November 6, 2023

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

RE: FCRA Proposals and Alternatives Under Consideration

Dear Director Chopra:

On behalf of Arlington Community Federal Credit Union (Arlington Community FCU), and in my role as a Small Entity Representative (SER), I am writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) Outline of Proposals and Alternatives Under Consideration for the Small Business Advisory Review Panel for Consumer Reporting Rulemaking ("the Outline"). The proposed changes to the interpretation of the Fair Credit Reporting Act (FCRA) would have wide-ranging negative impacts on small financial institutions, including Arlington Community FCU.

I have been with Arlington Community FCU for 13 years as the Chief Lending Officer. We exist to serve members and small businesses in Northern Virginia. Our service mission is to hear our members' stories and provide solutions that will empower their financial lives. Arlington Community FCU is a low-income designated credit union (LICU) and was recently approved for a Community Development Financial Institution (CDFI) grant to expand our lending programs to low-income households. We are submitting a second CDFI grant application for 2024 funding specifically for lending to women- and minority-owned businesses.

General Comments

I am a SER because I have seen the disproportionate impact of new regulations on small businesses, especially credit unions, and believe it is important for to have representation in the administrative rulemaking process. The SBREFA program is an important step in giving small businesses both a voice and recourse within the regulatory process. While proud to be part of this process, I was disappointed that the CPFB treated the input as a "check the box" exercise that was necessary to move forward with the Outline. Many SERs took valuable time away from their day jobs to explain the significant effect the potential rules derived from the Outline would have on their businesses and that information should be the basis of any future rules. It was not possible to estimate cost implications on Arlington Community FCU because there was simply not enough information in the Outline to project costs. For that reason, I would endorse another round of SER panels once the Bureau can share more specific proposals.

Timeline Considerations

The timeline for providing feedback was too short. The circulation of the Outline was only two weeks before the original scheduled pre-panels, and the delay necessitated by the threat of a government shutdown allowed only an extra week of review. Although the additional week for providing written comments is appreciated, SERs were provided less than three weeks from the final panel to submit written comments. If the Outline had provided sufficient information to develop cost estimates, two and a half weeks would still be insufficient time to execute and describe those calculations.

The FCRA Only Requires Factual Issues to be Resolved in Disputes

Legal Disputes

As I noted in the panels, we review every dispute thoroughly. We look at all the notes in the systems, documents, and processes. Integrity is one of our core values and it is our goal to uncover any error or miscommunication in the process so we can resolve things appropriately and quickly. We are not large enough to be able to afford an attorney on staff. If the Bureau were to require furnishers such as small and medium sized credit unions to resolve all legal issues presented in disputes, Arlington Community FCU, and many other small credit unions would have to either hire legal counsel or obtain outside counsel at significant cost. The example provided in the Outline, to make FCRA dispute provisions cover state foreclosure law interpretations disputes regarding whether a reported debt is collectible, would require access to attorneys barred in every state. This is a decision best left to the courts.

Systemic Disputes

The Outline states that the Bureau is considering rules regarding how furnishers would investigate and address systemic issues, including providing consumers with a specific process to notify furnishers of what they feel are systemic issues. Credit unions, including my own, already review, address, and correct systemic issues to any impacted member. Investigation and review of whether all disputes are systemic issues would certainly incur additional and cost. It is unclear what the benefits of sharing information regarding systemic issues with consumers would be, but it is unlikely that they would outweigh the burdens imposed on smaller credit unions.

Credit Headers Should Not be Classified as Consumer Reports

Credit unions have historically used credit data headers for identity verification. Credit unions require identify verification for requests for credit, increasing a credit limit, or adding a card to an account. It aids in fraud detection and prevents identity theft. It is the fastest way to identify a consumer and vital to the credit union’s Bank Secrecy Act and Know Your Customer requirements. Asking consumers for additional identity verification slows the approval process and increases the vulnerability of such sensitive identity information. Further, when consumers become accustomed to sharing their information freely, they are more likely to share with a bad actor. Making credit headers a consumer report would require credit unions to take on more time and more cost to verify their own customers and slow the process for the consumer.

