-management-controls-consumer-complaint-database-sep2015.pdf>.

⁴⁵ *Consumer Response: A Snapshot of Complaints Received, July 21, 2011 through June 30, 2014*, CFPB, 16, http://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf.

⁴⁶ *Id.*, *FTC Report*.

⁴⁷ Dilworth, Kelly, ‘*Jamming*’ cleans your credit – temporarily: Repair clinics dispute everything, clog system with bogus paperwork, *creditcards.com*, Feb. 20, 2014, <https://www.creditcards.com/credit-card-news/clean-credit-report-dispute-jamming-1270.php>. The House Committee on Banking, Finance and Urban Affairs recognized that “representations by credit repair clinics are often misleading, and consumers, mostly low- and moderate-income individuals, are cheated out of the money they paid for services.” S. REP. NO. 103-209, at *7 (1993).

The overall financial services industry and consumers would benefit from the Banking Committee's consideration of legislation to limit a credit repair clinics' ability to perpetrate fraud on CRAs, and by extension on lenders. It is important to better differentiate between CRAs, who work to legitimately boost the financial literacy of consumers, from credit repair outfits who seek to "fraudulently remove accurate information at a cost to the consumer .⁴⁸

- 5) *What could be done through legislation, regulation, or by implementing best practices so a consumer can easily identify and exercise control of data that is being (a) collected and shared by data brokers and other firms and (b) used as a factor in establishing a consumer's eligibility for credit, insurance, employment, or other purposes.*

Consumer report information from a CRA used for credit, insurance, employment, or other FCRA purposes, are not "data broker" uses, but regulated FCRA uses. These uses are already regulated by the FCRA and must meet all the requirements the FCRA offers, like notice, access, and correction. These uses are not "data broker" uses, but FCRA uses. As we noted above, by the terms of the FCRA, consumer reports cannot fall outside the scope of the Act. If an entity is a consumer reporting agency, it must comply with the FCRA. If an entity furnishes data to or from a consumer reporting agency, it must comply with the FCRA. The use of a consumer report must comply with the FCRA.

Non-FCRA "data broker" uses have many socially important uses and allowing consumer to control some of these data flows poses significant risks to consumers, businesses, governments, law enforcement, and nonprofits.

In a report on data brokers, the FTC "described three different categories of data brokers: (1) entities subject to the FCRA; (2) entities that maintain data for marketing purposes; and (3) non-FCRA covered entities that maintain data for non-marketing purposes that fall outside of the FCRA, such as to detect fraud or locate people."⁴⁹ We encourage your committee to look closely at those entities, like CRAs, that are already regulated by law as they do not require additional regulation. CDIA is best-equipped to address issues relating to entities subject to the FCRA and non-FCRA covered entities that maintain data for non-marketing purposes. We encourage your committee to closely examine whether "data brokers" need regulation at all since much of the information maintained by "data brokers" is used for fraud prevention and other socially beneficial purposes. We see significant dangers where access and correction systems could expose more businesses, governments, and consumers to additional fraud.

⁴⁸ CDIA supports amendments to the Credit Repair Organizations Act ("CROA"), Pub. L. No. 104-208, § 2451; 15 U.S.C. §§ 1679 *et seq.*, to enable the nationwide consumer reporting agencies to provide innovative credit education directly to consumers would have a real impact on our economy and the lives of Americans. Misinterpretation of CROA by the courts has stretched the law beyond its Congressional intent of combatting fraudulent credit repair practices. *See, Stout v. FreeScore*, 743 F.3d 680 (9th Cir. 2014).

⁴⁹ *Data Brokers: A Call for Transparency and Accountability*, FTC, May 2014, <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>.

A strong non-FCRA example of data and how it advances the needs of governments and consumers comes from Ohio. In September 2012, the Ohio attorney general's office was recognized as a leader in data management from Harvard's Kennedy School of Government. The attorney general's Program Integrity Group "created a computer algorithm to look through claims data on Medicaid providers, looking for possible fraud before humans detect it and report it. The U.S. Department of Health and Human Services selected Ohio's Medicaid Fraud Control Unit as the top unit of its kind nationally last year." According to the Kennedy School's [2012 Bright Ideas in Government](#) website, the Ohio AG's office "analyz[ed] patterns in known fraud cases... [to] devise[] data mining strategies to identify fraudulent activities, prosecute crimes, and recover taxpayer dollars."

In 2004, the GAO issued a report concerning the use of "data mining" in the federal government.⁵⁰ Data mining is a pejorative term, and the GAO noted that it is also referred to as "factual data analysis," "predictive analytics," and other terms.⁵¹ Regardless of what it is called, information collection and analysis is used because it "enables corporations and government agencies to analyze massive volumes of data quickly and relatively inexpensively,"⁵² and often to prevent fraud.

