



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

P 202 371 0910

Writer's direct dial: +1 (202) 408-7407

CDIAONLINE.ORG

December 14, 2020

Manuel Alvarez, Commissioner
California Department of Financial Protection & Innovation
2101 Arena Blvd.
Sacramento, CA 95834

RE: Regulation of Consumer Reporting Agencies in the DFPI Law

Dear Commissioner Alvarez:

I write on behalf of the Consumer Data Industry Association ("CDIA") to highlight problems with the recent law establishing the Department of Financial Protection and Innovation ("DFPI") impacting the consumer data industry and explain the need for further changes to the law. In doing so, we suggest some modest changes to the law.

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

CDIA members have been complying with laws and regulations governing the consumer reporting industry for decades. Members have complied with the Fair Credit Reporting Act ("FCRA"), which has been called the original federal consumer privacy law. The FCRA governs the collection, assembly, and use of consumer report information and provides the framework for 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 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 California Consumer Financial Protection Law (["CCFPPL"](#)) impacts consumer reporting agencies 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. We explain our concerns in detail below and we thank you for taking the time to receive our concerns.

1. The DFPI Law Has an Unnecessarily Outsized Impact on CRAs

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.

For example, § 90009(c) provides that the DFPI may impose rules applicable to a covered person identifying unfair, deceptive, and abusive acts banned by section 90003. However, CRAs are already subject to UDAAP authority, including under the CFPB. Multiple and potentially conflicting UDAAP expectations and requirements could complicate compliance for CRAs.

As another example, § 90009(d) permits the DFPI to write rules to ensure that features of consumer financial products and services are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks. 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.

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, all otherwise regulated under state law. This is also the case for CRAs, who are regulated by the CCRAA and other state law. CRAs are also regulated by federal law, the FCRA, GLBA, and other laws, in addition to regulation by the CFPB, which imposes generalized obligations on supervised entities like prohibiting unfair, deceptive, or abusive acts or practices. CRAs are not an unregulated participant in consumer financial services needing the application of the DFPI. CRAs should be included in the list of exempted entities in § 90002, and we strongly urge the DFPI to consider their addition.

Accordingly, we request the DFPI to propose and support the addition of a § 90002(f): “This division shall not apply to a consumer reporting agency, as defined by 15 U.S.C. § 1681a(f).”

2. CRAs Do Not Need to Register with the DFPI

The possibility of a registration requirement, along with the supervision that could result, is of particular concern to CDIA. Section 90009(a) permits the DFPI to prescribe rules regarding

registration requirement applicable to a covered person, and § 9000g(b) permits the DFPI to exercise certain oversight powers over registrants.

Considering the unique relationship CRAs have with consumers and the fact that consumers have private rights of action against CRAs under the FCRA, CDIA here suggests a balanced state regulatory approach that would not subject CRAs to registration with the State.

CDIA presumes the purpose of registration is to allow the public and regulators to know who regulated entities are and where they can be reached for dispute purposes. This provision should not apply to CRAs, since law and administrative processes already make the identity of CRAs well-known to consumers and regulators. The CFPB maintains a list of CRAs 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.”¹ 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...”² 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, as we discuss above.

Accordingly, in the absence of the broad exemption discussed above, we strongly urge the DFPI to propose and support the addition of a § 9000g(a)(2)(D):

“A consumer reporting agency, as defined by 15 U.S.C. § 1681a(f).”

3. Section 9000g(d) Does Not Properly Exempt CRAs

In the absence of a broader exemption for CRAs, CDIA urges the clarification of the exemption for CRAs in § 9000g(d)(2)(E).

Section 9000g(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 state law.³ To that end, § 9000g(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 language thus creates regulatory uncertainty without any clear consumer benefit.

¹ CFPB List of consumer reporting agencies, <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/consumer-reporting-companies/companies-list/>.

² 15 U.S.C. § 1681m(a)(3)(A).

³ 15 U.S.C. § 1681g(a).

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, the CCFPL could conflict with federal law.⁴

Finally, we wanted to point out what we believe to be a scrivener's error in this section. Section 90008(d)(2)(E) states the exemption applies only "to the extent subdivision (b) is inconsistent with" the FCRA, or "to the extent that subdivision (b) imposes a requirement otherwise prohibited under" the FCRA. However, the reference to "subdivision (b)" here may be a scrivener's error and should instead refer to "subdivision (d)."

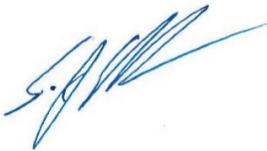
Accordingly, we request the DFPI propose and support a change to § 90008(d)(2)(E):

"Information collected, received, maintained, disclosed, sold, or processed pursuant to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), ~~but only to the extent subdivision (b) is inconsistent with any provision of the Fair Credit Reporting Act, and then only to the extent of the inconsistency, or to the extent that subdivision (b) imposes a requirement that is otherwise prohibited under Section 1681t(b) of Title 15 of the United States Code.~~"

* * *

Thank you for taking the time to review our comments on these important matters. Please do not hesitate to reach out if we can be of any assistance.

