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November 6, 2023

The Honorable Rohit Chopra  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

*Submitted via email to CFPB\_consumerreporting\_rulemaking@cfpb.gov*

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

Dear Director Chopra:

I submit this letter on behalf of Equifax Inc. in response to the CFPB's consumer reporting rulemaking outline (Outline). Equifax supports initiatives that improve the consumer experience and outcomes in the consumer reporting ecosystem, drive competition, promote regulatory parity, and provide clear guidance to support compliance, and Equifax's comments are made with these principles in mind. Equifax also commends the CFPB for its work to understand the impact of this rulemaking and encourages the CFPB to continue to gather the input of experts and impacted companies as it moves forward with this process. To that end, Equifax welcomes the opportunity to meet with you to discuss these and alternative proposals in more detail and to provide additional input as you continue to develop the proposed regulations.<sup>1</sup>

As a threshold matter, in its September 2023 Outline, the CFPB provided information about the topics it may include within a consumer reporting rulemaking; however, it did not provide detailed information about potential amendments to the current regulations. We respectfully encourage the CFPB to issue an Advance Notice of Proposed Rulemaking (ANPR), with more details about the proposed changes, prior to releasing a consumer reporting Notice of Proposed Rulemaking (NPRM). We believe this step is necessary in order to obtain the appropriate degree of public input, similar to the process the CFPB completed related to the Personal Financial Data Rights NPRM.<sup>2</sup>

**A. Definitions of consumer report and consumer reporting agency**

Under the current regulatory framework, consumers benefit from the use of consumer data for non-FCRA purposes such as fraud prevention and detection, Know Your Customer (KYC) activity, identity verification and

<sup>1</sup> Equifax appreciates that the Outline contains only high-level proposals that are likely to have a material impact on small business entities. As a result, in this letter, Equifax does not address the scope of the CFPB's rulemaking authority for any particular changes.

<sup>2</sup> See Electronic Fund Transfers (Regulation E) (77 FR 30923, May 24, 2012), Debt Collection (Regulation F) (78 FR 67848, November 12, 2013), Residential Property Assessed Clean Energy Financing (84 FR 8479, March 8, 2019), Home Mortgage Disclosure (Regulation C) Data Points and Coverage (84 FR 20049, May 8, 2019), Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z) (84 FR 37155, July 31, 2019), Dodd-Frank Act Section 1033 – Consumer Access to Financial Records (85 FR 71003, November 6, 2020), and Credit Card Late Fees and Late Payments (87 FR 38679, June 29, 2022), (87 FR 42662, July 18, 2022).

authentication, economic and public interest research, and risk management.<sup>3</sup> As the CFPB considers expanding the FCRA to cover businesses engaged in these activities, we encourage the CFPB to do so in a way that ensures these and other solutions that benefit consumers can continue to serve these important functions.

## **1. Data brokers**

Equifax supports rulemaking designed to increase competition in the market and protect consumers. However, a sweeping change in the definition of “consumer report” or “consumer reporting agency” may lead to a more complex regulatory framework, create consumer confusion, and increase the friction between consumers and consumer reporting ecosystem.

For example, if the definitions are expanded, it is unclear how many data brokers would then be nationwide consumer reporting agencies under Section 603(p), how data brokers would participate in the dispute process without traditional data furnisher relationships, or how consumers would manage their rights with respect to consumer reporting agencies if the number of such agencies dramatically increases. The FCRA imposes several obligations on consumer reporting agencies to permit consumers to access information in their file and to provide options to dispute and block, add alerts, opt out, and place freezes. The FCRA also imposes requirements for coordination between nationwide consumer reporting agencies in relation to many of these consumer rights.

Equifax believes that the current definitions of “consumer report” and “consumer reporting agency” strike the right balance. To the extent that the definitions are expanded, we urge the CFPB to consider the complexity of implementation for its proposal, including the potential for consumers to be required to expend additional time and effort to exercise their rights, and whether there is an alternative to bringing data brokers into the scope of the FCRA that will afford consumers greater protection and provide a more consistently implementable regulatory framework for data brokers.

