Credit Information Systems

November 5, 2023

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Via Electronic Delivery to
CFPB_consumerreporting_rulemaking@cfpb.gov

RE: Small Entity Representative Written Feedback to the Consumer Financial Protection Bureau Small Business Advisory Review Panel for Consumer Reporting Rulemaking – Outline of Proposals and Alternatives Under Consideration

To Whom It May Concern:

The Credit Bureau of Council Bluffs, Inc., which does business as Credit Information Systems, ("CBCB") would like to thank the Consumer Financial Protection Bureau ("CFPB") for the opportunity to participate as a small entity representative ("SER") to the CFPB's Small Business Advisory Review Panel for Consumer Reporting Rulemaking. In addition to our verbal remarks which we provided during our recent meetings, CBCB respectfully offers the following written feedback for the CFPB's consideration under the Small Business Regulatory Enforcement Fairness Act ("SBREFA") process.

My name is Heather Russell-Schroeder, and I am the owner and president of CBCB. CBCB has been privately owned by my family, the Russells, since 1948. I have worked for the business since 1984 and served in the role of President since 2008. But the company's history reaches back even further, as it has been helping consumers fulfill their financial dreams since 1915. From our original work preparing paper files to the modern reality of instant tri-merge credit reports, we have faithfully executed our mission to provide integral information to our clients so they can confidently make important lending decisions. As the industry has changed over the years, one thing has remained constant: our clients rely on us to provide them, and their customers, with the information they need when they need it to make sound lending decisions. To that end, our credit reporting, appraisal management, and lending risk mitigation products enable consumers to obtain mortgage loans, consumer loans, auto loans, apartment rentals, and employment opportunities.

We maintain an expert staff to assist consumers as they navigate the financial system. That staff consists of over 400 years of combined experience. Our staff is located at our corporate office in Council Bluffs, Iowa and also includes team members in Tennessee, Texas, and Connecticut. We serve clients nationwide. As a small

consumer calls our office, our staff answers the phone ready, willing, and able to assist. As a small business serving the financial industry, we take great pride in our integrity and in meeting our compliance obligations. As such, we maintain policies and procedures in keeping with all local, state, and national regulations to guard consumer information.

We are fully supportive of efforts to promote fair and accurate credit reporting while allowing small entities to thrive and serve their customers and their consumers effectively, but one aspect of the proposed rulemaking that we hope that the CFPB will pay close attention to is the potential impacts on small businesses, like us, if our current product and service offerings must be scaled down or sold off completely due to burdensome regulatory compliance processes. While we value the goal of enhancing consumer protections, we believe these proposals will come with unintended consequences for small entities like ours. Small consumer reporting agencies like us often operate with limited financial resources and leaner margins than the large players. Increased costs could be more easily borne by larger industry players, thus driving smaller entities out of the marketplace and/or causing market consolidation and decreased competition.

In the long run, we believe that such consolidation would harm consumers rather than benefit them by restricting access to credit and increasing costs related to financing and other financial services. Richard Cordray said in his July 16, 2012, Field Hearing: "Given its enormity, given its influence, and given its wide impact on our overall economy, you can see that there is much at stake in ensuring that the credit reporting market is working properly for consumers." I believe it is therefore essential to strike a balance between ensuring consumer protection and ensuring that these proposals do not become overly burdensome for small entities like mine that serve important sectors of the economy and work to benefit consumers.

Once again, thank you for this opportunity, and we look forward to a productive collaboration with the CFPB on an ongoing basis.

A. Definitions of consumer report and consumer reporting agency

The CFPB's Outline of Proposals and Alternatives Under Consideration ("Outline") contains four proposals to expand the definition of "consumer report" and "consumer reporting agency" under the Fair Credit Reporting Act ("FCRA"), which we believe could negatively impact the CBCB. For example, if we use a smaller vendor for part of our services today and that vendor is impacted by the proposed rules in a manner that they cannot afford to stay in business because of the increased compliance costs of becoming a consumer reporting agency ("CRA"), then we may not be able to negotiate a suitable replacement for this vendor. If we are forced to increase the cost of our products and services as a result, these may become less available to the marketplace, and consumers would suffer due to increased costs at the time of application or tightening of the availability of credit overall.

