Online Lenders Alliance

November 6, 2023

Submitted via Electronic Mail

Comment Intake
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552
CFPB_consumerreporting_rulemaking@cfpb.gov

Re: Non-SER Comments on the Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals

Dear Sirs and Madams:

Although the Consumer Financial Protection Bureau ("Bureau") is not obligated to take comment from entities that are not designated as Small Entity Representatives ("SERs"), the Bureau has historically accepted feedback from non-SERs. The Online Lenders Alliance would like to thank the Bureau for continuing to accept comments from non-SERs on their SBREFA outlines. The Bureau's practice of accepting comments on the SBREFA outline from non-SERs will ensure that the Bureau has necessary data and information on potential market impacts and potential unintended consequences to help inform future rulemaking.

About OLA

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics, and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors, and service providers to lenders, consumer reporting agencies, payment processors, and online marketing firms.

Fintech companies are at the vanguard of innovative online tools that reach new customers, prevent, and mitigate fraud, manage credit risk, and service loans. As technology evolves and the public's consumer comfort with online financial transactions grows, protecting consumers will be more important than ever. OLA is leading the way to improve consumer protections, with a set of consumer protection standards to ensure that borrowers are fully informed, fairly treated, and using lending products responsibly. To accomplish this, OLA members voluntarily agree to hold themselves to a set of Best Practices, a set of rigorous standards above and beyond the current legal and regulatory requirements. These are standards that OLA members, the industry, and any partners with whom OLA members work use to stay current on the changing legal and regulatory landscape. OLA's Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA's Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.[1]

Much of the innovation undertaken by OLA members has given consumers greater control over their financial future. This is especially the case when it comes to access to capital. Whether purchasing a home, starting a business, financing an education, or even paying for auto repairs, the ability to find and secure credit is often a determining factor in a consumer's financial well-being. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

Introduction

OLA and its members appreciate the opportunity to provide comments on proposals under consideration for the Consumer Financial Protection Bureau's (CFPB) upcoming Fair Credit Reporting Act (FCRA) Rulemaking. These comments herein related to changes to rules covering data brokers under the FCRA. While the Bureau assembled a SBREFA Panel containing a cross-section of potentially impacted entities, one portion of the industry; advertising and marketing firms, and in particular lead generators were underrepresented on the panel. Lead generators assist consumers looking for a loan. To help inform the CFPB's efforts, OLA would like to provide comments on how the proposed changes to FCRA will impact the online lending industry, and in particular lead generators.

About Lead Generation

Lead generation is a long-established marketing and advertising method that has become increasingly vital in the age of internet commerce. Specifically, consumer-focused industries rely on third-party internet marketers ("lead generators") to reach specific consumer audiences. Lead generators accomplish this through independent marketing and advertising, creating marketplaces of vetted providers for consumers seeking goods and services.
Some of today's most prominent lead generators include Uber, Google, Lending Tree, Quote Wizard, A Place for Mom, Twitter, Expedia, and Priceline. Through the work of the lead generation industry, legitimate service providers are able to connect with consumers interested in purchasing their products and services, while simultaneously suppressing illegitimate scammers and other unscrupulous actors the consumer otherwise may encounter in their search.
Whether it is Expedia gathering all available flights for a given time and place, or Lending Tree providing competitive finance rates for competing lenders, lead generation has become integral

[1] Online Lenders Alliance Best Practices, https://onlinelendersalliance.org/best-practices/

to the way consumers find and select products and services. Similarly, it has changed the way businesses find and engage with consumers.

In today's technology-enabled marketing ecosystem, successful companies are laser-focused on consumer choice and product availability. That is certainly true in the financial sector. In fact, one of the first successful internet-based lead generation verticals was developed by financial fintech companies to serve as a conduit for subprime and near-prime consumers who were unable to access credit through traditional means.

Also referred to as "performance marketing," lead generation is a faster and more cost-effective way for lenders to maximize their limited marketing resources. In turn, this benefits the consumer by limiting the exposure of their most sensitive data, saving hours (or even days) of frustrating searches, and increasing the likelihood of finding the financial solution they seek.

How Lead Generators Help Consumers

Despite the best efforts of government and industry, scam websites exist. When consumers happen upon such a site, they stand to lose hundreds or thousands of dollars. Lead generators provide a safe and efficient service for consumers seeking credit by accessing multiple lenders at the same time with only one submission of their information. By submitting only one request and allowing the automated system to securely present that information to multiple lenders, the consumer is not repeatedly divulging personally identifiable information across multiple sites. This approach saves consumers time, while also safeguarding their private information.

Another distinguishing aspect of lead generation in the fintech space is its transparency. When consumers create Facebook profiles or conduct Google searches, they may never think about how the information they provide can be collected, processed, and used by multiple entities to market products or services to them.

Fintech lead generators use clear forms, appropriate disclosures, and adhere to policies that facilitate consumer understanding of precisely how the information they are providing will be used. OLA member lead generators inform the consumer that their information will be used only in furtherance of their loan request.