## **2. Defining “assembling or evaluating”**

Equifax supports the CFPB’s desire to clearly define FCRA terms, consistent with the legislative intent of those terms. We believe that clarity drives both consistency in the industry and competition by establishing a level playing field for companies subject to the FCRA. However, we urge the CFPB to consider the potential implications of overly broad definitions. For example, companies that “assemble” or “evaluate” data to provide fraud prevention solutions could be captured by a definition that is not narrowly tailored. These types of companies provide valuable solutions for consumers, and work to protect consumers from fraudsters and criminals. Bringing these types of companies into the scope of the FCRA, and allowing fraudsters the opportunity to modify data used to verify consumers identities, may ultimately result in increased fraud. As another example, some companies act as service providers in the financial ecosystem to bring data from multiple sources together into a usable format for an end-user. These service provider entities provide valuable services that support consumer lending, but may be hindered by an expansive view of “assembling or evaluating.”

## **3. “Credit header” data**

Credit header information, such as name, current and former addresses, Social Security number, date of birth, and phone number, does not meet the current, definitional standard for a consumer report. In general, that information does not have a bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for the purpose of serving as a factor in

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<sup>3</sup> See Ellman, E. (July 14, 2023). Request for Information, Consumer Financial Protection Bureau; Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information (88 Fed. Reg. 16951-16954, March 21, 2023). Consumer Data Industry Association. Retrieved from <https://www.regulations.gov/comment/CFPB-2023-0020-3900>.

establishing the consumer's eligibility.<sup>4</sup> Further, credit header information received from financial institutions is already regulated under the Gramm-Leach-Bliley Act<sup>5</sup> (GLBA), which limits the use and disclosure of nonpublic personal information to a nonaffiliated third party. Equifax applies GLBA protections to all header data and enforces the use restrictions through contractual provisions.

Credit header data has numerous beneficial uses, including facilitating access to credit, helping prevent fraud, and assisting in government and social services. Credit header data, for example, helps provide near instant access to credit and services from verifying identity to automating verifications. With respect to fraud prevention, credit header information currently is used to validate consumer provided information and as part of complex solutions to detect synthetic identity fraud. Credit header information can further be used in KYC and Anti-Money Laundering programs intended to prevent economic crime, terrorism financing, and other prohibited activities. Additionally, credit header information has been used by government agencies to protect the vulnerable such as identifying or locating non-custodial parents to support enforcement of child support orders or to fight human trafficking. Further, for consumers who may not have a robust credit file or are newer to the credit system, some credit header data can be helpful in facilitating transactions by confirming identity or historical information thereby reducing the burden of the consumer.

Equifax does not believe that the CFPB should regulate credit header data as FCRA data because it does not meet the statutory definition of a "consumer report"; it is adequately regulated under the GLBA; and it would impede many beneficial uses of credit header data that benefit consumers and the public at large. Nevertheless, Equifax appreciates the intent behind the CFPB's Outline and urges the CFPB to ensure that whatever the outcome of the rulemaking that header data remain usable for the consumer- and economy- benefiting purposes described above. For example, if the CFPB decides to move forward with the intent to ensure consistent protections for the use of header data, it should consider working with Congress to expand the FCRA permissible purposes to include the general exceptions under 502(e) of GLBA, such as fraud prevention and detection practices; identity verification and authentication; and to prevent or detect other malicious, deceptive, fraudulent or illegal activity.

#### **4. Targeted marketing and aggregated data**

Equifax supports the CFPB's efforts to establish reasonable and appropriate guidelines for using aggregated and anonymized consumer information. Aggregated and anonymized consumer information is critical for conducting certain research, making informed business decisions, and engaging in marketing activities that lead to competition and lower prices for consumers. When information is aggregated, it is no longer directly representative of a specific consumer and, thus, it has no bearing on any of the FCRA's seven enumerated factors. Similarly, when information is anonymized, it is no longer identifiable to a specific consumer and cannot be used for consumer-specific decision making. Many U.S. state privacy laws<sup>6</sup> acknowledge the unique nature of aggregated and anonymized consumer information by excluding this data from the scope of state privacy laws. These state laws recognize the inherent protections that the anonymized information has, enabling businesses to continue to use this information while respecting consumers' privacy. In drafting regulations to provide more specific guidance around aggregating and anonymizing consumer information, we encourage the CFPB to consider the National Institute of Standards and Technology (NIST) Internal Report 8053<sup>7</sup> requirements for de-identifying personal information to help the industry align on a standard.

