

Consumer Reporting Rule SBREFA Panel Meetings

CFPB | October 18 & 19, 2023



Privacy Act Statement (5 U.S.C. 552a(e)(3))

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Day 1 Welcome

Dan Sokolov

Deputy Associate Director
Research, Monitoring, and Regulations Division
Consumer Financial Protection Bureau

Stephanie Fekete

Director of Interagency Affairs
Office of Advocacy
U.S. Small Business Administration

Will Bestani

Senior Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget

Day 1 Agenda

Time (Eastern)	Session
1:00 – 1:30 PM	Day 1 Welcome and Recap of Disputes Discussion
1:30 – 2:20 PM	<u>Segment 1</u> : Definitions of Consumer Reporting and Consumer Reporting Agency
2:20 – 2:30 PM	Break
2:30 – 4:00 PM	<u>Segment 1 (Cont.)</u> : Definitions of Consumer Reporting and Consumer Reporting Agency
4:00 – 4:10 PM	Break
4:10 – 4:55 PM	<u>Segment 2</u> : Medical Debt
4:55 – 5:00 PM	Day 1 Closing Remarks

Segment 1

Definitions of Consumer Report and Consumer Reporting Agency

- Data brokers
- Defining “assembling or evaluating”
- “Credit header” data
- Targeted marketing and aggregated data

Proposals Under Consideration – Data Brokers

Relevant FCRA Section:

- Section 603(d) and (f)
 - Defines the terms “consumer report” and “consumer reporting agency.”

Proposals Under Consideration:

- The CFPB is considering proposals to address the application of the FCRA to data brokers, including to codify current law. These include proposals to provide that:
 - Data brokers that sell certain types of consumer data (*e.g.*, data typically used for credit and employment eligibility determinations) are selling consumer reports, regardless of the purpose for which the data was actually used or collected, or the expectations of that data broker.
 - 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.

Discussion Questions – Data Brokers

General Questions

- Q1.** How, if at all, will the proposals under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposals under consideration?
- Q3.** What aspect or aspects of complying with the proposals under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposals under consideration?

Proposal-Specific Questions

- Q8.** If the CFPB proposes the approaches described above, what types of entities would fall within the definition of “consumer reporting agency”? Are there certain types of entities that should not fall within the definition of “consumer reporting agency”?
- Q9.** If consumer data communicated to a third party and used by the third party for credit decisions, employment purposes, insurance decisions, or other permissible purposes were a consumer report regardless of the data broker’s knowledge or intent concerning the third party’s use of the data, what costs would entities selling such data incur to monitor or control how their customers use purchased data?

Discussion Questions – Data Brokers

Proposal-Specific Questions

- Q10.** If the CFPB proposes the approach described above with respect to data brokers that sell certain types of data, would it be sufficient to provide a standard for (or guidelines about) what types of data are “typically” used for an FCRA-covered purpose or should the CFPB provide a list of such data types? What standard, guidelines, or data types should the CFPB consider for each FCRA-covered purpose?
- Q11.** Are there other ways in which the CFPB should be thinking about how and when data broker data should be considered a consumer report furnished by a CRA?
- Q12.** If any of the proposals under consideration that would make a data broker subject to the FCRA as a CRA were finalized, do you anticipate that your firm or your customers will seek to obtain consumer consent before providing consumer reports to third parties? If so, what challenges do you foresee with obtaining consumer consent?
- Q13.** What costs do you believe the proposals under consideration would be likely to impose on the entities from which your firm obtains consumer data (known as “furnishers” under the FCRA) and on the entities to which your firm provides consumer data (known as “users” under the FCRA)? Are there additional burdens or unintended consequences to such entities the CFPB should consider? What steps could the CFPB take to reduce or lessen those potential impacts?

Day 1 Mid-Session Break # 1

Proposal Under Consideration – Defining “Assembling or Evaluating”

Relevant FCRA Section:

- Section 603(f)
 - Defines the term “consumer reporting agency.”