Critically, small-dollar lead generators often connect underserved consumers with credit providers willing to quickly help solve the needs of the credit challenged. Furthermore, lead generators in the short-term consumer finance market provide their services to consumers free of charge. Reputable lead generators, complying with the standards outlined and enforced by the OLA's Best Practices, enable consumers to seek capital in a transparent and secure environment from vetted providers that are legally permitted to lend in their respective jurisdictions, creating a more efficient and safer consumer experience.

OLA Feed Back on SBREFA outline

Below are responses to those questions and topics posed by the Bureau in its SBREFA outlines.

I. Alternative Approaches for Regulating Data Brokers

The following is responsive to Question 4.

As noted in the CFPB's Request for Information, consumers have expressed concerns about the lack of control over how data collected about them is used. Lead Generators support security and transparency in data broker activities. Specifically, OLA and its member support initiatives requiring data brokers to (1) undertake reasonable measures to protect the security, confidentiality, and integrity of the personal information collected from or about consumers; (2) provide notice to consumers that their data is being collected and how their data is being used; (3) permit consumers to correct or delete any information that was shared or collected about them; (4) provide customers the ability to opt-out of the sharing of their data; and (5) impose adequate controls on downstream usage and sharing of the data, who can purchase the information in the data broker market.

While data brokers should be required to adhere to the standards set forth in the FCRA's disclosure and transparency requirements, the CFPB should not define all data brokers as presumptively CRAs. As a threshold matter in determining whether data brokers should be covered by FCRA, the CFPB will first need to assess if data brokers meet the definition of "consumer reporting agency" and whether their products comprise "consumer reports."

II. FCRA Applicability to Data Brokers

The following are responsive to Questions 8 through 12.

The FCRA defines a "consumer reporting agency" as any person who regularly assembles or evaluates information on consumers for the purpose of furnishing "consumer reports" to third parties." "Consumer report" is defined as a communication by a consumer reporting agency bearing on a consumer's creditworthiness, character, general reputation, or other factors that are used to establish a consumer's eligibility for credit, insurance, or employment purposes. The term "communication" and the seven consumer data categories are extremely broad; however, FCRA's definition of a consumer report is limited by the enumerated purposes.

If a company is classified as a CRA, then FCRA imposes certain obligations, such as ensuring the accuracy of information contained in a consumer report and procedures for a consumer to contest the accuracy of that information. Further, entities that provide information to CRAs for use in consumer reports are defined as "furnishers of information." As furnishers, those parties are also subject to certain requirements under Regulation V, FCRA's implementing regulation.

As the statutory language clearly states, an entity only qualifies as a CRA if it regularly assembles or evaluates information on consumers for the purpose of furnishing consumer reports to third parties. Again, the activities included in "assembling or evaluating" consumer information are very broad, but the CRA definition is limited by the purpose - furnishing consumer reports to third parties.

Credit reporting agencies specifically gather and provide information about individuals' credit and financial history, including details on credit accounts, loans, payment history, and related data. The information obtained by data brokers, on the other hand, is generally not collected for use in consumer reports nor is the information necessarily related to an individual's credit history or creditworthiness. Because the information is not used for the purpose of generating consumer reports, data brokers should not be considered CRAs.

Expanding the scope of FCRA regulations to data brokers as proposed by the CFPB, regulations in this area would bring a wide range of technology, insurance, and other activities within the FCRA's scope. Importantly, subjecting the selling of credit header data to the same regulatory framework as consumer reports under the FCRA would impose overly burdensome requirements and restrictions on the use and sharing of such information. These include restrictions on permissible purposes, mandates for data accuracy, requirements for notifying consumers in case of adverse actions, and provisions for accessing, disputing, and correcting or deleting data. However, these protective measures may not always be suitable for products based on consumer information that does not pertain to the seven key factors and is not utilized to determine eligibility for FCRA transactions. There are many different types of entities that purchase datasets from data brokers, including government entities, political entities, commercial entities, non-profit entities, and individuals.

For the foregoing reasons, the CFPB should not classify all data brokers as credit reporting agencies as proposed in the SBREFA outline.

III. Credit Header Data

The following are responsive to Questions 16-18.

The CFPB seeks to clarify the extent to which "credit header data" constitutes a "consumer report" under FCRA. Credit header data are certain consumer-identifying data maintained by consumer reporting agencies, such as an individual's name, address, and social security number.

The FCRA generally governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the United States. A "consumer report" is defined as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, 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 household credit, insurance, employment, government benefits, or similar important personal transactions.

Credit header data does not constitute a comprehensive consumer report, as it lacks details related to an individual's credit history, financial behavior, and other key indicators that are central to assessing creditworthiness. As defined by the Fair Credit Reporting Act (FCRA), a consumer report encompasses data that is used or expected to be used in establishing a person's eligibility for credit, insurance, employment, or other permissible purposes. As such, it is long-settled law that a report that is limited to identifying information, such as name, SSN, phone number, and address does not bear on the seven characteristics enumerated in the definition of a "consumer report" in the FCRA. Such information is not considered a consumer report, and the collection and sharing of such information is not regulated by the FCRA.

OLA appreciates the opportunity to provide input on this initiative. If you have questions or need additional information, please feel free to contact me at mday@OLADC.org.

Respectfully submitted,

Michael Day
Policy Director
Online Lenders Alliance