1. Data brokers

The CFPB Outline proposes to expand the scope of the FCRA to cover entities often referred to as "data brokers".[1] Despite participating in the SBREFA process, we remain unable to understand the scope of these proposals as the CFPB has not provided a clear definition or example of what kinds of entities it considers to be "data brokers," which is not a defined term under the FCRA. The vague use of the term "data brokers" makes it very difficult for members of the consumer reporting industry, especially a small business like our company, to assess the potential impact of these proposals or the potential impact on their own businesses.

For example, the CFPB proposes a rule change that could make a data broker a CRA if it sells certain types of data "typically" used for credit or employment eligibility determinations even if the data broker has no intention of selling the data for such an eligibility determination or even if the data is not used for such an eligibility determination. We believe that this could lead to an arbitrary standard that would lead to regulatory uncertainty as the CFPB has not provided any clarity on the breadth of the word "typically" or how the CFPB plans to define what data falls into this category. When asked during the SBREFA panel discussion how the CFPB would define what types of data are "typically" used for credit or employment eligibility purposes, the CFPB responded only that its thinking "is evolving" in that regard. We request that the CFPB either (1) not move forward with this proposal or (2) provide additional information about how this determination will be made.

Despite the non-specificity of the CFPB's data broker-related proposals, it is clear that redefining "consumer reporting agency" and "consumer report" to bring more entities into scope of the FCRA would have unintended consequences by significantly increasing compliance costs and forcing many smaller entities out of business, leading to market consolidation and less competition in the marketplace, resulting in a negative impact on consumers from higher costs to secure financial services. Entities like mine that have operated under the FCRA have very strict and defined policies and procedures for compliance. A new definition of a CRA would require the data broker to comply with all FCRA obligations resulting in new and unfamiliar processes to this ecosystem, the consequences of which may include service delays or disruptions and changes in the information being delivered and how the information gets delivered. Such unintended consequences could cause adverse disparate impacts to certain demographic populations that rely on this information to enter or remain active in the financial services industry.

The CFPB's Outline specifically references criminal records as an "example" of a type of consumer data that is "typically used for credit and employment determinations."[2] However, criminal records are also used by government agencies for law enforcement purposes. Those agencies in some cases rely on private databases and court runners to conduct criminal record research for law enforcement purposes, particularly in the instance of records from rural communities that do not provide full online access for their records. Thus, the CFPB's proposal would end up increasing costs or reducing available

[1] Outline at 7-8.
[2] Outline at 8.

research tools for government agencies engaged in law enforcement as well as other users of such data that fall outside of the FCRA.

2. Defining "assembling or evaluating"

The CFPB's Outline proposed changing the interpretation of the terms "assembling" and "evaluating" as used in the FCRA's definition of consumer reporting agency to ensure that "entities that facilitate data access between parties" fall within the definition of a CRA.[3] I have strong concerns about any expansion of these definitions in a manner that could potentially include a vast array of software providers, electronic platforms, and other data access vendors as CRAs. These potentially impacted software providers already answer to regulators for their compliance with the Gramm-Leach-Bliley Act with respect to protecting consumer data. As service providers to the financial services industry, they also meet various vendor management requirements to prove themselves as secure and responsible partners that have access to, store, transmit or process consumer information.

Consumer report resellers, like CBCB, would be particularly impacted by this proposal. As defined under the FCRA, a "reseller CRA" relies on "information contained in the database of another consumer reporting agency or multiple consumer reporting agencies" and "does not maintain a database of the assembled or merged information from which new consumer reports are produced." 15 U.S.C. § 1681a(u). Thus, resellers regularly use electronic data access to perform their statutorily defined role of reselling information obtained from other entities. Many resellers rely heavily on technology service providers and data access platforms to obtain and deliver the data they are reselling. Additionally, with the advent of tri-merge credit reporting, smaller resellers like CBCB have relied on third-party technology providers and software to draw information from the credit bureaus and perform the technical processes to merge the information into a single report, which we then deliver to our end user clients. Those technology providers are not currently considered CRAs, and they do not have any interaction with the end user receiving the consumer report: instead, a CRA such as CBCB necessarily stands between them and the end user.[4] While some larger CRAs possess their own technology solutions for retrieving, merging, and reformatting tri-merge credit reports, hundreds of smaller businesses currently operate in the United States today on a business model that requires reliance on third-party technology providers.