Proposal Under Consideration:

- The CFPB is considering a proposal to provide a more bright-line definition for when the activities of companies that facilitate electronic data access between parties, such as intermediaries or vendors, constitute “assembling” or “evaluating” as those terms are used in the FCRA’s definition of consumer reporting agency. These include proposals to:
 - Address when such companies’ activities constitute “assembling or evaluating.”
 - Provide that, if such companies are “assembling or evaluating” and otherwise meet the definition of “consumer reporting agency,” they would be consumer reporting agencies under FCRA section 603(f).

Discussion Questions – Defining “Assembling or Evaluating”

General Questions

- Q1.** How, if at all, will the proposal under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposal under consideration?
- Q3.** What aspect or aspects of complying with the proposal under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

Proposal-Specific Questions

- Q14.** What are the types of intermediaries, vendors, and other entities that transmit consumer data electronically between data sources and users? For any such company, describe the types of information the company obtains, from which data sources, who determines the sources of information to use, and how the information is transmitted, used, interpreted, or modified by the company.
- Q15.** Are there any circumstances under which the activities of an intermediary, vendor, or other entity that transmits consumer data electronically does not create a risk of harm to a consumer?

Proposals Under Consideration – “Credit Header” Data

Relevant FCRA Section:

- Section 603(d)
 - Defines the term “consumer report.”

Proposal Under Consideration:

- The CFPB is considering a proposal to clarify the extent to which credit header data constitutes a consumer report.
 - “Credit header” data are certain consumer-identifying data maintained by CRAs. Credit header data has historically been considered to include, for example, an individual’s name (and any other names previously used), current and former addresses, Social Security number, and phone numbers.
 - The proposal under consideration would likely reduce, perhaps significantly, CRAs’ ability to sell or otherwise disclose credit header data from their consumer reporting databases without a permissible purpose.

General Discussion Questions – “Credit Header” Data

- Q1.** How, if at all, will the proposal under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposal under consideration?
- Q3.** What aspect or aspects of complying with the proposal under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

Proposal-Specific Discussion Questions – “Credit Header” Data

- Q16.** What types of information do firms typically consider to be credit header data? What types of credit header data are typically sold or purchased and for what purpose(s)? How is data collected for those purposes and how is it stored?
- Q17.** Under what circumstances do firms typically consider the sale or purchase of credit header data not to be a consumer report, and why? What costs would be incurred if such sales or purchases of credit header data were to be considered a consumer report?
- Q18.** If the CFPB proposes a rule clarifying when credit header data is a consumer report, are there certain categories of credit header data you believe should be included or excluded as a consumer report? If so, under what circumstances?

Proposals Under Consideration – Targeted Marketing and Aggregated Data

Relevant FCRA Sections:

- Section 603(d)
 - Defines the term “consumer report.”
- Section 603(f)
 - Defines the term “consumer reporting agency.”

Proposals Under Consideration:

- The CFPB is considering proposals to clarify:
 - Whether and when aggregated or anonymized consumer report information constitutes or does not constitute a consumer report; and
 - That certain activities CRAs undertake to help third-party users market to consumers violate the FCRA’s general prohibition against furnishing consumer reports for marketing or advertising purposes.

General Discussion Questions – Targeted Marketing and Aggregated Data

- Q1.** How, if at all, will the proposals under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposals under consideration?
- Q3.** What aspect or aspects of complying with the proposals under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposals under consideration?

Proposal-Specific Discussion Questions – Targeted Marketing and Aggregated Data

- Q19.** What is your understanding of how CRAs or service providers perform marketing or advertising services on behalf of third-party users? What services are performed (*e.g.*, identification of target audiences, delivery of marketing or advertising materials to consumers)? What data are relied on to perform these services, and do firms typically consider such data to be protected by the FCRA? Why or why not?
- Q20.** What is your understanding of how firms share consumer report information in marketing or advertising platforms? What capabilities do these platforms offer to third-party users for targeting marketing or advertising campaigns? What steps do firms typically take to prevent consumer report information from being used for impermissible purposes under the FCRA?
- Q21.** What is your knowledge about products that include aggregated data drawn from consumer reporting databases? For what purposes do firms typically use or offer the products? What type of information is aggregated? How is the aggregation done? At what level are the data aggregated?
- Q22.** Do firms typically consider aggregated data products they use or offer to be consumer reports? Why or why not?
- Q23.** Is there a level of aggregation of consumer report information at which consumer privacy would not be implicated? Are there instances you are aware of where aggregated information that is drawn from a consumer reporting database is later linked back by a third party to specific consumers, for example when a consumer responds to an advertisement?

