

February 8, 2023

The Honorable Rohit Chopra  
Director, Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Request for broad consumer financial market correction, beginning with an advisory opinion regarding credit header data

Dear Director Chopra:

The below-signed immigrant rights, consumer rights, and privacy organizations urge the Consumer Financial Protection Bureau (CFPB) to use the full force of its authority under the Fair Credit Reporting Act (FCRA) to rein in widespread harmful behavior by the data broker industry. The CFPB's statutory purpose, in part, is to ensure that "markets for consumer financial products and services are fair [and] transparent."<sup>1</sup> Yet the soaring data market is unfair and opaque, leveraging the personal information of millions for profit, without consent, and too often evading accountability for mistakes that can lead to consumers being denied jobs, government benefits, or even housing.

We call on the CFPB to wield both its regulatory and enforcement authority to address these issues. CFPB should bring enforcement actions against data brokers already determined to be in violation of FCRA, as well as use its rulemaking authority to revise regulations implementing FCRA to ensure and clarify the Act's coverage of data brokers when they sell data that should be considered a "consumer report." And because a rulemaking may take an extended period of time to finalize, in the interim, we urge the CFPB to swiftly issue an Advisory Opinion (AO) clarifying that "credit header" data is not exempt from regulations promulgated under the Fair Credit Reporting Act (FCRA).

### **The Staggering Reach of the Data Broker Market Demands CFPB Attention**

Data brokers have a staggering reach into the most private corners of consumers' lives. For example, Acxiom, which claims to have "the best, most inclusive data offerings in the world," states that it has "coverage in over 62 countries . . . , as well as the ability to reach over 2.5 billion consumers."<sup>2</sup> This aligns with a 2014 Federal Trade Commission (FTC)

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<sup>1</sup> Consumer Financial Protection Bureau, *Building the CFPB: A Progress Report* (Jul. 18, 2011), [https://files.consumerfinance.gov/f/2011/07/Report\\_BuildingTheCfpb1.pdf](https://files.consumerfinance.gov/f/2011/07/Report_BuildingTheCfpb1.pdf) [<https://perma.cc/3X9J-9ACP>], p. 9.

<sup>2</sup> Acxiom Global Data, [<https://perma.cc/GJX4-NGWC>].

investigation, which found data brokers touting databases containing billions of records.<sup>34</sup> According to a 2022 FTC lawsuit, Kochava, Inc. pitched that its location feed “delivers raw latitude/longitude data with volumes around 94B+ geo transactions per month, 125 million monthly active users, and 35 million daily active users, on average observing more than 90 daily transactions per device.”<sup>5</sup>

Of particular concern are large data brokers, entities that aggregate and sell personal data, that “amass billions of public and proprietary records from thousands of different places” and update them in real time.<sup>6</sup> Companies like RELX and Thomson Reuters, which one scholar describes as occupying “the top of the personal data food chain,” possess dossiers on millions of people, including more than two-thirds of U.S. residents.<sup>7</sup> The dossiers combine scores of datasets to create a “mosaic” of “where we go, who we know, and what we do each day.”<sup>8</sup> In 2014, then-FTC chairwoman Edith Ramirez said that today’s data brokers “often know as much—or even more—about us than our family and friends.”<sup>9</sup>

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<sup>3</sup> See also FTC, *Data Brokers: A Call for Transparency and Accountability* (2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf> [https://perma.cc/R82F-JSR5]. Corelogic disclosed that its databases contained over 147 million records. (p. 8) Datalogix reported its intended partnership with Facebook to track offline purchases. eBureau, primarily a fraud-prediction service, reported that it draws from billions of consumer records in making its predictions, and that it adds “over three billion records each month.” (p. 8). ID Analytics touted that its network “includes hundreds of billions of aggregated data points, 1.1 billion unique identity elements, and it covers 1.4 billion consumer transactions.” (p. 8-9) Intelius admitted that its database contained more than twenty billion records. (p. 9).

<sup>4</sup> RELX boasts about having over 65 billion “science records,” 3 petabytes of legal data, and more than 65 billion pieces of personal data collected from more than 10,000 sources. Ronald Van Loon “(Part 2) RELX Group: The Transformation to a Leading Global & Analytics Company,” LinkedIn, Oct. 26, 2017, [https://perma.cc/3AXT-QRR3].

