

# United States Senate

WASHINGTON, DC 20510

March 22, 2024

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

Dear Director Chopra:

We are writing to express our concerns regarding the forthcoming Fair Credit Reporting Act (FCRA) rulemaking from the Consumer Financial Protection Bureau (“the Bureau”). Specifically, the Bureau announced its intention to pursue a rulemaking to amend Regulation V by significantly expanding the scope of entities and data subject to the FCRA.<sup>1</sup> We believe that an inappropriately broad expansion of the FCRA would contravene established federal laws and regulations related to financial crime and fraud prevention and would have a detrimental impact on the ability of law enforcement to investigate criminal activity.

We are very concerned with the Bureau’s stated intention to extend FCRA to apply to credit header and similar data used for identity verification purposes. Credit header information includes nonfinancial personally identifiable information such as name, address, date of birth, and Social Security number. According to the Bureau’s *Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals and Alternatives under Consideration*, “the CFPB is considering a proposal to clarify the extent to which credit header data constitutes a consumer report.” If implemented, the proposal under consideration “would likely reduce, perhaps significantly”, consumer reporting agencies’ ability to disclose credit header data from their consumer reporting databases without a permissible purpose.<sup>2</sup>

Treating credit header and related data as a consumer report would substantially hinder the ability of financial institutions to prevent money laundering, identify crime, and combat fraud in the financial ecosystem. Consumer financial fraud has intensified over the last several years, including national losses of more than \$10 billion to fraud in 2023, up from \$8.8 billion in 2022 and \$5.8 billion in 2021. Identity theft reports to the Federal Trade Commission remain over 1

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<sup>1</sup> <https://www.consumerfinance.gov/about-us/newsroom/remarks-of-cfpb-director-rohit-chopra-at-white-house-roundtable-on-protecting-americans-from-harmful-data-broker-practices/>

<sup>2</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-rule-sbrefa\\_outline-of-proposals.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf) (Page 10).

million annually, and credit card fraud was the most common type of identity fraud last year.<sup>3</sup> Regulations, such as the FCRA revisions under consideration, that would limit – and in certain circumstances prevent – the ability of financial institutions to obtain this information would only exacerbate the rise in financial fraud.

Further, subjecting credit header information to FCRA runs counter to established anti-crime regulations. For instance, anti-money laundering laws require banks to develop procedures for verifying the identity of any person seeking to open an account, to the extent reasonable and practicable. The FCRA’s Identity Theft Red Flags regulations also require financial institutions to develop and implement an identity theft prevention program to detect, prevent, and mitigate identity theft by obtaining identifying information about, and verifying the identity of, a person opening an account.<sup>4</sup> Credit header data is frequently and effectively used by financial institutions for these purposes. The Bureau’s efforts to regulate identifying information would not only undermine these existing anti-fraud regulatory requirements, but would also thwart the ability of banks to comply with them.

Additionally, federal law enforcement agencies, including the Federal Bureau of Investigation (FBI), the Department of Homeland Security, the Drug Enforcement Administration, the Secret Service, and the U.S. Marshals Service, regularly obtain credit header data from credit reporting agencies and use that data in pursuit of law enforcement investigations and objectives. A recent Wall Street Journal op-ed cited an example in which the FBI used credit header data to identify a key witness in their investigation and ultimately prevent an ISIS terrorist attack.<sup>5</sup> This is one of many cases in which this information has served as an essential tool for law enforcement agencies to curtail criminal activity.

As this rulemaking proceeds, it is critical to recognize that “Know Your Customer” requirements apply before a consumer's identity has been verified. These obligations and associated identity theft prevention activities are not "permissible purposes" under the FCRA. The FCRA framework appropriately applies once a consumer's identity has been verified and they are able to be evaluated for credit-worthiness. If credit header and related data is deemed a consumer report, financial institutions and law enforcement would face significant hurdles in detecting money laundering, terrorism financing, and identity theft. Not only would the proposal restrict the ability of entities to use existing fraud detection methods, but financial institutions would also face competing statutory obligations which would make it untenable to both verify a consumer’s identity and also afford them protections under the FCRA.

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<sup>3</sup> <https://www.ftc.gov/news-events/news/press-releases/2024/02/nationwide-fraud-losses-top-10-billion-2023-ftc-steps-efforts-protect-public>

<sup>4</sup> <https://www.federalregister.gov/documents/2014/05/29/2014-12358/identity-theft-red-flags-regulation-v>

<sup>5</sup> <https://www.wsj.com/articles/the-cfpb-targets-an-antiterror-tool-consumer-financial-protection-bureau-credit-header-data-80a038d4>

These issues clearly need to be examined in more depth. Few federal laws have greater impact on the daily lives of American consumers, nonprofit organizations, government agencies, and businesses of all sizes as the FCRA. Therefore, we urge the Bureau to issue an Advanced Notice of Proposed Rulemaking (ANPR) before it publishes a Notice of Proposed Rulemaking (NPRM) to amend Regulation V.

We do not believe a regulatory outcome that makes it more difficult for financial institutions and law enforcement to combat money laundering, terrorism financing, and identity theft is the Bureau's intent, as the impact would devastate consumers and the broader U.S. financial system. Such a result would undermine one consumer protection in furtherance of another. As such, we urge the Bureau to carefully tailor any forthcoming rulemaking to specifically exempt financial crime and fraud prevention activities, thereby ensuring that credit header and other similar data can continue to be used for these purposes, without creating barriers that frustrate the purpose of these other critical laws and requirements.

Thank you for your attention to this important matter.

Sincerely,



Katie Boyd Britt  
United States Senator



M. Michael Rounds  
United States Senator



Thom Tillis  
United States Senator



Bill Hagerty  
United States Senator



Steve Daines  
United States Senator