Creditors Should be Permitted to Continue Using Medical Debt Information

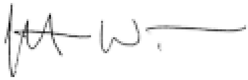
Creditors should have the option to use medical debt information to assess a borrower’s ability to repay. Arlington Community does not currently use medical debt in underwriting but that is a risk that was assessed and approved by the credit union’s leadership. Other credit unions have different considerations, including fields of membership,

products, missions, and risk tolerances that may impact their decision to include certain information like medical debt in their underwriting. They may not have the ability to disregard significant amounts of debt when calculating repayment and will want to include medical bills. The Bureau should not supplant the judgment of credit union leaders when estimating the appropriate amount of risk for their organizations.

The CFPB Should Provide Covered Data Providers with Ample Time to Implement a Future Proposal

As a furnisher, my organization would need at least 24 months to implement any final rule. If the rule includes any change to the definition of credit reports or imposes legal dispute requirements on dispute resolution, we may need additional time. As previously noted, the Outline was vague, and it has been impossible to estimate what the cost and time of implementation might be with so many distinct variables.

Sincerely,



Jim Wilmot
Chief Lending Officer
Arlington Community Federal Credit Union

November 6, 2023

Via Electronic Delivery to
CFPB_consumerreporting_rulemaking@cfpb.gov

Consumer Financial Protection Bureau
c/o Comment Intake Request
1700 G Street, NW
Washington, DC 20552

Re: Small Business Advisory Review Panel for Consumer Reporting Rulemaking – Outline of Proposals and Alternatives Under Consideration

To Whom it May Concern:

MicroBilt Corporation ("MicroBilt") submits this comment letter in response to the Small Business Review Panel for Consumer Reporting Rulemaking – Outline of Proposals and Alternatives Under Consideration ("Outline") from the Consumer Financial Protection Bureau ("CFPB"). As a small entity representative ("SER") that has engaged with the CFPB regarding the Outline, MicroBilt appreciates the opportunity to provide our view about the significantly negative impact these proposals will have on consumers and our business.

MicroBilt provides a single source solution of decision critical information that assists businesses in reducing risk and making informed decisions. We offer a comprehensive suite of products and services designed to help small-to-medium sized businesses manage risk, prevent fraud and optimize their operations. Our solutions, including consumer reports, background information and public records, identity verification and business reports and business credentialing services, are all tailored to meet the unique needs of our clients. MicroBilt is also a reseller of consumer reports furnished by the nationwide consumer reporting agencies ("NCRAs") and maintains its own database of information from which it provides consumer reports.

As a leader in alternative credit data and risk management solutions, MicroBilt has over forty-five years of experience in the consumer reporting industry. The broad and drastic changes that are being contemplated by the CFPB in the Outline upend well-established legal and regulatory processes under which we operate, and precedents that have guided MicroBilt for decades with little to no explanation as to why those changes are needed. The ultimate purpose of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") is to ensure small businesses have a voice in the regulatory process and that regulations are designed to minimize their impact on small businesses. It is in that spirit that MicroBilt unequivocally states that many of these proposals will not only significantly increase the complexity and cost of operating our business, but we believe it will also have far-reaching implications that will ultimately harm consumers and their ability to obtain financial services.

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This letter details specific concerns with the SBREFA process and the Outline's proposed changes to the way certain data is used, the consumer dispute process, and the liability companies have in the wake of security breaches.

I. The Brief Timeline to Provide Comment and the Lack of Specificity in the Outline Limits MicroBilt's Ability to Provide Detailed Feedback on Certain Proposals.

As noted above, MicroBilt appreciates the opportunity to participate in the SBERFA process. The brief timeline for engagement with SERs, however, limits our ability to provide detailed feedback on expansive proposals that would fundamentally change the way MicroBilt operates. For example, even with the one-week extension, we have not had sufficient time to thoroughly study the changes MicroBilt would have to make in response to potential changes to how "credit header" data is used or the potential cost increases of significantly expanding the dispute process. Unlike larger companies, MicroBilt does not have resources and capacity to deliver meaningful data and statistics that the CFPB could find useful in analyzing potential rulemaking within the allotted time. As it stands now, the SBREFA panel will have more time to publish a final report than MicroBilt had to analyze and comment on the Outline.