<sup>5</sup> Lesley Fair, *FTC says data broker sold consumers’ precise geolocation, including presence at sensitive healthcare facilities*, FTC Business Blog (Aug. 29, 2022), <https://www.ftc.gov/business-guidance/blog/2022/08/ftc-says-data-broker-sold-consumers-precise-geolocation-including-presence-sensitive-healthcare>; <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other> [https://perma.cc/V3JG-58BR].

<sup>6</sup> Sarah Lamdan, *Data Cartels: The Companies That Control and Monopolize Our Information* (2003), Stanford University Press, at page 27.

<sup>7</sup> Sarah Lamdan, *Data Cartels: The Companies That Control and Monopolize Our Information* (2003), Stanford University Press, at page 35.

<sup>8</sup> David E. Pozen. “The Mosaic Theory, National Security, and the Freedom of Information Act,” *Yale Law Journal* 115, no. 3 (December 2005): 628-79.

<sup>9</sup> FTC, *FTC Recommends Congress Require the Data Broker Industry to be More Transparent and Give Consumers Greater Control Over Their Personal Information: Agency Report Shows Data Brokers Collect and Store Billions of Data Elements Covering Nearly Every U.S. Consumer* (May 27, 2014), <https://www.ftc.gov/news-events/news/press-releases/2014/05/ftc-recommends-congress-require-data-broker-industry-be-more-transparent-give-consumers-greater> [https://perma.cc/S2UA-8UST].

Data brokers also are known to use their considerable resources and power to actively fight efforts to regulate the industry. According to an investigation by journalists at *The Markup*, “data broker spending on lobbying in 2020 rivaled the spending of individual Big Tech firms like Facebook and Google.”<sup>10</sup>

### **Data Brokers’ Harmful Practices Require the CFPB to Act**

Harmful and abusive practices by these data brokers violate consumers’ financial rights, privacy, and civil liberties—prioritizing profit above consumer protection. For example, data brokers buy and sell hundreds of millions of names and addresses gathered by essential utilities companies without consumers’ knowledge or consent<sup>11</sup>—often in violation of FCRA.<sup>12</sup> Data brokers dealing in credit header data also consistently fail to comply with the accuracy standard set forth in FCRA, resulting in these data brokers collecting and selling inaccurate data that harms consumers.<sup>13</sup> The CFPB has recognized the magnitude of the trade in junk data, taking several agency actions in the past year to contain the harm.<sup>14</sup>

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<sup>10</sup> Alfred Ng & Maddy Varner, *The Little-Known Data Broker Industry Is Spending Big Bucks Lobbying Congress*, *The Markup*, Apr. 1, 2021, <https://themarkup.org/privacy/2021/04/01/the-little-known-data-broker-industry-is-spending-big-bucks-lobbying-congress> [<https://perma.cc/GA7P-9VAM>].

<sup>11</sup> NCTUE pledged to stop selling consumer data after sustained pressure, but Thomson Reuters, a data broker, quickly asserted that it would find an alternate means of obtaining that information. This is not outside the realm of possibility since NCTUE is a single entity, and its change was entirely based on social pressure, not legal. *Utility companies will no longer share data with ICE — but many loopholes remain*, *The Verge* (Dec. 19, 2021 1:37 PM EST), <https://www.theverge.com/2021/12/9/22826271/utilities-ice-data-sharing-thomson-wyden> [<https://perma.cc/9ZCX-NV5U>].

<sup>12</sup> Just Futures Law & Mijente, *The Data Broker to Deportation Pipeline: How Thomson Reuters and LexisNexis Share Utility & Commercial Data with ICE* (June 2021), <https://www.flipsnack.com/justfutures/commercial-and-utility-data-report/full-view.html> [<https://perma.cc/LAD7-Z4N7>]; Nina Wang, *Is your utility company telling ICE where you live?*, *MEDIUM* (Feb. 26, 2021, 1:13 PM), <https://medium.com/center-on-privacy-technology/is-your-utility-company-telling-ice-where-you-live-ae1c7d187eff> [<https://perma.cc/NHN5-N248>].

<sup>13</sup> Fair Credit Reporting Act § 602, 15 U.S.C. § 1681.