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<sup>4</sup> 15 U.S.C. § 1681a(d).

<sup>5</sup> 15 U.S.C. § 6801 *et seq.*

<sup>6</sup> *E.g.*, California Consumer Privacy Act, Cal. Civ. Code § 1798.145(a)(6); Utah Consumer Privacy Act, Utah Code Ann. § 13-61-101(24)(b).

<sup>7</sup> U.S. National Institute of Standards and Technology, NISTIR 8053, *De-Identification of Personal Information* (2021).

## **B. Permissible Purposes**

### **1. Written instructions of the consumer**

Equifax supports the CFPB's efforts to promote clear guidance related to obtaining the written instruction of the consumer. In drafting regulations to provide more specific requirements for obtaining the written instructions, we encourage the CFPB to balance the desire to provide a frictionless transaction with the need to ensure consumer authorization. In general, we support the concept that consumers should provide written instructions in a form that specifies the consumer reporting agency (or agencies) that the consumer is instructing to release his or her credit report and the specific recipient (or recipients). In drafting this guidance; however, we believe it is also important to consider that in most traditional credit or insurance transactions another permissible purpose will likely apply.

### **2. Legitimate business need**

While Equifax supports additional clarity consistent with the themes expressed above, the Outline's proposal in this regard is unclear as to whom these clarifications would apply. For example, credit reporting agencies are not generally in a position to know the internal risk assessment processes of each user of consumer reports, and therefore are not in a position to understand when a consumer report would be "actually needed" or the specifics of the transaction at issue in relation to personal, family, or household purposes. If not implemented with specificity, these rules may ultimately require consumers to disclose more personal information as part of a financial transaction, including details of their personal or family life. The rules may also result in the tightening of lending practices, ultimately reducing access to credit for consumers who are most in need.

### **3. Data security and data breaches**

Equifax is committed to being an industry leader in security and we continue to build a culture where data security is central in everything we do. Equifax supports the CFPB's desire to encourage strong data security practices that prioritize protecting consumer data. Having a robust data security practice has become a cost of doing business and companies are incentivized to take these threats seriously to protect their reputation, their customers, and consumers.

Equifax encourages the CFPB to coordinate with other entities that have current authority over data security practices and data breaches to establish clear and consistent requirements. One area that the CFPB could consider leading is a national standard for consumer reporting agencies to notify consumers of a breach of personal information. A national standard would establish uniform protections for consumers regardless of where they reside.

## **C. Disputes**

### **1. Disputes involving legal matters**

Equifax takes its responsibility to investigate disputes seriously and, as part of our consumer friendly initiatives, strives to do so in a manner that reduces the burden to the consumer. We agree with the CFPB that it is the duty of consumer reporting agencies to investigate all legitimate disputes according to the process and timeline outlined by the FCRA.<sup>8</sup> Accordingly, Equifax does not distinguish between legal and factual disputes at the time the dispute is received. Equifax investigates any legitimate dispute in accordance with the requirements of the FCRA and provides a notice of the outcome of the investigation to the consumer. It is worth noting that there may

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<sup>8</sup> 15 U.S.C. § 1681i.

be circumstances under which a consumer reporting agency cannot ultimately determine the proper legal outcome, for example, whether a contract is lawfully executed thereby creating an obligation for a party to pay.

## **2. Disputes involving systemic issues**

Equifax is committed to being consumer-friendly in every interaction, and as part of that mission is already in the process of implementing monitoring and controls designed to identify potential systemic issues that may impact the accuracy of information in consumer files. We support the concept that furnishers and consumer reporting agencies have an obligation to investigate and correct systemic issues when they occur, and we support a framework for clear consumer communication.