Further, the lack of clarity of the proposals itself, and the purposes that underlie them limits the kind of feedback the CFPB will receive. The Outline lacks details that are needed for MicroBilt to fully explain why a proposal would increase our costs or affect our business model. For example, the CFPB mentions "systemic issues" several times but fails to define or even hint as to what a systemic issue is and how it differs from other issues that consumers report to consumer reporting agencies and furnishers.

This lack of clarity is further complicated by the fact that the CFPB does not offer specific reasons why certain proposals are needed in the first place. For example, the CFPB does not articulate why changing the use of credit header data is necessary. Without articulating concrete concerns, it is challenging, if not impossible, for MicroBilt to propose alternative proposals for the CFPB to consider or to scope out impacts. This ultimately defeats the entire point of the SBREFA process.

II. Credit Header Data is Vital to Fraud Prevention and Should Not Be Regulated by the Fair Credit Reporting Act ("FCRA").

The Outline notes that the CFPB is considering a proposal to treat credit header data as a "consumer report." It is important to note that credit header data is consumer-identifying data and using the term "credit header" is for convenience. The term does not mean it is consumer credit report data. Rather it is a consumer's current and former addresses, Social Security number, and similar identifying information. That information may be obtained from many sources, including public records and consumer reporting agencies. Therefore, it is not information that relates to the "seven factors" that define "consumer report" in FCRA as it does not impact a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Treating this data as a consumer report will make it nearly impossible to use in fraud prevention because the requirements of the FCRA would unnecessarily restrict data sources, which will allow fraudsters to exploit consumers.

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MicroBilt uses credit header data to validate a consumer's personally identifiable information ("PII") and match it to known fraudulent activity that used the same identifying data. The information is collected for non-FCRA purposes from various sources and is used to, for example, help ensure consumer payments are directed to the appropriate bank account, help prevent unauthorized transactions, help prevent fraud, identity theft or to validate the identity of a consumer in accordance with "Know Your Customer" rules. MicroBilt even provides ID verification for local, state and federal agencies for child support, student finance and state tax payments.

These fraud detection and identity theft prevention services not only protect consumers, but they also protect businesses, which ultimately lowers the cost of services for consumers. These services help businesses manage their losses by limiting the risk of fraud. As a third-party service provider, MicroBilt provides these services to small businesses that do not have the resources to build internal fraud detection and identity theft prevention tools. Restricting access to credit header data would disproportionately impact those businesses.

On the other hand, subjecting credit header data to the FCRA would introduce many restrictions that would only benefit fraudsters. Restricting the use of credit header data to only those permissible purposes under the FCRA would interfere with MicroBilt's ability to help customers detect fraud patterns and associations where credit header information is vital. Even if there was an FCRA permissible purpose to use the information, any security freezes placed on the credit header data would prevent its use for fraud and identity theft prevention. Further, adding the requirements of the FCRA dispute process where consumers could challenge credit header data as if it were a consumer report would allow fraudsters to improve their chance of success with future fraud schemes. By its very nature, credit header data is difficult to verify because, unlike a consumer report tradeline, the data is derived from a wide variety of sources.

Requiring MicroBilt to handle disputes of credit header data, even if it had the ability to do so, would also be expensive and would likely push many of MicroBilt's customers and data providers out of business—we have already heard from several of them in the SBREFA panel meetings that they are not able to take on the cost of implementing such a process. MicroBilt already absorbs the expense caused by the abusive tactics of fraudsters and credit repair organizations; expanding the scope of disputes would exacerbate it. To the extent such a dispute would not be something MicroBilt would be able to address, that information would be sent upstream to the originating NCRA, further clogging the system with additional disputes that must be resolved in less than a month's time. This has drastic implications for all consumer reporting agencies because of the increase in dispute volumes alone.

The CFPB has not explained why this proposal is necessary except to provide, without evidence, vague references that the data is "more frequently used for eligibility determinations." The CFPB surely has other, more tactical tools available to help stem this concern instead of broader, systemic change. Without credit header data, there is no reasonable alternative to match and verify the identity of consumers in an efficient and effective manner. Because the information contained in credit header data is widely used and replicated in billions of transactions, it is the core piece of any identity validation tool. Further, although the CFPB is much less clear on why this change is necessary, regulators and courts have been clear for decades that credit header data is not a consumer report. Until there are reasonable

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alternatives to the use of credit header data in fraud detection and identity theft prevention are available, this precedent must not change.