Day 1 Mid-Session Break # 2

Segment 2

Medical Debt Collection Information

Proposals Under Consideration – Medical Debt Collection Information

Relevant FCRA and Regulation V Sections:

- FCRA Section 604(g)(2)
 - Restricts creditors' ability to obtain or use medical information in credit decisions
- Regulation V, 12 CFR § 1022.30(d)
 - Identifies exceptions to the restrictions in FCRA section 604(g)(2)

Proposals Under Consideration:

- The CFPB is considering proposals to:
 - Revise Regulation V, 1022.30(d) such that creditors would be prohibited from obtaining or using medical debt collection information about a consumer to make determinations about the consumer's credit eligibility or continued credit eligibility.
 - Prohibit CRAs from including medical debt collection tradelines on consumer reports furnished to creditors for purpose of making credit eligibility determinations.

General Discussion Questions – Medical Debt Collection Information

- Q1.** How, if at all, will the proposals under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposals under consideration?
- Q3.** What aspect or aspects of complying with the proposals under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposals under consideration?

Proposal-Specific Discussion Questions – Medical Debt Collection Information

- Q35.** Under the proposals under consideration, would you anticipate that medical debt collectors would stop furnishing medical debt collection information to CRAs and use alternative debt collection methods? If so, which ones?
- Q36.** To what extent do creditors currently use medical debt collection information when making credit eligibility determinations, including to comply with other laws or requirements? Do creditors use medical debt collection information for other purposes in connection with a credit transaction?
- Q37.** From what sources do creditors obtain consumers' medical debt collection information, other than consumer reports?
- Q38.** What are the pros and cons to an alternative approach of mandating a delay in the furnishing and reporting of medical debt for a particular period of time, and not reporting or furnishing medical debt below a particular dollar amount?
- Q39.** What are the pros and cons of an alternative approach of requiring CRAs and furnishers, upon receiving a dispute, to conduct an independent investigation to certify that a disputed medical debt is accurate and not subject to pending insurance disputes?

Day 1 Closing Remarks

Day 2 Welcome

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Day 2 Agenda

Time (Eastern)	Session
1:00 – 1:05 PM	Day 2 Welcome
1:05 – 1:30 PM	<u>Segment 2 Cont.</u> : Medical Debt
1:30 – 2:30 PM	<u>Segment 3</u> : Permissible Purposes
2:30 – 2:40 PM	Break
2:40 – 3:10 PM	<u>Segment 3 Cont.</u> : Permissible Purposes
3:10 – 3:30 PM	<u>Segment 4</u> : Implementation Period
3:30 – 3:40 PM	Break
3:40 – 4:30 PM	<u>Segment 5</u> : Potential Impacts on Small Entities
4:30 – 5:00 PM	Day 2 Closing Remarks

Proposal-Specific Discussion Questions – Medical Debt Collection Information

- Q35.** Under the proposals under consideration, would you anticipate that medical debt collectors would stop furnishing medical debt collection information to CRAs and use alternative debt collection methods? If so, which ones?
- Q36.** To what extent do creditors currently use medical debt collection information when making credit eligibility determinations, including to comply with other laws or requirements? Do creditors use medical debt collection information for other purposes in connection with a credit transaction?
- Q37.** From what sources do creditors obtain consumers' medical debt collection information, other than consumer reports?
- Q38.** What are the pros and cons to an alternative approach of mandating a delay in the furnishing and reporting of medical debt for a particular period of time, and not reporting or furnishing medical debt below a particular dollar amount?
- Q39.** What are the pros and cons of an alternative approach of requiring CRAs and furnishers, upon receiving a dispute, to conduct an independent investigation to certify that a disputed medical debt is accurate and not subject to pending insurance disputes?

