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May 8, 2023

***Via Electronic Delivery to***  
***[petitions@cfpb.gov](mailto:petitions@cfpb.gov)***

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

**RE: Petition for FCRA Rulemaking Submitted by the National Consumer Law Center dated March 3, 2023, Docket No. CFPB-2023-0021**

Dear Director Chopra:

The Consumer Data Industry Association submits this response to the petition for a rulemaking under the Fair Credit Reporting Act ("FCRA") submitted by the National Consumer Law Center ("NCLC") on March 3, 2023 (hereinafter referred to as "Petition"). In its Petition, NCLC requests that the CFPB address three issues in a rulemaking pursuant to the FCRA.<sup>1</sup> We respond to each request below:

**I. NCLC requests that the CFPB establish strict requirements to regulate the furnishing of information regarding a debt in collections by third-party debt collectors and debt buyers.**

NCLC requests that the CFPB adopt, by rule, certain additional requirements to regulate the furnishing of information regarding a debt in collections by third-party debt collectors and debt buyers. NCLC specifically requests that that the CFPB adopt a rule (a) requiring that debt collection activity must be reported by the original creditor with the original credit tradeline, whether the collection activity is undertaken by a third-party collection agency, a debt buyer, a third-party service provider, or the creditor itself; (b) prohibiting the reporting of a debt in collections unless there is a complete tradeline with prior account activity; and (c) require debt collectors to obtain and review certain documents before they can furnish a debt to a CRA, unless the debt collection information is only included in the original tradeline and not as a separate debt collection item.

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<sup>1</sup> The Consumer Data Industry Association ("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.

One of the primary concerns behind these requests is the concern that certain debts may be reported more than once if they are not properly tied to prior tradeline reporting, and that information such as a date of first delinquency may not be reporting correctly by debt collectors. CDIA and its members share the NCLC's desire to ensure that information in the consumer reporting system is accurate.

NCLC's Petition expresses concerns that debt collectors that furnish information to the nationwide consumer reporting agencies ("NCRAs") are failing to comply with the requirements of the Metro 2<sup>®</sup> reporting format to avoid duplicate tradelines. As evidence of the significance of this concern, NCLC cites a study from 2003 by the Federal Reserve on credit reporting. Since the issuance of that study, however, there have been changes to the reporting of collection accounts that directly address this issue.

First, as NCLC's Petition recognizes, the Metro 2<sup>®</sup> reporting standard contains fields to avoid duplicate reporting of debts, specifically requiring that debt collectors that report collection accounts include information related to the original creditor (in the K and L segments). The NCRAs strengthened their policies following their settlement with certain state AGs in 2015 and now **require** debt collectors to provide the original creditor's name and information about the debt ***before the debt information can be added to the credit report.***<sup>2</sup>

NCLC's second proposal, a prohibition on the furnishing of collection accounts where there is no prior tradeline, would result in the exclusion of delinquency information that is relevant to assessing a consumer's creditworthiness. Some furnishers report certain types of accounts only when the payment history turns negative.<sup>3</sup> The most common examples of these "negative only" accounts are those related to non-credit debts, telecommunications, and utility payments.<sup>4</sup> Excluding this information would result in an inaccurate picture of a consumer's creditworthiness and impact the ability of financial institutions to appropriately assess risk.

On the final suggestion, that debt collectors obtain and review certain documents before they can furnish a debt to a CRA, CDIA submits that this issue is better raised through a request for a rulemaking under the Fair Debt Collections Practices Act ("FDCPA"), as these issues impact

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<sup>2</sup> News Release: Attorney General DeWine Announces Major National Settlement with Credit Reporting Agencies, May 20, 2015, available at <https://www.ohioattorneygeneral.gov/Media/News-Releases/May-2015/Attorney-General-DeWine-Announces-Major-National-S>.

<sup>3</sup> See Federal Trade Commission and Board of Governors of the Federal Reserve, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006 (hereinafter referred to as "Dispute Process Report"), available at <https://www.federalreserve.gov/boarddocs/rptcongress/fcradispute/fcradispute200608.htm>.