III. The Proposal Limiting the Use of Aggregated and Anonymized Data Would Stifle Innovation and the Effectiveness of Financial Products.

Although there is little detail, the Outline states that the CFPB would like to "clarify whether and when aggregated or anonymized consumer report information constitutes or does not constitute a consumer report." Outline at 11. Such a proposal runs counter to the definition of a consumer report and the spirit of the FCRA. It would also dramatically change the way companies improve and innovate products and services.

At its core, the FCRA is a consumer privacy statute, but is intended to regulate only a class of data on consumers – that which is of the most sensitive financial nature about a particular consumer. Therefore, if data does not pertain to an identifiable consumer, the FCRA does not apply.[1] That is consistent with the interpretation of regulators and courts for over forty years.[2] MicroBilt uses aggregated and anonymized data to gain insight and train models for its customers. We also use anonymized data sets to evaluate criteria and other standards. Financial institutions use aggregated and anonymized data sets to satisfy their due diligence requirements to vet vendors like MicroBilt under federal law. Without the ability to analyze the products to be purchased, the financial institution would not be able to test the sufficiency of the data and its impact on its business *without pulling live credit data on consumers in real time*. As the CFPB is aware, there is no permissible purpose for testing or evaluating providers or products. The current proposal cannot be the right balance. This information is crucial to improving the effectiveness of our products and services.

Further, we use the data to research products and identify consumer trends, which ultimately leads to newer and better products for consumers and businesses. For example, the use of aggregated and anonymized non-traditional payments data helped companies develop financial products for underserved consumers who do not have access to traditional financial products and services. Limiting the ability to do these kinds of analyses would slow down the progress that has been made on creating more opportunities for every consumer to meet their financial needs. As with credit header data, the CFPB offers little explanation as to the problem this proposal is trying to solve, which makes it challenging for MicroBilt to offer an alternative for the CFPB to consider.

IV. Adding FCRA Liability to Data Breaches Would Drive Up Insurance Costs.

The Outline indicates that the CFPB is considering making the "failure to protect against unauthorized access to consumer reports by third parties" a violation of FCRA sections 604 and 607(a). Outline at 14. While such a proposal does nothing to add to the obligations or standards businesses must follow to safeguard consumer report data, it adds a significant amount of liability to scenarios that already carry significant scrutiny and penalties under existing law.

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[1] See 15 U.S.C. § 1681a(d)(1); *McCready v. eBay, Inc.*, 453 F.3d 882 (7th Cir. 2006) (holding that a consumer under the FCRA must at a minimum "be an identifiable person").
[2] 55 Fed. Reg. 18804 (May 4, 1990); *Tailford v. Experian Information Solutions, Inc.*, 26 F.4th 1092 (9th Cir. 2022).

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MicroBilt is proud to invest substantially in a comprehensive approach to data security to ensure it safeguards consumer information. We have implemented security policies and procedures, regularly conduct risk assessments and perform security testing. We audit our security controls using internal and third-party auditors. We use a web isolation security platform to ensure we protect our network internally, and continuously monitor our network environment to detect suspicious activity. We also implemented a process to ensure security updates and patches are timely to fix known vulnerabilities.

In implementing these practices, MicroBilt follows existing state and federal requirements, including the Safeguards Rule,[3] promulgated under the Gramm-Leach-Bliley Act ("GLBA"), and the New York Cybersecurity Requirements for Financial Services Companies.[4] These statutes are broad and hold businesses like MicroBilt accountable for a breach that exposed consumer report data. There are also state data breach laws that govern MicroBilt and others. Indeed, the CFPB, Federal Trade Commission ("FTC"), attorneys general, other state regulators and consumers have repeatedly shown that they have sufficient tools to hold companies accountable under existing law.

As a result, SERs, even industry leaders like MicroBilt, have found it difficult to find cyber insurance coverage. In our last renewal, our cyber insurance costs increased by 300% and our deductible increased by 200% even though we have not had a reportable incident. Because we are a small business, we are not able to self-insure and need to maintain coverage to meet fiscal and contractual obligations to our customers. Several cyber insurance underwriters that were in the market a few years ago have now exited the market. The proposal would significantly add to the challenge in obtaining insurance coverage and likely make it nearly impossible. This ultimately impacts our ability to do business and limits competition and new product innovation. This would also likely drive a number of smaller companies out of the industry entirely, further consolidating the market and stifling competition.