Segment 3

Permissible Purposes

- Written instructions of the consumer
- Legitimate business need
- Data security and data breaches

Proposals Under Consideration – Written Instructions of the Consumer

Relevant FCRA Sections:

- Section 604
 - Provides the enumerated permitted purposes for which a CRA may furnish consumer reports.
- Section 604(a)(2)
 - States that a CRA may furnish a consumer report if the report is provided “[i]n accordance with the written instructions of the consumer to whom it relates.”

Proposals Under Consideration:

- The CFPB is considering proposals to address what is needed for a consumer report to be furnished by a CRA in accordance with the “written instructions of the consumer” permissible purpose under the FCRA, including:
 - The steps companies must take to obtain a consumer’s written instructions;
 - Who can collect written instructions;
 - Limits on the scope of authorization to ensure the consumer has authorized all uses of the consumer’s data (including limits on the number of purposes or entities that can be covered by a single instruction); and
 - Methods for revoking any ongoing authorization.

General Discussion Questions – Written Instructions of the Consumer

- Q1.** How, if at all, will the proposals under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposals under consideration?
- Q3.** What aspect or aspects of complying with the proposals under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposals under consideration?

Proposal-Specific Discussion Questions – Written Instructions of the Consumer

- Q24.** Describe the consumer authorizations or certifications of written instruction typically relied upon to furnish or obtain consumer reports pursuant to this permissible purpose. How specific are these authorizations, and if your firm relies on the certification of a user, does the user disclose the language of the consumer’s authorization? How can a consumer revoke or modify their authorization? What are the products or services offered to consumers for which your firm relies on the written instructions of the consumer to obtain a consumer report?
- Q25.** What should the CFPB take into consideration when evaluating proposals to ensure that consumers understand the scope and import of their authorization to furnish or obtain their consumer report?
- Q26.** If your firm requires consumer authorization to furnish or obtain consumer reports, what methods (*e.g.*, electronic signature, check box, wet-ink signature, etc.) does your firm use to document the consumer’s instructions or authorization? What feedback has your firm received from consumers regarding the convenience or challenges caused by such methods, if any?

Proposal Under Consideration – Legitimate Business Need

Relevant FCRA Sections:

- Section 604
 - Provides the enumerated permitted purposes for which a CRA may furnish consumer reports.
- Section 604(a)(3)(F)
 - States that a CRA may furnish a consumer report to a person if it has reason to believe that the person “otherwise has a legitimate business need for the information—(i) in connection with a business transaction that is initiated by the consumer; or (ii) to review an account to determine whether the consumer continues to meet the terms of the account.”

Proposal Under Consideration:

- The CFPB is considering a proposal to specify that a CRA may furnish a consumer report under the “legitimate business need” permissible purpose in the FCRA only if:
 - A transaction was initiated by the consumer for personal, family, or household purposes and the consumer report will be used only for the purpose of determining the consumer’s eligibility for the business transaction; or
 - There is an account review for which the use of a consumer report is actually needed to make a decision about whether the consumer continues to meet the terms of the account.

Discussion Questions – Legitimate Business Need

General Questions

- Q1.** How, if at all, will the proposal under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposal under consideration?
- Q3.** What aspect or aspects of complying with the proposal under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

Proposal-Specific Questions

- Q27.** Under what circumstances do firms currently use the legitimate business need permissible purpose in connection with consumer-initiated business transactions and account reviews?
- Q28.** Would the proposal under consideration limit your firm's ability to get consumer reports? If so, how? Would it be feasible for your firm instead to rely on the written instruction permissible purpose or some other permissible purpose?

Day 2 Mid-Session Break # 1

Proposal Under Consideration – Data Security and Data Breaches

Relevant FCRA Sections:

- Section 604
 - Provides the enumerated permitted purposes for which a CRA may furnish consumer reports.
- Section 607(a)
 - Requires CRAs to maintain reasonable procedures designed to limit the furnishing of consumer reports to the permissible purposes listed in FCRA section 604.

Proposal Under Consideration:

- The CFPB is considering a proposal to address a CRA's obligation under the FCRA to protect consumer reports from a data breach or unauthorized access.
 - The CFPB is considering, for example, providing that failure to protect against unauthorized access to consumer reports by third parties may violate FCRA sections 604 or 607(a).