<sup>14</sup> News Release, *CFPB Supervisory Examinations Find Credit Reporting Failures, Junk Fees, and Mishandling of COVID-19 Protections*, Consumer Financial Protection Bureau (Nov. 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervisory-examinations-find-credit-reporting-failures-surprise-junk-fees/> [<https://perma.cc/WQW9-QL5W>]; Advisory Opinion, *Fair Credit Reporting; Facially False Data*, Consumer Financial Protection Bureau (Oct. 20, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_fair-credit-reporting-facially-false-data\\_advisory-opinion\\_2022-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-facially-false-data_advisory-opinion_2022-10.pdf) [<https://perma.cc/52VW-896Y>]; News Release, *CFPB Orders Hyundai to Pay \$19 Million for Widespread Credit Reporting Failures*, Consumer Financial Protection Bureau (Jul. 26, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-hyundai-to-pay-19-million-for-widespread-credit-reporting-failures/> [<https://perma.cc/C4LU-TGCW>]; Seth Frotman, *Credit reporting companies and furnishers have obligations to assure accuracy in consumer reports*, Consumer Financial Protection Bureau (May 6, 2022), <https://www.consumerfinance.gov/about-us/blog/credit-reporting-companies-and-furnishers-have-obligations-to-assure-accuracy-in-consumer-reports/> [<https://perma.cc/NAC2-A376>].

Beyond directly harming consumers, data brokers' abusive practices degrade overall consumer trust. As Congress stated when it passed FCRA, "unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system."<sup>15</sup> Right now, consumers have no way to know how often or for what purposes data brokers use their personal information, which harms marketplace integrity and trustworthiness.<sup>16</sup> As you yourself have observed, "there's a broader sense of powerless[ness] that both businesses and consumers feel when it comes to just turning over all their data."<sup>17</sup>

The range of harms caused by data brokers fall disproportionately on historically disadvantaged communities. One such harm, data brokers' inaccuracies flowing from name mismatches, disparately impact racialized communities, who often face a higher likelihood of these types of mismatches because of "clustering" of common surnames.<sup>18</sup> Also, data brokers may sell information about low-income communities of color to entities that will use that information to market predatory products, such as high-interest payday loans.<sup>19</sup> And finally, the sale of digital dossiers to law enforcement agencies—who purchase large swaths of data when they are unable to obtain that data through lawful order, circumventing Fourth Amendment protections—disproportionately harms overpoliced communities, including immigrant and mixed-status communities.<sup>20</sup>

The CFPB has broad authority under FCRA to establish fairness and transparency in the data broker industry. We urge the CFPB to bring enforcement actions against data brokers already determined to be in violation of FCRA. In some cases, courts have held that data brokers are not covered by the FCRA based on overly restrictive interpretations, despite

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<sup>15</sup> Fair Credit Reporting Act § 602, 15 U.S.C. § 1681. See Brian Krebs, *Hacked Data Broker Accounts Fueled Phony COVID Loans, Unemployment Claims*, Krebs on Security (Aug. 6, 2020, 03:56 PM), <https://krebsonsecurity.com/2020/08/hacked-data-broker-accounts-fueled-phony-covid-loans-unemployment-claims/> [https://perma.cc/Z7YY-W6K5].

<sup>16</sup> For example, LexisNexis prohibits business partners from referencing its products in third-party disclosures. See also FTC, *Data Brokers: A Call for Transparency and Accountability*, at iv (2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf> [https://perma.cc/R82F-JSR5].

<sup>17</sup> Evan Weinberger & Andrea Vittorio, *Unlocking Consumer Bank Data Stokes Chopra's 'Underworld' Fears*, Bloomberg Law (July 29, 2022, 4:55 AM), <https://news.bloomberglaw.com/banking-law/unlocking-consumer-bank-data-stokes-chopras-underworld-fears> [https://perma.cc/6QFE-9LQS].

<sup>18</sup> Sarah Mancini, Kate Lang & Chi Chi Wu, *Mismatched and Mistaken*, Justice in Aging 21 (Apr. 14, 2021), <https://justiceinaging.org/wp-content/uploads/2021/04/SSADDataReport.pdf> [https://perma.cc/QJK6-RHLS].