<sup>4</sup> See PERC, *Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits* (March 2009), at pp. 19-20, available at [http://www.perc.net/wp-content/uploads/2013/09/bizcase\\_o.pdf](http://www.perc.net/wp-content/uploads/2013/09/bizcase_o.pdf) 17-18 (noting that majority of utility data furnishers report only when accounts enter negative status).

collections generally.<sup>5</sup> Further, as NCLC recognizes, the CFPB's Furnisher Rule already requires that information reported by furnishers be "substantiated by the furnisher's records at the time it is furnished." 12 CFR 1022.31(d)(1). The guidelines issued in support of this requirement indicate that a furnisher's policies and procedures should address "[m]aintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute." Appendix E to Part 1022, III.(c). For these reasons, CDIA submits that rulemaking under the FCRA is unnecessary.

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<sup>5</sup> For example, the District of Columbia recently amended its debt collection laws to require debt collectors to obtain certain documentation prior to attempting to collect a debt:

In addition, no debt collector may collect or attempt to collect a consumer debt unless the debt collector has complete documentation of the ownership of the consumer debt, and the debt collector is in possession of or has immediate access to the following information or documents:

- (A) Documentation of the name of the original creditor as well as the name of the current creditor or owner of the consumer debt;
- (B) The consumer's last account number with the original creditor;
- (C)(i) A copy of the signed contract, signed application, or other documents that provide evidence of the consumer's contractual or other liability and the terms thereof. (ii) For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, balance transfer, or extension of credit shall be deemed sufficient to satisfy the requirement of this subparagraph;
- (D) The date that the consumer debt was incurred; except, that in the case of a revolving credit account, the date that the consumer debt was incurred shall be the date of the most recent purchase, payment, balance transfer, or last extension of credit;
- (E) The date and amount of the last payment by the consumer, if applicable; and
- (F)(i) An itemized accounting of the amount claimed to be owed, including the amount of the principal, any interest, fees, or charges, and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. (ii) If the consumer debt arises from a credit card or revolving credit account that has been charged off, the itemized accounting shall be measured from the charge-off balance and shall include copies of the charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer.
- (G) If the consumer debt has been reduced to a judgment, a copy of the judgment as originally issued, complete documentation establishing that the debt collector is the owner of the judgment, and an itemized accounting of the balance due on the judgment.

**II. NCLC requests that the CFPB require translation of consumer reports by the national consumer reporting agencies into the eight languages most frequently used by limited English proficient consumers.**

The NCLC recommends that the CFPB require the NCRAs to “offer translated free annual file disclosures to consumers with limited English proficiency (“LEP”).” This recommendation mirrors a request that NCLC and several other organizations sent to the NCRAs on October 19, 2020.

As CDIA and the NCRAs pointed out in their response letter (attached hereto), NCRAs have played a critical role in the U.S. financial ecosystem and have invested significant resources to expand access to credit and other financial opportunities. NCRAs are continuously improving the consumers’ experience and streamlining the process for consumers with LEP to resolve issues and better understand their credit profiles through live operator translations or other systems. Currently, consumers contacting the NCRAs to manage a security freeze, place a fraud alert, obtain a copy of a credit report, or initiate a dispute may do so in Spanish. The CFPB also provides model notices for the federally-mandated Summary of Rights and identity theft rights notices in Spanish, and the NCRAs make the CFPB translations available to consumers on their websites. NCRAs recognize that there is a clear demand for broader availability of information in languages other than English and therefore will continue to develop innovative ways to serve consumers in languages beyond English.

With respect to NCLC’s request to require the NCRAs to provide file disclosures in eight languages, however, CDIA notes that this recommendation would impose additional obligations on NCRAs that are in conflict with the FCRA. All consumer reporting agencies, regardless of size, must disclose to consumers, upon request, “clearly and accurately . . . all information in the consumer’s file at the time of the request.” 15 U.S.C. § 1681g(a). The term “file” when used in connection with information on any consumer (as used above) means “all information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.” 15 U.S.C. § 1681a(g) (emphasis added).