Most of the information gathering and analysis by the federal government mentioned in the GAO report contains personal information. The report noted that 128 federal agencies use data mining for "improving service or performance; detecting fraud, waste and abuse; analyzing scientific and research information; managing human resources; and analyzing intelligence and detecting terrorist activities."⁵³ By way of example, for fraud detection, "data mining has been an integral part of GAO audits...of federal government purchase and credit card programs."⁵⁴ The biggest user of information compilation and analysis for the detection of fraud, waste, and abuse is the Department of Education. As an example, the Department of Education's "Title IV Identity Theft effort focuses on identity theft" detection involving student loans.⁵⁵

In the health care space, for fighting public fraud, and elsewhere, "[d]ata mining is very powerful in that it 'can reveal patterns the user has not considered in his or her search, producing answers to questions that were never asked.'"⁵⁶ Data aggregation to prevent fraud is a value shared by Congress. Under Section 6034 of the Deficit Reduction Act, the

⁵⁰ *Data Mining: Federal Efforts Cover a Wide Range of Uses*, General Accounting Office, GAO-04-548 (May 2004).

⁵¹ *Id.*, at 4.

⁵² *Id.*, at 3.

⁵³ *Id.*, at 2-3.

⁵⁴ *Id.*, at 4.

⁵⁵ *Id.*, at 9.

⁵⁶ Giannangelo, Kathy. *Mining Medicare and Medicaid Data to Detect Fraud*, Journal of AHIMA 78, no.7 (July 2007): 66-67 (quoting Hams, K. and M. Farishta. *Knowledge Management*, in *Health Information Management: Concepts, Principles, and Practice*, edited by Kathleen M. LaTour and Shirley Eichenwald. Chicago, IL: AHIMA, 2006) ("Giannangelo").

Medi-Medi programs are to use computer algorithms to search for payment anomalies. The abnormalities being sought include billing or billing patterns identified with respect to service, time, or patient that appear to be suspect or otherwise implausible. This data-oriented approach to mining combined Medicare and Medicaid claims to detect improper billings and utilization patterns has created the ability to find vulnerabilities in both programs.⁵⁷

The GAO found that “[d]ata mining and data matching techniques can help identify potential [Supplemental Nutrition Assistance Program] SNAP fraud, and predictive models can help identify characteristics of SNAP traffickers.”⁵⁸

Because of the great social value that comes from non-FCRA regulated “data brokers”, we urge your committee to show great care before you move too far down the road of legislation.

6. Conclusion

Thank you for undertaking a review of the Fair Credit Reporting Act. The FCRA is a robust privacy statute and an enabling and empowering law that has protected consumers and created an ecosystem that is the envy of the world. The law drives “the miracle of instant credit” that allows for rapid mortgage refinancing, and instant retail credit. The FCRA eases people into homes, jobs, and cars with quiet efficiency.

CDIA members use data locate crime victims and fugitives; they reunite consumers with lost financial assets; they help keep workplaces and apartment buildings safe. Our members market-leading innovations prevent fraud in the public and private sectors. Our members work every day to empower economic opportunity for consumers, businesses, government agencies, and nonprofits.

From the law’s introduction in 1970, to the most recent credit freeze amendments in 2018, and in every amendment in between, the FCRA has been and remains a forward-looking law that balances vigorous consumer protections with a strong risk-management system. Any reforms to the FCRA should occur within the context of the current system, which includes existing rights and responsibilities for data furnishers, CRAs, users, and consumers; fair information principles, like notice, access, correction, and consent; robust consumer rights which can be exercised at no charge; and obligations on businesses in how they operate in the ecosystem.

As your committee considers additional changes to how data may be used and regulated, we urge committee to continue to carefully distinguish between entities that are regulated by the FCRA and those that may not be. There are significant differences in how

⁵⁷ *Id.*, Giannangelo.


⁵⁸ U.S. Gen. Accountability Office, *GAO-19-115, SSA: Supplemental Nutrition Assistance Program: Disseminating Information on Successful Use of Data Analytics Could Help States Manage Fraud Risks*, 34 (Oct. 2018).

data can be used in and out of the FCRA. Yet, you should also keep in mind that non-FCRA practices have many socially important uses and allowing consumer to control some of these data flows poses significant risks to consumers, businesses, governments, law enforcement, and nonprofits.

We sincerely appreciate the committee's efforts to continue to explore how is data is used and regulated as you consider possible legislation, and we urge the committee to continue to seek input from stakeholders as you explore how possible changes could impact consumers and the lending market.

Thank you very much for the opportunity to participate in this process, and we look forward to continuing our dialogue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. J. Ellman', with a long horizontal flourish extending to the right.

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