

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

May 21, 2021

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** May 26, 2021, Oversight & Investigations Subcommittee Hearing entitled, “Consumer Credit Reporting: Assessing Accuracy and Compliance”

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The Subcommittee on Oversight & Investigations will hold a hearing entitled, “Consumer Credit Reporting: Assessing Accuracy and Compliance” on May 26, 2021 at 12:00 pm via Cisco Webex. There will be one panel with the following witnesses:

- **Ms. Beverly Anderson**, President, Global Consumer Solutions, Equifax
- **Ms. Sandy Anderson**, Senior Vice President, Strategy and Operations, Experian Credit Services
- **Mr. John Danaher**, Executive Vice President, Consumer Interactive at TransUnion
- **Ms. Rebecca Kuehn**, Partner, Hudson Cook
- **Ms. Chi Chi Wu**, Staff Attorney, National Consumer Law Center (NCLC)

### Overview

Creditors, data resellers, employers, insurers, law enforcement agencies, underwriters, utility providers, and others rely on consumer credit reports and scores. Consequently, consumer reporting agencies (CRAs) and the credit reporting system as a whole directly affect the lives of all Americans in lasting, life-altering ways. Yet, regulators warn that too many consumers suffer from incomplete or erroneous information on their credit reports and then find significant barriers when attempting to rectify such errors.<sup>1</sup> At the same time that credit bureaus have monetized the credit files of consumers, there is a dearth of current or even recent data establishing the accuracy and reliability of the data sold by the CRAs.<sup>2</sup> In response, jurisdictions such as California and the European Union have taken steps to empower consumers with more control over their data,<sup>3</sup> with some observers calling for comprehensive reforms to

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<sup>1</sup> FTC, [Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003](#) at 6, and 8-9 (Dec. 2012). Additionally, these are prior studies on credit report accuracy conducted by the CRA industry that were also cited in the FTC Report: CDIA, [Credit Reporting Reliability Study: Executive Summary](#) (Feb. 4, 1992); Michael A. Turner et al., [U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts](#), PERC Results and Solutions (May 2011); John Golinger and Edmund Mierzwinski, [PIRG: Mistakes do happen: Credit Report Errors Mean Consumers Lose](#), U.S. Public Interest Research Group (March 1998); Alison Cassidy and Edmund Mierzwinski, [Mistakes do happen: A Look at Errors in Consumer Credit Reports. National Association of State PIRGs](#), (2004); Robert B. Avery, et al., [An Overview of Consumer Data and Credit Reporting. Federal Reserve Bulletin](#) (Feb. 2003); FTC, [40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations](#) (July 2011).

<sup>2</sup> *Id.*

<sup>3</sup> For the European Union’s new General Data Protection Regulation, see Congressional Research Service, [EU Data Protection Rules and U.S. Implications](#) (IF10896) (July 17, 2020). For the new California Consumer Privacy Act, see Congressional Research Service, [California Dreamin’ of Privacy Regulation: The California Consumer Privacy Act and Congress](#) (Nov. 1, 2018) (LSB10213).

make the system more consumer oriented.<sup>4</sup> Other experts have urged the creation of a federal consumer credit reporting agency.<sup>5</sup>

## Background

The Fair Credit Reporting Act (FCRA) defines CRAs as “any person (who)... regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.”<sup>6</sup> Under §607(b) of FCRA, CRAs must have reasonable procedures in place to ensure the “maximum possible accuracy” of information contained in consumer files.<sup>7</sup> While there are only three nationwide CRAs — Experian, Equifax, and TransUnion — other types of CRAs collect and sell consumers’ data, such as employment and tenant history. Some of these companies are referred to as nationwide specialty CRAs.<sup>8</sup> CRAs receive information voluntarily supplied by “furnishers.” For the nationwide CRAs, these furnishers are generally creditors, debt servicers, and debt collectors. The CRAs then curate and maintain this information to create individual consumer reports and related product offerings that it sells to various users such as landlords, employers, lenders, utilities, and data resellers. FCRA and Regulation V provide the legal framework for the consumer credit reporting system, including limitations on how CRAs can disclose credit report information.<sup>9</sup> FCRA has been amended by various statutes, including the Fair and Accurate Credit Transactions Act of 2003, the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act of 2010, and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.

The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) share FCRA jurisdiction.<sup>10</sup> FCRA also creates a private right of action.<sup>11</sup> §501(b) of the Gramm-Leach-Bliley Act, which mandates security and confidentiality safeguards for consumer records and information, as well as protects against unauthorized access or use of such records or information which could result in substantial harm or inconvenience to any customer.<sup>12</sup> The FTC has authority to enforce §501(b) for CRAs, which it typically exercises after an incident occurs.

## Changes to Credit Reporting Requirements in the CARES Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted on March 27, 2020, amended FCRA and thereby altered the duties of furnishers (such as creditors, mortgage loan servicers, and credit card account servicers) when reporting on the status of accounts provided with COVID-19-related payment accommodations.<sup>13</sup> Under the CARES Act, furnishers must report such an account as current if the account was current before the payment accommodation, assuming the consumer makes

<sup>4</sup> See, e.g., House Committee on Financial Services, [Testimony of Chi Chi Wu, Examining the Equifax Data Breach](#), 115th Cong. (Oct. 25, 2016).

