

Discussion Guide: Consumer Reporting Rule SBREFA Outline

About this document: The CFPB is currently considering a rulemaking to address a number of consumer reporting topics under the Fair Credit Reporting Act (FCRA). In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the CFPB is planning a Small Business Review Panel to consult with representatives of small entities that likely would be subject to the rule, if it were adopted. The CFPB has issued an Outline of Proposals and Alternatives Under Consideration (Outline) to summarize for those representatives the proposals the CFPB is considering and to seek feedback on those proposals. This document supports the Outline by providing a high-level overview of the proposals the CFPB is considering and noting their location in the Outline.

Consumer Report and Consumer Reporting Agency Definitions

Topic	Summary of proposal(s) under consideration	Location in SBREFA Outline
Data brokers	<p>Among other things, would:</p> <p>1) provide that data brokers that sell certain types of consumer data (e.g., data typically used for credit, employment, and certain other eligibility determinations) are selling consumer reports; and</p> <p>2) provide that consumer information provided to a user who uses it for a permissible purpose is a “consumer report” regardless of whether the data broker knew or should have known the user would use it for that purpose or intended the user to use it for that purpose. Assuming the other elements of the definition of “consumer reporting agency” were satisfied, such data brokers would be consumer reporting agencies.</p>	7-9
“Assembling or Evaluating”	Would provide more bright-line definition for the terms “assembling” and “evaluating” in the definition of “consumer	9-10

Topic	Summary of proposal(s) under consideration	Location in SBREFA Outline
	reporting agency,” specifically as those terms pertain to entities that facilitate electronic data access between parties.	
Credit header data	Would clarify the extent to which credit header data— <i>i.e.</i> , consumer-identifying data, such as a consumer’s current and former addresses and Social Security number, that are maintained by consumer reporting agencies—is a consumer report.	10
Targeted marketing and aggregated data	<p>Would clarify that certain activities that consumer reporting agencies undertake to help third-party users market to consumers violate the FCRA prohibition on furnishing consumer reports to third parties without a permissible purpose.</p> <p>Additionally, would clarify when aggregated or anonymized consumer report information constitutes or does not constitute a consumer report.</p>	11-12

Permissible purposes

Topic	Summary of proposal(s) under consideration	Location in SBREFA Outline
Written instructions of the consumer	Would address what is needed for a consumer report to be furnished by a consumer reporting agency in accordance with the “written instructions of the consumer” permissible purpose.	12-13
Legitimate business need	Would clarify that the “legitimate business need” permissible purpose requires either 1) that the consumer has initiated a transaction for personal, family, or household purposes and the consumer report is used only for the purpose of determining the consumer’s eligibility for the business transaction, or 2) that there is an account review for which the use of a consumer report is actually needed to decide if the consumer continues to meet the terms of the account.	13-14

Topic	Summary of proposal(s) under consideration	Location in SBREFA Outline
Data security and data breaches	Would clarify a consumer reporting agency's obligation to protect consumer reports from data breaches or unauthorized access by third parties.	14

Disputes

Topic	Summary of proposal(s) under consideration	Location in SBREFA Outline
Legal	Would codify that there is no distinction in the FCRA between "legal" and "factual" disputes, such that consumer reporting agencies and furnishers have obligations to conduct reasonable investigations of both types of disputes.	14-16
Systemic	Would address what consumer reporting agencies and furnishers must do to investigate and address systemic errors that come to their attention via disputes. In addition, may provide a specific process consumers could use to submit disputes relating to systemic issues affecting multiple consumers.	16-17

Medical Debt

Topic	Summary of proposal(s) under consideration	Location in SBREFA Outline
Creditors	Would prohibit creditors from obtaining or using medical debt collection information to make determinations about consumers' eligibility (or continued eligibility) for credit.	14-17
Consumer Reporting Agencies	Would prohibit consumer reporting agencies from including medical debt collection tradelines on consumer reports furnished to creditors for purposes of making credit eligibility determinations.	17-18