<sup>19</sup> Upturn, *Civil Rights, Big Data, and Our Algorithmic Future* 8 (2014), <https://bigdata.fairness.io/wp-content/uploads/2015/04/2015-04-20-Civil-Rights-Big-Data-and-Our-Algorithmic-Future-v1.2.pdf> [https://perma.cc/M3F9-NDL5].

<sup>20</sup> Elizabeth Goitein, *The Government Can't Seize Your Digital Data. Except by Buying It.*, Wash. Post, Apr. 26, 2021, <https://www.washingtonpost.com/outlook/2021/04/26/constitution-digital-privacy-loopholes-purchases/> [https://perma.cc/6HX7-6W3F].

selling data that is used for a purpose covered by the Act.<sup>21</sup> The CFPB should also use its rulemaking authority to revise regulations implementing FCRA to ensure and clarify coverage of data brokers when they sell data that should be considered a “consumer report” under the Act.

**The CFPB Should Begin its Data Broker Regulation by Issuing an Advisory Opinion to Clarify Existing Regulations that Appear to Be Widely Misunderstood**

**Because a rulemaking may take an extended period of time to finalize, in the interim, we urge the CFPB to issue an Advisory Opinion (AO) clarifying that “credit header” data is not exempt from regulations promulgated under the Fair Credit Reporting Act (FCRA).**<sup>22</sup> Credit header data typically consists of an individual’s name, aliases, birth date, Social Security number, current and prior addresses, and telephone number.<sup>23</sup>

Currently, nationwide consumer reporting agencies (CRAs) take the position that credit header data does not constitute a “consumer report” under the FCRA based on their reading of guidance issued by the FTC and published in a 2011 FTC staff report.<sup>24</sup> This interpretation of the FTC report is erroneous—on the contrary, when such credit header data is derived from the files of a CRA and is otherwise used in consumer reports, it is a

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<sup>21</sup> See, e.g., *Kidd v. Thomson Reuters Corp.* 925 F.3d. 99 (2d Cir. 2019) (Thomson Reuters’ CLEAR product not a consumer report, despite state agency’s use for employment purposes, because Reuters did not collect data for specific purpose of, and did not have specific intent to, furnish a consumer report). See generally National Consumer Law Center, *Data Gatherers Evading the FCRA May Find Themselves Still In Hot Water* (Oct. 2019), <https://library.nclc.org/article/data-gatherers-evading-fcra-may-find-themselves-still-hot-water>.

<sup>22</sup> CFPB can and should rely on the authority granted by 15 U.S.C. § 1681s(e) to issue this guidance. According to the CFPB’s Advisory Opinions Policy, when determining whether to prioritize an AO, the agency considers three factors. CFPB Advisory Opinions Policy, 85 Fed. Reg. 77987, 77987–88 (Dec. 3, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-12-03/pdf/2020-26661.pdf> [<https://perma.cc/7SQL-4DPE>]. All three factors are met here.

First, the credit header issue has been noted during prior Bureau examinations as one that might benefit from additional regulatory clarity. Advocacy organizations and the legislative branch have urged such a clarification. On January 20, 2022, six consumer and immigrant rights organizations requested a similar clarification from the Bureau (Appendix A). In December of the preceding year, Senator Wyden’s office also requested that the CFPB act on this issue (Appendix B).

Second, the credit header issue is of significant importance. Unless the CFPB acts to provide regulatory clarity, the ambiguity regarding credit header data will continue to empower data brokers to disregard important consumer privacy regulations. Clarification that this is not permitted would provide significant benefit.

Finally, the Bureau has not previously addressed the credit header ambiguity through an interpretive rule or other authoritative source.

<sup>23</sup> “Credit header” was defined in this way by the FTC in a 1997 report to Congress. <https://www.ftc.gov/reports/individual-reference-services-report-congress> [<https://perma.cc/B4QZ-HRRQ>].

<sup>24</sup> Fed. Trade Comm’n, *40 Years of Experience with the Fair Credit Reporting Act* (2011) [hereinafter 2011 FTC Staff Report] <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>.

consumer report within the meaning of FCRA. The CFPB must clarify this to immediately address widespread FCRA noncompliance by data brokers.