The specifics of this particular proposal are vague within the Outline, and we ask the CFPB to consider how a requirement like this one might best be implemented. For example, the Outline implies that consumers would report systemic issues; however, it is unclear how a consumer could identify an issue that impacts multiple consumers without access to those consumers' reports. It is also unclear whether a furnisher or a consumer reporting agency would be required to investigate all reports of potential systemic issues, or only those that are novel or with merit. While we support the concept of systemic dispute investigations, we believe that the requirements must balance the accuracy requirements of the FCRA and the complexity of implementation for furnishers and consumer reporting agencies, and consider the entities in the best position to identify and resolve systemic issues when they occur.

### ***D. Medical debt collection information***

In March 2022, Equifax, Experian, and TransUnion announced significant changes to medical collection debt reporting to support consumers who might have been faced with unexpected medical bills. The nationwide consumer reporting agencies made three changes to the reporting of medical collection debt:

1. As of July 1, 2022, all medical collection debt that has been paid by the consumer in full is no longer included on U.S. consumer credit reports. Paid medical collections debt is debt that was sent to collections and has since been marked as paid by a collections agency.
2. Also as of July 1, 2022, the time period before unpaid medical collection debt will appear on a consumer's credit report was increased from 6 months to one year, giving consumers more time to address their debt before it is reported on their credit file.
3. In April 2023, all medical collection debt with an initial reported balance of under \$500 was removed from credit reports.

This decision to make changes to the reporting of medical collections is part of Equifax's commitment to help consumers prioritize their financial health and to facilitate access to affordable, mainstream financial services opportunities for all consumers.

Equifax understands the CFPB has questioned the predictive value of medical collection debt on consumer reports; however, our data demonstrates that there is predictive value and removing all medical collection debt will reduce predictive value. Further, medical collection debt is accurate. Using disputes as a measure, our data shows that while consumers dispute collection tradelines more often than other trades, they do so at a similar rate to consumers disputing delinquent tradelines.

The FCRA is underpinned by the accuracy of information on consumer reports. The congressional findings make clear that "[the] banking system is depending upon fair and accurate credit reporting."<sup>9</sup> And the core of consumer

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<sup>9</sup> 15 U.S.C. § 1681(a)(1).

reporting agencies' obligation is to "follow reasonable procedures to assure maximum possible accuracy".<sup>10</sup> Equifax has interpreted this to require full and complete reporting to present the most accurate and complete representation of a consumer to a user with a permissible purpose. There is the potential that removing accurate, predictive information from a consumer report will degrade the accuracy of consumer reporting in contradiction to the clearly outlined Congressional findings and statement of purpose. If the CFPB wants to take further action related to medical collection debt, we encourage the CFPB to work with Congress to codify the actions the nationwide consumer reporting agencies have taken. These changes help 80% of consumers with medical collection debt on their files and provide an additional six months for insurance agencies and medical providers to work out the details of payment.

Additionally, we encourage the CFPB to provide a clear definition of "medical collection debt" to ensure that data furnishers and consumer reporting agencies can identify the intended collection accounts.

#### ***E. Implementation period***

Equifax encourages the CFPB to provide sufficient time for consumer reporting agencies to make the changes included in the Outline. When considering a timeline, we encourage the CFPB to take into account requirements imposed on consumer reporting agencies in other CFPB proceedings (for example, the Personal Financial Data Rights rulemaking), in related state activity, and by other federal agencies. Notably, transitioning a non-FCRA activity or business to one that is compliant with the FCRA may take more time than complying with a change in the way disputes involving legal matters are viewed or changes to the permissible purposes. In order to support transition and promote compliance, Equifax encourages a 24 to 36-month implementation period. Building in sufficient time for implementation will enhance the benefit to consumers and best support a competitive market.

Thank you for allowing us the opportunity to provide input on the Outline. We hope to have an opportunity to meet with you to discuss the consumer reporting rulemaking in more detail. Please reach out to me at [stephanie.gunselman@equifax.com](mailto:stephanie.gunselman@equifax.com) if you have any questions or concerns.

Sincerely,



Stephanie Gunselman

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<sup>10</sup> 15 U.S.C. § 1681e(b).