Discussion Questions – Data Security and Data Breaches

General Questions

- Q1.** How, if at all, will the proposal under consideration require your firm to change its operations, products, or services?
- Q2.** What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposal under consideration?
- Q3.** What aspect or aspects of complying with the proposal under consideration would be the most challenging?
- Q4.** What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

Proposal-Specific Question

- Q29.** What data security improvements, and associated costs, would CRAs incur if they were liable under the FCRA for all data breaches?

Segment 4

Implementation Period

Discussion Questions – Implementation Period

- Q40.** Please provide input on an appropriate implementation period for complying with a rule finalizing the proposals under consideration. Are there any aspects of the CFPB's proposals under consideration that could be particularly time consuming or costly to implement? Are any of these challenges particular to small entities? Are there any factors outside a covered entity's control that would affect its ability to prepare for compliance?

Day 2 Mid-Session Break # 2

Segment 5

Potential Impacts on Small Entities

Potential Impacts on Small Entities

Relevant RFA Sections

- Section 603(b)
 - Requires agencies to include in proposed rules certain descriptions and analyses regarding the initial projected costs of the proposed rule on small entities.
- Section 603(c)
 - Requires agencies to describe as part of the initial cost analysis any significant alternatives to the proposed rule which accomplish the objectives of applicable statutes and also minimize any significant economic impact of the proposed rule on small entities.
- Section 603(d)(1)
 - Requires, as part of the initial cost analysis for proposed rules, agencies to consider and describe the following:
 - any projected increase in the cost of credit for small entities;
 - any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any increase in the cost of credit for small entities; and
 - advice and recommendations of SERs related to any projected increased in the cost of credit for small entities and any significant alternatives to minimize such cost increases, as well as SERs' advice and recommendations regarding the analyses required by RFA section 603(b).

Discussion Questions – Potential Impacts on Small Entities

- Q5.** Other than compliance costs, what costs, burdens, or unintended consequences should the CFPB consider with respect to the proposals under consideration? Please quantify if possible. What alternatives, if any, would mitigate such costs, burdens, or unintended consequences?
- Q43.** For each of the proposals under consideration above, do you expect that your firm would restrict or eliminate any product or service offerings to comply with the rule? If so, how would the proposals impact those products or services?
- Q44.** For each of the proposals under consideration above, please provide information, data, and/or estimates of impacts to your firm's business operations and revenue, including to both current operations and revenues and to future operations and revenues that could potentially be lost.
- Q45.** What other, additional impacts do you think might occur that have not been covered above?
- Q6.** Are there any statutes or regulations with which your firm must comply that may duplicate, overlap, or conflict with the proposals under consideration? What challenges or costs would your firm anticipate in complying with any such statutes or regulations and the CFPB's proposals under consideration?

Discussion Questions – Potential Impacts on Small Entities

- Q7.** What factors disproportionately affecting small entities should the CFPB be aware of when evaluating the proposals under consideration? Would the proposals under consideration provide unique benefits to small entities?
- Q46.** What benefits do you expect small entities may experience from any of the proposals under consideration listed above?
- Q41.** Please provide feedback on the CFPB’s understanding of the small entities that could be affected by the proposals under consideration.
- Q42.** For the proposals under consideration that are relevant to their businesses, small entity representatives are encouraged to provide specific estimates, information, and data on the projected one-time and ongoing costs of compliance if the proposals were adopted. Information and data on current FCRA compliance costs (baseline costs) will be valuable as well.
- Q47.** Would the proposals under consideration affect the cost and availability of credit to small entities?

Day 2 Closing Remarks

Submitting Written Feedback

SERs are encouraged to submit written feedback about each of the proposals under consideration and, in particular, about the costs and impacts of each proposal. Your feedback will help inform the written SBREFA panel report and the overall rulemaking.

Due Date: November 6, 2023

Submit To: CFPB_consumerreporting_rulemaking@cfpb.gov

Reminders for SER written feedback:

- Your feedback will be appended to the SBREFA panel report, which will be made part of the public rulemaking docket.
- If you are considering submitting proprietary or confidential business information, please contact us in advance to discuss whether and how that information should be provided.
- Written feedback will be shared with SBA OA and OIRA.

Thank you!