To correct the ambiguity that has stood since the 2011 FTC Staff Report, the CFPB should issue an AO that clarifies that there is no categorical exception for “credit header” information and reiterates that “credit header” information satisfies the statutory consumer report definition when it is derived from data originating from a CRA and is data that is otherwise included in consumer reports issued by the CRA. The CRA should further clarify that consumer information from a CRA, regardless of content, is always a consumer report.<sup>25</sup>

### **Conclusion**

For the reasons detailed above, we respectfully request that the CFPB exercise its broad authority to correct the consumer financial market, beginning with issuing the suggested AO. We look forward to discussing the credit header issue and proposed AO further with you and your staff. We urge swift action on this issue to protect consumers from ongoing harmful practices and from the further proliferation of this business model.

If you have any questions about this letter, please contact Lauren Harriman, staff attorney in the Communications & Technology Law Clinic at Georgetown Law,\* counsel for Just Futures Law, at L.Harriman@georgetown.edu.

Sincerely,

Center for Democracy & Technology  
Center on Privacy & Technology at Georgetown Law  
Consumer Action  
Consumer Reports  
Demand Progress Education Fund  
Electronic Privacy Information Center (EPIC)  
Just Futures Law  
Mijente  
National Consumer Law Center (on behalf of its low-income clients)  
U.S. PIRG

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<sup>25</sup> In response to the CFPB’s submission requirements for AOs, we provide the following information concerning pending litigation and confidentiality. Just Futures Law has a pending action against a CRA, but this action does not rely on FCRA as a cause of action. Therefore, as our request is for clarification about the scope of FCRA, it would not be the “*subject* of any known or reasonably knowable active litigation” (emphasis added). Regarding confidentiality, all information included in this request letter is based on publicly available information, so we do not identify any contents as confidential.

\* This letter was drafted with considerable assistance from former clinic students Jordan Mallory and Sydney Brinker.

**Appendix A:**

Letter from National Consumer Law Center, Consumer Action, Consumer Federation of America, Consumer Reports, National Immigration Law Center, and U.S. PIRG to Hon. Rohit Chopra, Director, CFPB (Jan. 20, 2022), [https://www.nclc.org/wp-content/uploads/2022/10/credit\\_headers\\_ICE\\_ltr.pdf](https://www.nclc.org/wp-content/uploads/2022/10/credit_headers_ICE_ltr.pdf) [<https://perma.cc/AJV5-VJ2P>].

**Appendix B:**

Letter from Ron Wyden, U.S. Senator, to Hon. Rohit Chopra, Director, CFPB (Dec. 8, 2021), <https://www.wyden.senate.gov/imo/media/doc/CFPB%20Letter%20120821.pdf> [<https://perma.cc/2BWT-8XZJ>].

# Appendix A



**Consumer Action  
Consumer Federation of America  
Consumer Reports  
National Consumer Law Center (on behalf of its low-income clients)  
National Immigration Law Center  
U.S. PIRG**

January 20, 2021

The Honorable Rohit Chopra  
Director, Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Dear Director Chopra:

The undersigned consumer and immigrant rights organizations write to urge the Consumer Financial Protection Bureau (CFPB) to prohibit consumer reporting agencies (CRAs) from selling “credit header” information without a permissible purpose as defined by the Fair Credit Reporting Act (FCRA). This action can be taken through guidance and does not require a rulemaking.

This letter follows up on a [December 8, 2021 letter sent by Senator Ron Wyden](#) regarding the sale of credit header information from the National Consumer Telecom & Utilities Exchange (NCTUE)/Equifax to U.S. Immigration and Customs Enforcement (ICE). Senator Wyden’s letter urged the CFPB to limit the sharing of credit header data to government agencies such as ICE by amending Regulation P, which implements the privacy provisions of the Gramm-Leach-Bliley Act (GLBA). We write to propose another option to stop the sharing of credit header information, which is to remove the exclusion of credit header information from the definition of “consumer report” under the FCRA.

Credit header information generally refers to identifiers such as a consumer’s name, current and former addresses, telephone number, and Social Security number (SSN). It can also include information such as current and prior employers, mother’s maiden name, and age/date of birth. Currently, credit header information is not considered a “consumer report” under the FCRA, even when the information originated from the files of a consumer reporting agency (CRA), including the nationwide CRAs (Equifax, Experian and TransUnion).