The CFPB's proposal would have severe unintended consequences on small CRAs by eliminating from the marketplace the data access platforms on which they rely, as the obligations to comply with all sections of the FCRA would simply become too costly and burdensome to these companies. Unlike the large CRAs, small CRAs often do not own their own technologies for accessing data directly, and thus must rely on other entities to facilitate that access. The CFPB's proposal would almost certainly result in

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[3] Outline at 9.

[4] *See* Federal Trade Commission, 40 Years of Experience with the Fair Credit Reporting Act ("40 Years Report") at 29 (explaining that a company that provides a software to process and merge credit information is not a CRA, as distinguished from a consumer reporting agency that utilizes a software to assemble the information for transmission to end users).

many of those entities leaving the marketplace or substantially increasing the prices for their services. CBCB and other small CRAs in a similar position would not be able to create their own technologies quickly or in a cost-effective manner to remain competitive. The need to do so would require a significant investment of resources and time. In short, the system in place today works to support small business CRAs and consumers. We honor our FCRA obligations and serve consumers, and the technology platform companies honor their obligations to support the mortgage industry through innovation in merging and "de-duping" the credit information and delivering this data through secure/compliant transmission.

Additionally, there are other limitations on who can transmit certain data that cannot be overcome even with adequate resources. For example, there is a limited number of platforms that are integrated into government-sponsored enterprises (GSEs), such as Fannie Mae and Freddie Mac. The GSEs are not currently accepting new technology partners. While larger CRAs already have established relationships with those entities, CBCB relies on two electronic platforms to transmit information to the GSEs for its end users. If one or both entities were forced out of business because of the CFPB's proposals, CBCB would be left without a meaningful option for integration with Fannie Mae and Freddie Mac. Even if CBCB could develop its own technology platform quickly, which would be a massive feat in and of itself, it would not be able to obtain the same level of integration as CBCB does not have the same established relationships with the GSEs as currently exist with CBCB's technology partners. The CFPB's proposal could realistically cut CBCB off from integration with Fannie Mae and Freddie Mac, which would force CBCB to shut down its mortgage line of business entirely. CBCB's mortgage line of business currently equates to 90% of the credit reporting services sold by CBCB. Without the ability to serve the mortgage industry we would be forced to go out of business.

CBCB notes that although these impacts would certainly be felt by the mortgage industry, the impacts will also be felt in numerous other industries that similarly rely on third-party intermediaries to move, transmit, and integrate data. The proposal will have profound and costly impacts on CRAs operating in areas such as auto loans, student loans, personal loans, as well as small credit unions and banks that rely on such intermediaries.

3. "Credit header" data

The CFPB Outline proposes to redefine "consumer report" such that it includes transmissions of "credit header data."[5] The CFPB acknowledges this proposal would "likely reduce, perhaps significantly," a CRA's ability to sell or otherwise disclose credit header data without a permissible purpose.[6]

CBCB's understanding is that credit header data refers to a consumer's identifying information such as names, addresses, Social Security number, and phone numbers.[7] Historically, such information has not been considered a "consumer report," as it does not

[5] Outline at 10.
[6] *Id.*
[7] Outline at 10.

meet the plain statutory definition of a consumer report. The FCRA expressly provides that a consumer report must "bear on" at least one of seven enumerated characteristics regarding the consumer and must be used or expected to be used for one of the FCRA's enumerated permissible purposes.[8] Credit header data does not "bear on" any of those enumerated characteristics for a consumer: to the contrary, it is merely identifying information.[9] In the Federal Trade Commission ("FTC") staff report on 40 Years of Experience with the Fair Credit Reporting Act ("40 Years Report"), the FTC affirmed: "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."[10]

Credit header data is frequently used for identity verification and fraud prevention purposes, particularly in the financial services sector and for online transactions. It is also used for checking and savings account openings as a resource to confirm identities. Without access to this information, these products would become more costly, perhaps making them unreachable to the unbanked or underserved consumer. Additionally, credit header data is frequently used by financial institutions to comply with anti-money laundering laws, "know your customer" requirements, and industry red flag rules which are not FCRA permissible purposes. While the FCRA does provide that obtaining the written permission of the consumer to whom the report relates is a permissible purpose, that alternative would likely not be available for fraud prevention and identity verification, because a fraudster or identity thief would be unlikely to provide consent knowing that doing so will uncover their malicious activity. Furthermore, forcing banks to request written permission from consumers to pull a "consumer report" whenever there is a need to verify their identity raises the risk of confusing consumers who don't understand what is entailed and how that may affect their credit or undermine their privacy. We anticipate that many consumers will likely deny such requests due to misunderstanding the nature of the request.