Relying on translation services, as NCLC recognizes in its petition, presents challenges of ensuring that consumers receive accurate information about the information in their file. A requirement to translate information from a file disclosure could create situations where the consumer’s translated file disclosure may differ from the information received by the end user, potentially confusing a consumer. Further, NCLC’s request does not take into consideration the fact that many of the countries where these languages are spoken do not or are in the early stages of adopting or developing a credit reporting system.

CDIA members recognize the complexities of the issues surrounding the need to properly serve LEP consumers. These complexities were discussed at length in the CFPB's guidance, *Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency*, issued in January 2021.<sup>6</sup> In that guidance, the CFPB acknowledged the technical, operational, and compliance challenges specific to providing translated documents, and provided a statement of principles and guidelines to inform and assist financial institutions in their decision making related to serving LEP consumers. Notably, the Bureau did not mandate that financial institutions provide services in language other than English.<sup>7</sup> The CFPB should not consider imposing such a requirement on the NCRAs without considering the entire financial system.

**III. NCLC requests that the CFPB establish an Office of Ombudsman to assist consumers who have been unable to fix errors in their consumer reports from the nationwide CRAs and other CRAs within the CFPB's supervisory authority.**

NCLC's Petition also requests that the CFPB consider creating an Office of Ombudsman to assist consumers who have been unable to fix errors in their consumer reports from the NCRAs and other CRAs within the CFPB's supervisory authority. NCLC recommends that this newly-created Office could assist consumers with resolving their disputes, but also empower this office to conduct an "independent review" of credit reporting disputes.

In general, CDIA and its members support the request for the CFPB to provide individualized assistance to consumers, as such assistance would be preferable to the type of services provided by for-profit credit repair organizations. Neither the FCRA nor the Consumer Financial Protection Act ("CFPA"), however, provide the CFPB with the ability to create an Office of Ombudsman with independent adjudicatory powers.

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<sup>6</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_lep-statement\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf).

<sup>7</sup> Notably, the CFPB acknowledged the risks of providing translations when it cited to its enforcement actions against institutions for violations that resulted, at least in part, from the exclusion of consumers with non-English language preferences from offers provided to similarly situated consumers without those language preferences. See, e.g., *In re Synchrony Bank*, No. 2014-CFPB-0007 (June 19, 2014), [http://files.consumerfinance.gov/f/201406\\_cfpb\\_consent-order\\_synchrony-bank.pdf](http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf) (citing violations of ECOA resulting from the exclusion of consumers from offers that would otherwise have been provided but for the Bank's language preference flag and/or the fact that the consumers had addresses in Puerto Rico or the U.S. territories); *In re American Express Centurion Bank*, No. 2017-CFPB-0016 (Aug. 23, 2017), [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_american-express\\_content-order.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_american-express_content-order.pdf) (taking action against two American Express banking subsidiaries for discriminating against certain consumers with Spanish language preferences, and consumers in Puerto Rico, the U.S. Virgin Islands, and other U.S. territories by charging them higher interest rates, imposing stricter credit cutoffs, and providing less debt forgiveness compared to consumers without Spanish-language preferences or addresses in Puerto Rico and the U.S. territories).

The FCRA provides the CFPB with the authority to enforce the FCRA. 15 U.S.C. § 1681s(b)(1)(H). Further, through the CFPB, the CFPB may examine certain entities (including larger participants in the consumer reporting market) for compliance with the FCRA. 12 U.S.C. 5514. There is no provision for a third avenue of oversight through an Office of Ombudsman.

To the extent that the CFPB provides for ombudsmen, their powers do not include the ability to adjudicate disputes between consumers and CRAs. The CFPB establishes an agency ombudsman as well as a private education loan ombudsman. 12 U.S.C. § 4806(d) provides that the agency ombudsman's duties are to "act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau" and to "assure that safeguards exist to encourage complainants to come forward and preserve confidentiality."<sup>8</sup> The powers of the private education loan ombudsman are broader, 12 U.S.C. § 5535, but at most, only enable this ombudsman to "receive, review, and **attempt to resolve informally** complaints from borrowers of private education loans . . . ."<sup>9</sup>

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Thank you for the opportunity to share our views on NCLC's Petition. Please contact us if you have any questions or need further information based on comments.

