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Cc: charles.carriere@dfpi.ca.gov

Department of Financial Protection and Innovation, Legal Division
Attn: Sandra Sandoval, Legal Assistant
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

**RE: Invitation for Comments on Proposed Rulemaking under the California
Consumer Financial Protection Law**

Dear Mr. Carriere:

The Consumer Data Industry Association (“CDIA”) submits this comment letter in response to the invitation by the California Department of Financial Protection and Innovation (“DFPI”) on proposed rulemaking under the California Consumer Financial Protection Law (“CCFPL”). Adoption of our suggestions would protect consumers and enhance the California credit economy.

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

Our consumer reporting agency members have been complying with laws and regulations governing the consumer reporting industry for decades, including the Fair Credit Reporting Act (“FCRA”).¹ The FCRA is more than just the nation’s first federal consumer privacy law; it is a substantial body of consumer rights and industry obligations.

¹ 15 U.S.C. §§ 1681 *et seq.*

The FCRA governs the collection, assembly, and use of consumer report information. The statute, the rules promulgated thereunder, and the data flows regulated by the Act undergird the U.S. credit reporting system. In particular, the FCRA outlines many consumer rights with respect to the use and accuracy of the information contained in consumer reports. Under the FCRA, consumer reports may be accessed only for permissible purposes, and a consumer has the right to dispute the accuracy of any information included in his or her consumer report with a consumer reporting agency (“CRA”).

CDIA members are also regulated by the Gramm-Leach-Bliley Act and its Privacy and Safeguards Rules, which impose protections on nonpublic personal information related to consumer financial products and services.

Per the Dodd-Frank Act, the Consumer Financial Protection Bureau (“CFPB”) has the authority to supervise, including through regular examination, non-bank larger participants in the consumer reporting market, namely CRAs. The consumer reporting larger participant rule defines this authority. *See* 12 C.F.R. § 1090.104. The CFPB also has authority to supervise persons whom the CFPB has reasonable cause to determine are engaging or have engaged in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. 12 U.S.C. § 5514(a)(1)(C); 12 C.F.R. Part 1091. The CFPB and the Federal Trade Commission (“FTC”) share enforcement and rulemaking authority over all CRAs and regularly coordinate their efforts.

In California, members are also subject to the California Consumer Credit Reporting Agencies Act (“CCRAA”). The CCRAA imposes a host of obligations on CRAs to protect and empower consumers in meaningful ways, like accessing their personal information maintained by consumer credit reporting agencies (“CCRAs”), obtaining information about third-party disclosures of their personal information, restricting the dissemination of information to third parties, and providing for complaint, correction, and deletion rights.

CDIA members have been at the forefront of consumer privacy protection. Fair, accurate, and permissioned use of consumer information is necessary for any CDIA member client to do business effectively.

CDIA is concerned with how the CCFPL impacts CRAs and consumer reporting more generally. Broadly, CDIA is concerned with how the CCFPL imposes a new and uncertain layer of regulation on an already highly regulated industry. CDIA is also concerned with how the law regulates consumer reporting inconsistently from federal law, which could complicate compliance with preexisting federal and state law and raise preemption concerns.

While the law provides some limited exclusions for CRAs, there remain provisions of the law that apply to CRAs even though the existing framework provided by the FCRA, CCRAA, and GLBA already provide comprehensive, well-established consumer protections. Additional regulation of CRAs risks conflicting and inconsistent consumer protections and unclear compliance obligations. These conflicts and opacity could harm the very consumers the DFPI intends to protect.

In connection with proposed rulemaking under the CCFPL, we strongly urge the DFPI to issue regulations that clearly limit the application of the law and any regulations on CRAs in order to reduce the regulatory uncertainty imposed by the CCFPL and clarify the impact of the federal FCRA and the California Consumer Credit Reporting Agencies Act to regulate CRAs in California. We also urge the DFPI to remember that when regulating “consumer financial products and services,” as the CCFPL defines them, CRAs have a very different kind of relationship with consumers than entities that directly provide financial products and services to consumers. For this reason, the CFPB exercises extensive oversight of CRAs, and additional consumer protections need to be tailored to the unique relationship CRAs have with consumers.