Thus, if the intent or effect of the CFPB's proposal will be to eliminate the ability of credit header data to be sold for a non-permissible purpose, then identity verification and fraud prevention would become prohibited uses of credit header data. Such an effect would cause harm to consumers by making it easier for fraudsters to perpetrate fraud and by increasing transaction and security costs for online transactions and account openings.

Prohibiting the sale of credit header data for such uses would severely harm small banks and credit unions that do not have the resources to conduct due diligence on their customers through other means, preventing them from complying with their legal obligations to do so. In small rural communities, where there may be only one bank serving a relatively small population, that bank may be able to verify identities for longstanding local residents based on personal knowledge. But newcomers or visitors in such communities will be disadvantaged and potentially blocked from using the services of such a bank, such as seeking a checking account, because the bank does not have a

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[8] 15 U.S.C. § 1681a(d)(1).

[9] *See Individual Reference Servs. Grp., Inc. v. F.T.C.*, 145 F. Supp. 2d 6, 17 (D.D.C. 2001) (recognizing credit header data is not a consumer report).

[10] 40 Years Report at 21.

reliable source of nationwide identity verification information. Consumers with recent name changes (e.g., recently married or transgender) or address changes not yet reflected on their official identification documents will be particularly harmed, whereas the use of credit header data ordinarily allows for easy verification that such consumers are who they say they are. Further, the lack of access to credit header data—an unbiased source of identifying information unattached to any indicators that could fuel discrimination—will result in an increase of human bias and prejudice infecting such transactions. Lastly, any changes to access to credit header data would be counterproductive to recent financial services efforts to seek inclusivity and to serve the "unbanked" or "underserved populations" (often including minority populations) with easier access to various services.

4. Aggregated Data

The CFPB Outline proposes to clarify whether aggregated or anonymized consumer report should continue to be considered consumer report information.

The FCRA defines "consumer" as "an individual," meaning one person, not many people.[11] The FCRA defines "consumer report" as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for" credit, employment, insurance, or other permissible purposes allowed by the FCRA.[12] The information in a consumer report must have a "bearing on" a single person's specified consumer characteristics (e.g., credit worthiness). Aggregated and anonymized data does not have a "bearing on" a single person's specified consumer characteristics because the data is either an aggregation of many different consumers' information, or anonymized and therefore is unrelated to any identifiable consumer. This interpretation of the plain text of the FCRA is consistent with how the FTC has historically interpreted the applicability of the FCRA to aggregated and anonymized data. In its 40 Years Report, the FTC states the following with respect to aggregated and anonymized data and consumer reports:

> A "consumer report" is a report on a "consumer" to be used for certain purposes involving that "consumer." Information that does not identify a specific consumer does not constitute a consumer report even if the communication is used in part to determine eligibility. For example, a communication that flags a specific Internet transaction as potentially fraudulent based on comparison to aggregate data about Internet transactions (e.g., time-of-day activity, geographic location, amount of the transaction, etc.), without reference to an individual consumer, is not a consumer report.[13]

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[11] See 15 U.S.C. § 1681a(c).

[12] See id § 1681a(d) (emphasis added).

[13] *See* 40 Years Report at 20 (emphasis added).

Because the plain text of the FCRA and the FTC already provide guidance on whether aggregated and anonymized data is a consumer report, we do not believe the CFPB needs to provide further clarity on this topic. An interpretation of "consumer report" that would expand the definition to include aggregated and anonymized data is only going to hurt businesses and consumers.

Expanding the definition of "consumer report" to include aggregated and anonymized data will deprive businesses of valuable information they need to operate and offer the best products to consumers. For example, a creditor that obtains aggregated and anonymized data can use that data to refine its credit policy to avoid credit losses, and its pricing policy to offer the most competitive credit pricing. If a creditor loses access to aggregated and anonymized data because it must have a permissible purpose to obtain that data, the creditor may not be able to test credit and pricing models on aggregated and anonymized data before putting those models into production, or back-test those models to identify weaknesses and/or model deterioration. Creditors will respond by tightening credit policies or increasing pricing. Consumers will suffer as a result, because of reduced access to credit and higher credit costs. Consumers with lower credit scores will suffer the greatest harm because creditors will be unable to use aggregated and anonymized data to find alternative methods to underwrite and price those consumers.