Sincerely,



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

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<sup>8</sup> The Ombudsman Charter, stating the purpose and principles of the office, can be found at [https://files.consumerfinance.gov/f/documents/CFPB\\_Ombudsman\\_Charter\\_12-7-11.pdf](https://files.consumerfinance.gov/f/documents/CFPB_Ombudsman_Charter_12-7-11.pdf).

<sup>9</sup> To the extent that NCLC bases its request for an ombudsman to adjudicate to disputes on the authority of the CFPB to establish certain complaint handling procedures under 12 U.S.C. § 5534, CDIA notes that the CFPB's authority under that provision only extends to the entities identified in 12 U.S.C. § 5515 (very large banks, savings associations, and credit unions).



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October 29, 2020

Ms. Chi Chi Wu  
National Consumer Law Center  
7 Winthrop Square  
Boston, MA 02110-1245

Dear Ms. Wu:

The Consumer Data Industry Association (“CDIA”), Equifax, Experian, and TransUnion strongly support and are actively advancing financial inclusion. Equifax, Experian, and TransUnion have a strong track record of assisting consumers in languages other than English. CDIA is writing in response to the letter the National Consumer Law Center (“NCLC”) and several other organizations<sup>1</sup> sent on October 19 to the nationwide consumer reporting agencies and CDIA.<sup>2</sup> This letter highlights the credit bureaus’ consumer assistance and financial inclusion efforts and encourages you to join us in lowering the barriers to alternative data reporting. This letter also outlines the legal obstacles that limit the nationwide consumer reporting agencies’ ability to provide credit reports in languages other than English.

The COVID-19 pandemic has exposed substantial economic dislocation in this country, which is why the nationwide credit bureaus have stepped up their efforts to serve consumers. Among other things, the bureaus are making additional credit reports available to consumers for free, and they are offering additional, helpful information to consumers on their websites. The disruption caused by the pandemic and the immersive media around racial injustice reminds us of how proud the nationwide credit bureaus are of their support financial inclusion work. We are also reminded that we cannot let up on our industry’s work to bring more consumers into the financial mainstream.

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<sup>1</sup> National Consumer Law Center (on behalf of its low-income clients), Americans for Financial Reform Education Fund, Community Service Society of New York, Consumer Action, Consumer Federation of America, Consumer Reports, Connecticut Fair Housing Center, Dēmos, Empire Justice Center, Jacksonville Area Legal Aid, Inc., National Association of Consumer Advocates, National Fair Housing Alliance, National Housing Resource Center, Public Good Law Center, Public Justice, Texas Appleseed, Tzedek DC, U.S. PIRG.

<sup>2</sup> 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.

**1. Equifax, Experian, and TransUnion strongly support and are actively advancing financial inclusion.**

Our consumer reporting agency members, including the three nationwide credit bureaus, have invested, and continue to invest, substantial time, money, and energy in bringing more consumers into the financial mainstream. There are still too many un- and under-banked consumers in the United States. Our members work on their own and with governments, businesses, and nonprofits, to expand access to a variety of data sources that have long been held to be the fulcrums to lifting consumers from credit invisible to visible. This data includes rental, utility, and telecom payments. Some of the obstacles to alternative data reporting are operational, statutory, and regulatory. Barriers to alternative data reporting include the high operational costs and financial liability under the FCRA. Sometimes statutes and rules prohibit the reporting of utility data to consumer reporting agencies.<sup>3</sup> Sometimes statutes mean well in their attempts to encourage rental reporting, but while attempting to do good, they impose so many burdens on landlords that rent reporting may be limited.<sup>4</sup> We hope NCLC and its consumer group partners will join us in our quest to lower barriers of entry for bringing more alternative data into the credit reporting system, which will help to fulfill the promise of credit inclusion.