Ironically, other proposals in the Outline would require MicroBilt to retain <u>more</u> sensitive consumer report data, while this proposal increases the exposure and potential liability for retaining that information. Businesses should be doing all we can to reduce that exposure and risk because, as the CFPB knows, bad actors frequently target even the most robust security systems and are, at times, successful.

V. The Proposed Changes to the Dispute Process Would Dramatically Increase Operational Costs and Increase Abusive Tactics.

The CFPB is considering proposals to change the dispute process by requiring consumer reporting agencies to adjudicate legal disputes during a reinvestigation and adding a new process to address potential "systemic issue" disputes. These changes would increase the cost of an already burdened dispute process, while providing little value to consumers.

As it relates to disputes involving legal matters, MicroBilt has already explained during the SERs hearing that we handle all disputes in the same manner, regardless of the stated basis of the dispute. MicroBilt does as much as we can to reinvestigate disputes with the information available to us. When a

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[3] 16 C.F.R. § 314.

[4] 23 NYCRR Part 500.

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consumer, however, raises a legal challenge to the validity of a debt, there is no way for MicroBilt to verify the information. Adjudicating legal disputes is something MicroBilt is not equipped to handle and would take a robust legal team to be able to implement. If this process were required, MicroBilt would likely delete the disputed information rather than attempt to adjudicate it. This would result in inaccurate consumer reports and fraud. Further, the cost of building that team and implementing a process would be cost-prohibitive to pursue. Several U.S. circuit courts have agreed that adjudicating legal disputes should not be our responsibility, especially given the resources and limited information that consumer reporting agencies have when reinvestigating a dispute.

On the flip side, the CFPB has provided little information as what it considers to be "systemic issues" and how it might propose MicroBilt handle them. The vague nature of the proposal reflects the complicated nature of a "systemic issue." Systemic issues, like disputes, are likely to be highly fact specific. Consumers rarely have a way of knowing if their dispute is "systemic," and even businesses have a challenging time identifying them without observing incidents over a period of time and reviewing multiple indicators that an issue extends beyond a handful of consumers. Because this new process would likely require some kind of escalated review to determine if a dispute is systemic, consumers (and particularly credit repair organizations and consumer litigation attorneys) would designate nearly every dispute as a "systemic issue." That would invariably stall an already overburdened system. Indeed, we estimate that MicroBilt would have to double its disputes team if the proposals were adopted.

MicroBilt spends, on average, approximately 10 to 15% of annual revenues for security, compliance and consumer services. Nevertheless, we have seen a dramatic increase in abusive tactics by attorneys and credit repair organizations. These tactics have clogged the dispute system with frivolous disputes and increased the cost of the process. This dramatic rise in dispute submissions was not caused by an increase of inaccurate data, it is part of an intentional strategy by attorneys and credit repair organizations to harass consumer reporting agencies into making changes to consumer reports that artificially improve credit scores and generate fees. For example, MicroBilt has processed four times the number of "form disputes" from credit repair organizations than we did just last year. These letters look identical—they include the same grammatical errors, cite the same incorrect information about the FCRA and request the same outcome on behalf of consumers. This increase has contributed to the need for MicroBilt to increase resources and invest even more in the dispute process. For those furnishers and CRAs that cannot keep up with this huge uptick in disputes, their often truthful and accurate information is removed from the system. While at first blush this may seem helpful to the consumer, it can in fact result in an inflated appearance of credit worthiness or credit capacity that results in a consumer becoming over-leveraged. While the CFPB has brought enforcement actions against certain credit repair organizations, a significant number of bad actors remain and continue to make it harder for consumers with legitimate disputes to have their disputes appropriately reinvestigated. As a result, any changes to the dispute process should focus on reducing abusive tactics, and not incentivizing them.

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VI. Conclusion

MicroBilt again appreciates the opportunity to engage in this process as a SER and hope the CFPB gives these comments serious consideration in its efforts to minimize the potential impact of new regulations on small businesses. We would be happy to discuss any of these issues further.

Best,

Walter R. Wojciechowski, CEO

Walt Wojciechowski
Chief Executive Officer
MicroBilt Corporation

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