If the CFPB decides that further clarity is needed, we strongly encourage the CFPB to provide additional clarity that is consistent with the plain text of the FCRA and the FTC's interpretation to avoid causing harm to businesses and consumers.

B. Permissible Purposes

1. Written Instructions of the Consumer

The CFPB Outline proposes to impose rigid new requirements on the FCRA permissible purpose based on the "written instructions of the consumer to whom [the consumer report] relates."[14] The CFPB does not provide much insight into exactly what it plans to do, but the CFPB notes several "proposals under consideration," including:

- The steps required to obtain a consumer's written instructions;
- Potential limitations on who may collect such written instructions;
- Limitations on the scope of such written instructions;
- Defining who can collect such written instructions; and
- Methods for revoking modifying such written instructions.[15]

However, the FCRA places no such restrictions on what should constitute a consumer's written instructions.[16] The FTC noted in its 40 Years Report that a simple "I

[14] *See* 15 U.S.C. § 1681b(a)(2).
[15] Outline at 12-13.
[16] *See* 15 U.S.C. § 1681b(a)(2).

authorize you to procure a consumer report on me," without any specific reasons for the request, provides a permissible purpose.[17]

Many parties rely on written instructions as a permissible purpose to obtain consumer reports for reasons that may not be covered under the existing FCRA permissible purposes. Imposing burdens on a process that could impair the ability of consumers to provide their written instructions will potentially reduce the availability of credit to consumers. In today's world consumers expect to be able to navigate financial services quickly and efficiently and get access to the funding that they need when they need it. Consumers would be harmed by taking away their ability to give their written consent for potential creditors to access their credit reports.

2. Legitimate Business Need

The CFPB Outline proposes to clarify the ability of end users to obtain consumer reports for a legitimate business need in connection with a business transaction that is initiated by the consumer or to review an account to determine whether the consumer continues to meet the terms of the account.

With regard to business transactions, the CFPB appears to be equating such a "need" with the other FCRA permissible purposes by requiring that a consumer report may only be procured to determine eligibility for the specific business transaction.[18] By limiting the ability of companies to seek consumer reports for other needs related to a business transaction outside of an eligibility determination, the CFPB would make this FCRA provision superfluous, which would be contrary to the black letter of the law. This would harm consumers especially if they are unbanked or underserved. For example, if a consumer needs to rent a car, but does not have a major credit card like a VISA or MasterCard, a car rental agency may pull a credit report before allowing a consumer to rent the vehicle using a debit card. The car rental agency has a legitimate business need to ascertain the risk involved with renting the vehicle to this consumer, but it would not otherwise have a permissible purpose under the FCRA.

Regarding account reviews, the CFPB appears to limit the use of a consumer report to only those situations where a business can demonstrate that the consumer report was "actually needed" by the user.[19] It remains unclear how a business would be able to demonstrate such a need or how a CRA would be able to monitor for such needs. We are concerned that the CFPB may establish a requirement for which it would be impossible to comply.

C. Data Security and Data Breaches

The CFPB Outline proposes to protect consumer reports from data breaches or unauthorized access by imposing a strict liability regime on CRAs. The CFPB appears

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[17] 40 Years Report at 43.
[18] Outline at 13.
[19] Outline at 13-14.

to interpret the FCRA as equating a data breach by a threat actor with an intentional provision of a consumer report to an end user. There is nothing in the FCRA that addresses data breaches, and we encourage the CFPB not to legislate through its rulemaking. There are numerous other statutes on both a federal and state level that address data security and breaches. Imposing new requirements on CRAs will simply increase compliance costs, including increased costs for commercial crime and cyber insurance policies, without any corresponding consumer benefit.