The pace of alternative data reporting is slow and steady, but it is not fast enough. To serve more consumers more quickly, our members are also looking into new and innovative ways to mainstream consumers by internal innovation and external partnerships. There is great promise, for example, in a combination of sources of information, including self-reported data.

**2. Equifax, Experian and TransUnion have a strong track record of assisting consumers in languages other than English.**

The nationwide credit bureaus have spent significant resources over decades, building their systems and developing ways to serve consumers in languages other than English through live operator translations or other systems. Consumers calling the nationwide credit bureaus to manage a security freeze, place a fraud alert, obtain a copy of a credit report, or initiate a dispute can choose to do so in Spanish.

While the credit bureaus are happy to assist consumers in languages other than English, consumer education cannot come solely from credit bureaus, and credit bureaus cannot be the sole focus of proposals for mandating speech in languages other than

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<sup>3</sup> *Eg.*, Conn. Gen. Stat. § 16-262d, Tex. Utilities Code. § 17.152.

<sup>4</sup> *Eg.*, Cal. Civ. Code § 1954.06.



English.<sup>5</sup> To best serve immigrant communities, we must harness the power of community groups who are far better positioned to help translate and interpret credit reports into languages other than English. We need to rely on the core competencies that community service organizations have, since it is they, and not the credit bureaus, that are far more attuned to their communities' language, culture, and history.

### **3. Absent changes to the substantial liability provisions under the FCRA, credit reports in languages other than English opens the door to liability for innocent, honest translation errors**

Respectfully, the nationwide credit bureaus are unable to fulfill the request to provide consumers with the free annual file disclosure required by the Fair Credit Reporting Act ("FCRA") in languages other than English. Providing these reports could put the credit bureaus into conflict with the requirements imposed on them by the FCRA. Providing these reports could potentially undermine the accuracy requirements of the FCRA. Conflicts with the FCRA and reduced accuracy would not help consumers and could expose consumer reporting agencies to substantial liability.

A few years ago, the Federal Trade Commission ("FTC") looked at requiring credit reports to be in Spanish, but then abandoned the idea after it became clear how complicated a translation mandate was; how high the liability would be for minor, technical errors; and how consumers were already served by community groups. The FTC said, in 2004, that

[m]any consumer advocacy groups and a state official suggest that the centralized source be required to provide instructions in languages, other than English, that are spoken by a substantial number of consumers in the United States...Having carefully considered these comments, the [FTC] has determined not to require instructions in other languages. The Commission believes that requiring multi-language translations...would impose significant additional burden on the nationwide consumer reporting agencies at a time when they will already be responding to the multiple and varied...obligations [under federal law].<sup>6</sup>

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<sup>5</sup> A New Jersey law mandating credit reports be provided to consumers in Spanish and ten other languages beyond Spanish is presently under challenge in federal court in New Jersey. This law, among other things, violates the First Amendment. There are few laws, even in New Jersey, that require government agencies, transit authorities, banks, utilities, insurance companies, or hospitals, to communicate with consumers in languages other than English, let alone eight or eleven other languages.

<sup>6</sup> 69 Fed. Reg. at 35476.

The complexities and burdens the FTC noted in 2004 are only magnified today by the increasingly diverse population, and exponentially more complicated by your request to provide credit reports in not just Spanish, but in at least seven other languages. When the FTC and CFPB took up the issue again at a workshop in October 2014, no recommendations were made that necessitated credit reports be disclosed in languages other than English.

#### **4. Conclusion**

Thank you for your letter of October 19. The nationwide credit bureaus, Equifax, Experian, and TransUnion, are proud of their work in promoting financial inclusion efforts. We hope that NCLC and the other organizations that signed the letter to CDIA, Equifax, Experian, and TransUnion will join us in working toward lowering the barriers to alternative data reporting. We respect and honor the hopes and dreams of consumers who speak a language other than English. The credit bureaus are proud to serve them, and where their linguistic and cultural needs exceed the authority given to the credit bureaus, we are comforted knowing there are community organizations and religious institutions to step forward. Working together is the best way to give consumers the help they need.

Sincerely,



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

cc: The Honorable Kathy Kraninger, Director, Consumer Financial Protection Bureau