We respond to the below DFPI questions to provide our input for potential DFPI rulemaking and welcome further conversation on the impact of DFPI regulations on the consumer reporting industry.

1. Question 2.a. Financial Code section 90002 describes certain entities that are exempt from the CCFPL. Should the DFPI issue regulations to clarify the scope of these exemptions?

The DFPI should issue regulations to clarify that CRAs will not be subject to CCFPL rulemaking, as entities that—like those included in section 90002—are already regulated under federal and California law.

As evidenced by section 90002, the CCFPL was drafted generally to regulate previously unregulated participants in the consumer financial services space. Section 90002 exempts a wide swath of financial institutions, creditors, brokers, dealers, agents, sellers, which are all otherwise regulated under state law. This is also the case for CRAs, who are regulated by the CCRAA and other state law. The CCRAA already imposes requirements related to subjects of likely CCFPL rulemaking, like disclosures to consumers of their personal information and about how their information has been shared. Cal. Civ. Code § 1785.10.

CRA are also regulated by federal law—the FCRA, GLBA, and other laws—in addition to regulation and supervision by the CFPB. The CFPB already regulates supervised CRA in another area of potential CCFPL rulemaking: unfair, deceptive, and abusive acts and practices. Multiple and potentially conflicting UDAAP expectations and requirements could complicate compliance for CRA.

CRA are not an unregulated participant in consumer financial services needing the application of DFPI regulations. We strongly urge the DFPI to clarify by regulation that any CCFPL rulemaking will not apply to CRA.

- 2. Question 3.a. For what industries should the DFPI first establish registration requirements under Financial Code section 90009, subdivision (a)? What consumer protection risks do those industries present to consumers that would make it appropriate to prioritize the registration of those industries over others? The DFPI invites stakeholders to submit examples of acts or practices in those industries that stakeholders find concerning.**

The DFPI should not include CRA in registration requirements. While CRA are not subject to a California registration requirement, CRA are subject to regulation in California and the CFPB maintains a public list of CRA.

The possibility of a registration requirement, along with the supervision that could result, is of particular concern to CDIA members. Considering the unique relationship CRA have with consumers and the fact that consumers have private rights of action against CRA under the FCRA, CDIA advocates for a balanced state regulatory approach that would not subject CRA to registration with the state.

CDIA presumes the purpose of registration is to allow the public and regulators to know the identity of regulated entities and where they can be reached for dispute purposes. This provision should not apply to CRA, since law and administrative processes already make the identity of CRA well known to consumers and regulators. The CFPB maintains a list of CRA to “help [consumers] take advantage of [their] right[s] to review the information in [their] consumer reports, and dispute possible inaccuracies with companies as needed.”² Furthermore, unlike most other regulated entities, a user of a consumer report that takes an “adverse action” on a consumer based on a “consumer report,” is required by law to provide an adverse action notice which must include “the name, address, and telephone number of the [CRA] that furnished the report to the user...” 15 U.S.C. § 1681m(a)(3)(A).

² CFPB List of consumer reporting agencies, <https://www.consumerfinance.gov/consumer-tools/creditreports-and-scores/consumer-reporting-companies/companies-list/>.

Thus, both federal and state regulators, as well as consumers, are empowered to identify, contact, and lodge concerns with CRAs. Such registration is not needed for an already highly regulated industry.

- 3. Question 4.e. Should the DFPI interpret or clarify through regulation any provisions of Financial Code section 90008 concerning complaints? For example, Financial Code section 90008, subdivision (d)(2)(D), provides that a business need not disclose “nonpublic or confidential information, including confidential supervisory information” in response to a consumer complaint or inquiry. Is rulemaking necessary to clarify what constitutes “nonpublic or confidential information”?**

CDIA urges the DFPI to clarify the exemption for CRAs in CCFPL § 90008(d)(2)(E).