The exclusion of credit header information stems from a provision in the Federal Trade Commission’s [40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations](#) (“FTC Staff Summary), formerly known as the FTC Staff

Commentary to the FCRA. Section 603(d)(1), para. 6.C.ii of the FTC Staff Summary states:

ii. Lists of names and contact information. A report limited to identifying information such as a consumer's name, address, former addresses, or phone numbers, does not constitute a "consumer report" if it does not bear on any of the seven factors and is not used to determine eligibility.

Viewed in the abstract, a simple list of names, addresses and telephone numbers does not seem to be a consumer report in that the information does not appear to bear on the seven factors of a consumer's "credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living." 15 U.S.C. § 1681a(d)(1). However, such lists must be viewed in context, and the fact that the information originates from a CRA not only can bear on one of the seven factors, but reveal sensitive information.

For example, a list of consumers from NCTUE indicates those consumers have obtained service from one of the member companies, *i.e.* the consumers have a mobile phone, cable, utility, or Internet service, which would be a "personal characteristic" or "mode of living." If a list of consumers includes SSNs, those numbers by themselves are extremely sensitive as well as valuable – the very keys for identity theft and the target of data breaches such as the one against Equifax. In addition, the fact that the consumer's entry is missing an SSN or uses another identification number such as a matricula consular or Individual Taxpayer Identification Number can be revealing of the consumer's immigration status, which is a personal characteristic. Even just a list of consumers from a Big Three credit bureau standing alone provides important information, in that it informs the user that each consumer has a file with those companies and is not "credit invisible."

We are not advocating that any and all lists of consumers with names, address and telephone numbers should be considered consumer reports. Instead, what we do urge is that CFPB make clear that credit header information is a consumer report, even if it is limited to names, addresses and other identifiers, *if the information originates from a consumer reporting agency.*

In fact, another provision in the FTC Staff Summary is relevant in this regard. Section 603(d)(1), para. 4 of the FTC Staff Summary states: "If information from a consumer report is added to a report that is not otherwise a consumer report, that report becomes a consumer report." Thus, information derived from a consumer report, such as credit header information, that would not otherwise be FCRA-covered if it originated from another source should remain a consumer report because of its origins.

Coverage of credit header information under the FCRA is both fair and important, because CRAs have the ability to compile information about consumers that are not easily and generally obtained or available to other parties. This is especially true for sensitive identifiers such as a SSNs or driver's license numbers. Such information also includes addresses and telephone numbers for consumers who do not wish to be located, including not only undocumented immigrants but debtors seeking refuge from harassing collectors, domestic violence survivors

seeking to flee abusers, or consumers who simply do not wish to be contacted. These consumers, who might take great pains to avoid publicizing their home addresses or phone numbers, should not be forced to give up that privacy in order to obtain essential services such as cell phone, Internet, or utility service.

We urge the CFPB to prohibit CRAs, including the Big Three credit bureaus, from selling consumer identifying information to those entities without a permissible purpose under the FCRA, including to government agencies and data brokers. This should be as simple as clarifying that the language cited above from Section 603(d)(1), para. 6.C.ii of the FTC Staff Summary is limited to lists of consumer's identifying information *that are not derived from the files of a CRA*. The CFPB should also note that identifying information by nature bears on one of the seven factors if it is derived from the files of a CRA.

Such a clarification does not require rulemaking because the FTC Staff Summary itself is not a regulation and can be easily clarified in the same manner it was issued, as guidance. This is especially true since the FTC never had plenary regulatory authority over the FCRA in that manner that the CFPB has under Section 1681s(e) of the FCRA.

If you have any questions about this letter, please contact Chi Chi Wu at [cwu@nclc.org](mailto:cwu@nclc.org) or 617-226-0326.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)  
Consumer Action  
Consumer Federation of America  
Consumer Reports  
National Immigration Law Center  
U.S. PIRG

cc: Senator Ron Wyden (via email to Chris Soghoian)

# Appendix B

RON WYDEN  
OREGON

CHAIRMAN OF COMMITTEE ON  
FINANCE

221 DIRKSEN SENATE OFFICE BUILDING  
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United States Senate  
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**COMMITTEES:**

COMMITTEE ON FINANCE  
COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SELECT COMMITTEE ON INTELLIGENCE  
JOINT COMMITTEE ON TAXATION

December 8, 2021

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Dear Director Chopra:

I write to urge the Consumer Financial Protection Bureau (CFPB) to prevent credit agencies from selling Americans' personal data for purposes entirely unrelated to consumers' credit or financial decisions, including to law enforcement, via data brokers. The government should be seeking a subpoena or court order for this information, but these data brokers are serving as shady middlemen to sell this personal information without any legal protections.