CBCB has already seen a steady increase in the cost of coverage for commercial crime and cyber insurance over the years we have had these policies in place. With strict controls and SOC 2 Type II audits conducted annually, the premiums are still in the five figures range for annual coverage. CBCB has invested heavily in threat monitoring and detection and takes the responsibility to safeguard consumer data from criminals very seriously. To penalize CRAs for the unscrupulous actions of criminals whose sole intent is to defraud and cause harm to consumers is unfair and unwarranted. If a strict liability regime were to be imposed on small CRAs, most businesses in this space would be unable to continue due to the inability to plan and pay for the criminal actions of others.

D. Disputes

1. Disputes involving legal matters

The CFPB Outline proposes to undermine years of existing interpretation about the applicability of the FCRA to legal disputes, rather than only factual disputes.

CBCB, as stated before, is a reseller under the FCRA. A reseller's obligation regarding disputes is defined in FCRA 611(f). Summarized here: Once a reseller determines the consumer's dispute was not caused by an act or omission of the reseller, the reseller must forward the notice of the dispute and all relevant information to the CRA that provided the information to the reseller to investigate. The CRA would then investigate the dispute and update their database according to the results of that investigation, and it would communicate those results back to the reseller who then sends the copy of the results to the consumer. CBCB forwards all disputes to the originating CRAs and does not determine if the dispute is legal or factual in nature.

CBCB's main business line is providing tri-merge credit reports (also known as a mortgage credit report) to the mortgage industry. In the course of working with mortgage lenders, information on a consumer credit report could need to be updated or investigated based on the information obtained at the time the credit report was pulled. Our credit support staff verify and update information on mortgage credit reports at the request of our lender clients. The credit support staff at CBCB contact creditors, with the consumer's authorization, to obtain updated account information to supply to the mortgage lender. The credit information supplied by the creditor (or furnisher of the information) is solely information based upon the facts related to the account being verified. Some of these facts are current balance, date of last payment, date next payment is due, address of the property used to secure the loan in the case of a

mortgage, etc. If a consumer were to claim that a specific account should not be reported on their mortgage credit report because of a legal dispute, then CBCB would have no way to verify the authenticity of that claim.

CRAs like CBCB are not in a position to adjudicate legal claims. We do not have the internal staff or resources to develop expertise on the nuances of all potential relevant federal and state laws and regulations that could give rise to legal issues, conduct lengthy reviews of the enforceability of various provisions in consumer agreements, or digest opposing arguments between a furnisher and a consumer.

For example, in a situation where everyone agreed that a consumer borrowed the amounts reflected on a credit report, but the consumer disputed whether the debt was collectible because of a violation of an obscure law, we could not resolve that dispute – only a court could. No amount of investigation by a CRA could substitute for the careful consideration of the facts of a case and the applicability of the law by a court of law. Even if we were able to incur (we are not) the substantial cost of adding attorneys to our current staff to assist with legal disputes, we would not be able make the kinds of determinations that are only appropriate for a judge.

We strongly discourage the CFPB from taking a wildly impractical approach toward this issue that would be out of alignment with prior interpretations of the FCRA over the past 50 years.

2. Disputes involving systemic issues

The CFPB Outline proposes to require CRAs and furnishers to investigate and address systemic issues affecting the completeness or accuracy of data involving multiple consumers. The CFPB, however, has not provided insight into how a CRA would make a determination that an issue is systemic, such as how many consumers would need to be impacted. During the SER meetings, the CFPB staff suggested that this threshold could be set to as low as two consumers.

We believe that the process envisioned by the CFPB is inconsistent with the framework established by the FCRA. For example, the FCRA requires a CRA in response to a dispute to investigate the completeness or accuracy of any item of information contained in ***a*** consumer's file. The items contained in all consumer credit files are provided to the CRA by third party entities who furnish the information, referred to as "furnishers." The FCRA already requires furnishers to have reasonable policies and procedures concerning the accuracy and integrity of furnished information as set forth in 12 CFR Part 1022 – Fair Credit Reporting (Regulation V). Furnishers complying with Regulation V would reasonably be able to identify issues in their own reporting and mitigate any issues discovered through implementing their own procedures, as already required under the law. Furthermore, the FCRA requires furnishers to report the results of its investigation into a dispute to ***the*** consumer, not to all similarly situated consumers that may have been impacted by an issue discovered during the course of the investigation. However, if an issue did affect more than one consumer, such as in the

case of a jointly held account, the furnisher would be obligated to correct the information for all affected consumers whether or not they have disputed the information impacted. Even if the furnisher uncovered a systemic issue in response to reinvestigating a dispute, CRAs like CBCB would have no visibility into such systemic issues that may originate with a furnisher.