Section 90008(d)(1) requires covered persons to comply with a consumer request for information in the control or possession of that covered person. However, CRAs are already subject to disclosure requests, set out in FCRA § 609(a) as well as the CCRAA. 15 U.S.C. § 1681g(a). To that end, § 90008(d)(2)(E) exempts from this DFPI disclosure requirement information subject to the FCRA, “but only to the extent” the requirement is inconsistent with the FCRA. This carveout is confusing, as it is not clear what information the DFPI might expect CRAs to disclose that are not already subject to disclosure under the FCRA. The FCRA requires CRAs to disclose to consumers all information in the consumer’s file as well as the sources of that information, a list of third parties that recently received a consumer’s report, and other specified information. 15 U.S.C. § 1681g(a). It is not clear what “information in the control or possession” of a CRA the DFPI could require CRAs to disclose to consumers upon request that CRAs are not already required to disclose pursuant to the FCRA. Thus, the language creates regulatory uncertainty without any clear consumer benefit.

Section 90008 also provides an exception for CCRAs, in subdivision (d)(3), but without the confusing “only to the extent” limitation. However, not all CRAs that could be subject to the CCFPL are CCRAs, so this provision extends the regulatory uncertainty. For example, “nationwide specialty consumer reporting agencies,” a defined subset of CRAs under the FCRA, may not be CCRAs in California (because they compile non-credit information) but could be subject to the CCFPL (because the information is used in connection with consumer financial products or services).

Furthermore, the long-standing federal and state requirements are very specific and relate to the timing of those disclosures, the content of those disclosures, and more. Without a clear exclusion, CCFPL regulations could conflict with federal law.³

³ Under the FCRA, “no requirement or prohibition may be imposed under the laws of any State...the disclosures required to be made under [15 U.S. Code § 1681g, concerning disclosures to consumers]...” 15 U.S. Code § 1681t(b)(3).

Accordingly, CDIA strongly urges the DFPI to clarify that regulations adopted under CCFPL § 90008 will not apply to CRAs as defined by the FCRA.

- 4. Question 8.a. Should the DFPI prescribe rules to ensure that the features of a consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service? (Fin. Code § 90009, sub. (d).) If so, please describe the product or service where consumers would benefit from disclosure rules, what disclosures the DFPI should require, and why those disclosures will help consumers understand the costs, benefits, and the risks associated with the product or service.**

The DFPI should exempt CRAs from any rulemaking under § 90009(d) related to disclosures to consumers related to the costs, benefits, and risks of the consumer financial products and services.

The purpose of such of regulation would be to inform consumers about the product to empower them well to decide whether to engage with the product or service. However, as structured by federal law, the consumer reporting ecosystem often permits consumer reports to be provided to third-party users without consumer permission.

Still, consumers are required to be informed of how to exercise their rights under the FCRA. The CFPB has developed a Summary of Consumer Rights under the FCRA and the FCRA requires the Summary to be provided to consumers at various points of engagement with the consumer reporting system.⁴ The Summary informs consumers of their rights to notice of adverse action, file disclosures, credit score disclosures, disputes, correction, and deletion, among other rights.

Furthermore, as already mentioned, CRAs are already subject to layers of regulation under the FCRA, CCRAA, and other laws. Additional disclosure requirements could conflict with or be preempted by existing law.

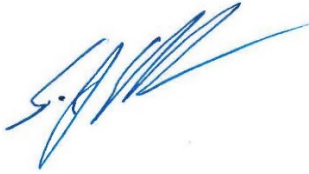
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⁴ Summary of Consumer Rights, https://files.consumerfinance.gov/f/documents/bcfp_consumer-rights-summary_2018-09.docx.

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Thank you for the opportunity to share the views and concerns of the consumer reporting industry as part of the DFPI's rulemaking efforts. Please contact us if you have any questions or need further information based on our comments.

Sincerely,

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

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