Equifax, Experian, Transunion and other credit reporting agencies collect, process, and sell data on hundreds of millions of Americans. But while the sale of credit data, revealing payment history and credit lines, by the credit agencies is strictly regulated under federal law, these companies also sell a subset of the same data — including names, addresses, dates of birth, and social security numbers — in bulk, to data brokers who then sell it to private investigators and the government. The sale of this so-called "credit-header" data is regulated by CFPB, pursuant to the 1999 Gramm-Leach-Bliley Act (GLBA).

I began looking into the sale of credit-header data this spring, after researchers and the press exposed the purchase and use of this information by U.S. Immigration and Customs Enforcement (ICE). The Washington Post revealed in February that ICE purchased access to a commercial data service offered by Thomson Reuters, which resold bulk utility company data that it obtained from the National Consumer Telecom & Utilities Exchange (NCTUE), a customer credit data co-op run by energy, cable, and phone companies.

What I learned was troubling. NCTUE outsourced the operation of the utility industry's credit reporting service to Equifax, which provided this service to NCTUE at no cost. However, under the terms of their agreement, NCTUE permitted Equifax to resell credit-header data for 171 million people and to keep all of the revenue those data sales generated. Moreover, major utility companies that sit on NCTUE's board had no idea that their customers' data was being sold, and the companies' privacy lawyers learned about this practice for the first time when they were contacted by my office.

Equifax sold this information without consumers' knowledge or consent. And while Equifax informed my office that Californians could opt-out of the sale of their data, it was unlikely that

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many people would take advantage of this opt-out, since neither Equifax, NCTUE, nor the utility companies were transparent with consumers. Selling personal information that people provide to sign up for power, water and other necessities of life, and giving them no choice in the matter, is an egregious abuse of consumers' privacy.

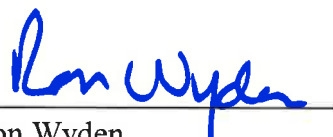
Thankfully, in October, NCTUE instructed Equifax to cease the sale of credit-header data. This was a direct result of action by Comcast and AT&T, with whom my office engaged in productive conversations for several months in their capacity as members of the NCTUE board. However, NCTUE is not promising to put the genie back in the bottle. The data brokers that purchased NCTUE credit-header data are continuing to sell the data they received before October. And while some of the addresses will be less accurate as people move in the months and years ahead, their dates of birth and social security numbers will obviously remain the same for the rest of their lives. Moreover, even if NCTUE were able to force the data brokers and their customers to destroy these records, it is just one source of consumer credit-header data. The big three credit agencies also sell credit-header data from the records they receive from banks.

The personal privacy of hundreds of millions of people should not depend upon the goodwill of corporations worried about negative headlines caused by a public letter from a U.S. Senator. While the GLBA was an important first step in limiting the sale of credit-header data, it continued to permit credit agencies to sell this data for a variety of purposes, including to the government. However, the text of the GLBA and CFPB's implementing regulations fail to define the circumstances in which government agencies may get access to this data. To date, CFPB has issued no public guidance on this portion of the regulations, known as Regulation P, nor conducted any public investigations into the widespread sale of consumers' personal credit-header data.

The data broker industry is out of control, in part because of vague and undefined regulations first promulgated by the Federal Trade Commission, and then adopted by CFPB a decade ago. I know you, and the Biden administration as a whole, share my goal of protecting Americans' privacy and civil liberties. CFPB must rein in the sale of Americans' data by credit agencies for non-credit related purposes. It should do so by investigating the sale of this sensitive personal data, issuing clarifying guidance and updating Regulation P, including by limiting disclosures to the government to those only in response to a subpoena or court order. If CFPB believes it needs additional authorities to fully protect Americans' privacy in this way, please detail the agency's analysis in your response so Congress can act accordingly.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,

  
\_\_\_\_\_  
Ron Wyden  
United States Senator