This kind of mass-dispute-response procedure would be incredibly burdensome to implement, particularly given the fact that many of the affected consumers in such a scenario may not have been harmed by the issue at all if no consumer report with such information had been provided to any end users. In the litigation context, the Supreme Court has held that a class action cannot be maintained where absent class members suffered no injury from an alleged FCRA violation. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021) ("No concrete harm, no standing."). That same reasoning counsels against imposing a burdensome requirement of providing dispute correction notices and disclosures to potentially thousands of consumers regarding an issue that may have never harmed them. The FCRA does not contemplate that investigations would expand beyond a single consumer or that the results of investigations would be communicated in such a broad fashion as the CFPB Outline proposes.

Although the CFPB noted that it is also considering whether to provide a rubric or template that consumers could use to submit disputes relating to systemic issues, we strongly encourage the CFPB to ensure that any such identification by a consumer should be rebuttable by a CRA's own determination on how widespread the issue may be across consumers. We would also like to note that consumers do not have access to other consumers' credit reports, and they have no permissible purpose to view that information. Therefore, it is unclear to us how a consumer could ascertain that an error which occurred on their own personal credit report was also reflected in another consumer's report unless they were violating the FCRA by viewing such report without a permissible purpose.

Furnishing information to the nationwide CRAs is not obligatory. If furnishers cannot rely on compliance with the reasonableness standard established under Regulation V to protect them from possible class action lawsuits based on consumer supposition (i.e., that if an error occurred on their report, it must have occurred on other's reports), then an unintended consequence of the CFPB's proposal would be that the furnisher might stop reporting altogether. Recently, there has been great movement by the nationwide CRAs to obtain more information from creditors not currently reporting information, such as utilities, telephone companies, landlords, and rental data. This push has been inspired by the need to be more inclusive in the financial services industries to assist the unbanked and underbanked with their financing needs. This additional information allows lenders to make confident lending decisions to those individuals. They are now lending to consumers who would not have been qualified before due to a lack of a traditional credit file, or a thin credit file. All this good work could be undone if these new furnishers decide it is too risky to report information to consumer reporting agencies for fear of a class action lawsuit despite their best efforts to comply with Regulation V.

If furnishers no longer consistently report account information to the CRAs, then lenders will no longer be able to rely on the credit reports supplied to them to fully and accurately assess a consumer's credit worthiness. The lending industry would regress decades and go back to credit bureaus who take information supplied by the consumer and call each creditor listed by the consumer to verify the account information. CBCB was one of those credit bureaus that processed credit reports manually for mortgage lending, and the reports took days, not seconds to process like they do now. Credit is the foundation of commerce. Without a strong credit reporting system, commerce stops. Consumers will be unable to finance education, vehicles, or homes. Students would not be attending universities. Vehicles and homes would not be built because no one would be able to purchase them, leaving many middle-class Americans without jobs. It is essential for the American people that a robust credit reporting system be maintained.

As a small business, CBCB will be greatly impacted by the proposals, leaving us with an uncertain future. The stability and integrity of the United States financial services industry would be greatly impacted by these proposals, leaving American consumers nowhere to turn to get financing for the purchases they cannot complete with cash on hand. Every day my staff helps consumers to achieve the American dream of homeownership. We help consumers navigate the biggest purchase of their lives. We provide the information necessary for lenders to make confident decisions. If the information we currently provide were to be restricted or downgraded due to data brokers leaving the industry or creditors electing not to furnish information, then the impact to the American economy would be catastrophic.

We hope that the CFPB will take into consideration and prioritize our written feedback to the Consumer Reporting Rulemaking Process. We respectfully request that the CFPB continue to work in concert with the SERs as you develop final rules, including the opportunity to provide further comments in response to an Advance Notice of Proposed Rulemaking (ANPRM) that provides more specific details about the CFPB's plans, rather than progressing directly to a Notice of Proposed Rulemaking (NPRM). We look forward to working with the CFPB to find the right balance between consumer protection and the practical needs of small businesses like ours.

Sincerely,

Heather Russell-Schroeder

Heather Russell-Schroeder
President