Sincerely,



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

cc: Nicole Hisatomi, Deputy Commissioner, Legislation
Bret Ladine, General Counsel

⁴ 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).

**CDIA Proposed Amendments to the
California Consumer Financial Protection Law**

Amendment 1:

Sec. 90002. (a) This division shall not apply to a licensee, or an employee of a licensee, of any state agency other than the Department of Financial Protection and Innovation to the extent that licensee or employee is acting under the authority of the other state agency's license.

(b) This division shall not apply to a person or employee of that person to the extent that person or employee is acting under the authority of one of the following licenses, certificates, or charters issued by the Department of Financial Protection and Innovation:

(1) Any person licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code.

(2) Any person licensed as a finance lender, broker, program administrator, or mortgage loan originator under Division 9 (commencing with Section 22000) of the Financial Code.

(3) Any person licensed as a broker-dealer or investment adviser under Division 1 (commencing with Section 25000) of Title 4 the Corporations Code.

(4) Any person licensed as a residential mortgage lender, a mortgage servicer, or a mortgage loan originator under Division 20 (commencing with Section 50000) of the Financial Code.

(5) Any person licensed as a check seller, bill payer, or prorater under Division 3 (commencing with Section 12000) of the Financial Code.

(6) Any person licensed as a capital access company under Division 3 (commencing with Section 28000) of Title 4 of the Corporations Code.

(7) Any person doing business under a license, charter, or certificate issued under the Financial Institutions Law, including Division 1 (commencing with Section 99), Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000) of the Financial Code.

(c) This division shall not apply to a bank, bank holding company, trust company, savings and loan association, savings and loan holding company, credit union, or an organization subject to oversight of the Farm Credit Administration, when acting under the authority of a license, certificate, or charter under federal law or the laws of another state.

(~~d~~e) This division applies to all other covered persons, as defined in subdivision (f) of Section 90005.

(f) A consumer reporting agency, as defined by 15 U.S.C. § 1681a(f), or a consumer credit reporting agency as defined by Section 1785.3 of the Civil Code.

Amendment 2:

Sec. 90009. (a) (1) The department may prescribe rules regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service, including requiring a filing be made under oath, and requiring the payment of registration fees. The department may require registration through the Nationwide Multistate Licensing System and Registry.

(2) Notwithstanding paragraph (1), the department shall not require the registration or the payment of a fee by any of the following:

(A) A covered person who is licensed by the department under another law and who is providing a financial product or service within the scope of that license.

(B) A covered person who is licensed or registered by another agency unless the covered person is offering or providing a financial product or service that is not regulated by the agency licensing or registering the covered person.

(C) A covered person who is licensed by the department or a federal agency who engages in deposit-taking activity unless the covered person is offering or providing a financial product or service that is not regulated by the agency licensing the covered person.

(D) A consumer reporting agency, as defined by 15 U.S.C. § 1681a(f), or a consumer credit reporting agency as defined by Section 1785.3 of the Civil Code.

* * *

Amendment 3:

Sec. 90008. (a) The department shall, by rule, establish reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person.

(b) The department shall, by rule, require a covered person to provide a timely response, in writing where appropriate, to the department concerning a consumer complaint or inquiry, including all of the following:

(1) Steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer.

(2) Responses received by the covered person from the consumer.

(3) Follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) Subdivisions (a) and (b) shall not apply to a covered person to the extent it is a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(f)).

(d) With respect to the provision of information to consumers by covered persons, all of the following shall apply:

(1) A covered person shall, in a timely manner, comply with a consumer request for information in the control or possession of that covered person concerning the consumer financial product or service that the consumer obtained from that covered person, including supporting written documentation, concerning the account of the consumer.

(2) Notwithstanding paragraph (1), a covered person may not be required by this section to make available to the consumer any of the following information:

(A) Confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors.

(B) Information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct.

(C) Information required to be kept confidential by any other provision of law.

(D) Nonpublic or confidential information, including confidential supervisory information.

(E) Information collected, received, maintained, disclosed, sold, or processed pursuant to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), ~~but only to the extent subdivision (b) is inconsistent with any provision of the Fair Credit Reporting Act, and then only to the extent of the inconsistency, or to the extent that subdivision (b) imposes a requirement that is otherwise prohibited under Section 1681t(b) of Title 15 of the United States Code.~~

(3) This subdivision shall not apply to a consumer credit reporting agency subject to Section 1785.10 of the Civil Code.

(e) The department shall promulgate regulations to implement subdivisions (a) and

(b) before commencing an enforcement action against a covered person or service provider for a violation of those provisions.