<sup>5</sup> President Joseph R. Biden Jr., *Biden-Sanders Unity Task Force Recommendations* at 74 (Jul. 2020).

<sup>6</sup> [15 U.S.C. § 1681a\(e\)](#) (2012).

<sup>7</sup> [15 U.S.C. § 1681e\(b\)](#) (2012).

<sup>8</sup> For a list of nationwide specialty CRAs compiled by the Consumer Financial Protection Bureau, see Consumer Financial Protection Bureau, [List of Consumer Reporting Companies](#) (2020).

<sup>9</sup> Congressional Research Service, [Consumer and Credit Reporting, Scoring, and Related Policy Issues](#) (Oct. 15, 2020) (R44125).

<sup>10</sup> Senate Committee on Banking, Housing, and Urban Affairs, [An Overview of the Credit Bureaus and the Fair Credit Reporting Act](#), 115<sup>th</sup> Cong. (July 12, 2018) (S. HRG. 115–361).

<sup>11</sup> [15 U.S.C. § 1681n\(a\)\(1\)\(A\)](#) (2012).

<sup>12</sup> *Id.*

<sup>13</sup> [P. L. No. 116-136](#) (2020); CFPB, [Supervisory Highlights COVID-19 Prioritized Assessments Special Edition](#) (Jan 19, 2021).

payments in accordance with their accommodation.<sup>14</sup> The CARES Act also requires furnishers to report an account as delinquent if the account was delinquent before accommodation, except if the consumer brings the account current during the accommodation, at which point, the furnisher should report the account as current.<sup>15</sup> The CARES Act does not create a new private right of action for violation of these new requirements, but it may create new litigation risks for furnishers depending on the accuracy of reporting on consumers who adhered to the terms of accommodations or who brought their accounts current during an accommodation.<sup>16</sup>

### CFPB Oversight of Credit Reporting Agencies

On April 1, 2020, the CFPB issued a statement regarding the Bureau’s discretionary use of its supervisory and enforcement authority, outlining a “flexible approach” regarding compliance with Regulation V and FCRA, stating that the CFPB would consider the circumstances furnishers faced as a result of the pandemic and “their good faith efforts to comply with their statutory and regulatory obligations.”<sup>17</sup> On April 2021, the CFPB issued a statement rescinding this flexible approach and stated its intention to “exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and FCRA and with the full authority afforded by Congress.”<sup>18</sup>

In a special edition on COVID-19 prioritized assessments, the CFPB’s *Supervisory Highlights* for Winter 2021, Vol. 23,<sup>19</sup> described how furnishers were not properly administering CARES Act provisions and that information was misreported to CRAs in violation of CARES Act amendments to FCRA. The CFPB identified the following resulting areas that present risk of consumer harm: inaccurate reporting of CARES Act accommodations granted to consumers; provision of inaccurate information due to insufficient furnishing policies and procedures; and untimely dispute investigations by CRAs and furnishers.<sup>20</sup>

Shortly after the enactment of the CARES Act, the Student Borrower Protection Center (SBPC) and law firm Towards Justice initiated litigation against Great Lakes Educational Loan Services, the three national CRAs, and the credit scorer VantageScore for widespread, systemic reporting of inaccurate information in contravention of the CARES Act and to the detriment of nearly five million consumers.<sup>21</sup> In April 2021, SBPC published a report finding that multiple servicers, including Navient and PHEAA, engaged in similar violative conduct.<sup>22</sup> SBPC contends furnishers improperly reported student loans which had been suspended in accordance with CARES Act protections as having stopped paying.<sup>23</sup> Such reporting constitutes negative credit information and violates CARES Act protections.<sup>24</sup>

<sup>14</sup> See [15 U.S.C. § 1681s-2\(a\)\(1\)\(F\)](#) (2021) (subsection entitled “Reporting information during COVID-19 pandemic”).

<sup>15</sup> *Id.*

<sup>16</sup> Brian M. Forbes and Robert W. Sparkes, III, [COVID-19: Credit Reporting in the Age of COVID-19](#), *The National Law Review* (Apr. 30, 2020).

<sup>17</sup> CFPB, [Rescission of Statement of Policy on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act](#) (Mar. 31, 2021).

<sup>18</sup> *Id.*

<sup>19</sup> CFPB, [Supervisory Highlights COVID-19 Prioritized Assessments Special Edition](#) (Jan. 2021).

<sup>20</sup> *Id.*

<sup>21</sup> [Class Action Complaint](#) (May 20, 2020), *Sass et al. v. Great Lakes Educational Loan Services, Inc. et al.*, N.D. Cal. (No. 3:20-cv-03424).

<sup>22</sup> Student Borrower Protection Center, [Adding Insult to Injury](#) (April 2021).

<sup>23</sup> *Id.*; [P. L. No. 116-136](#) (2020).

<sup>24</sup> *Id.*

The CFPB’s complaint portal provides timely, compelling evidence of the vast scope and reach of the problems consumers confront with respect to CRAs.<sup>25</sup> Since the inception of the CFPB consumer complaint portal a decade ago, complaints from consumers about credit reporting have outpaced complaints about any other consumer product or service.<sup>26</sup> Still, 2020 broke all records for credit reporting complaints. The CFPB’s 2020 Consumer Response Annual Report recounts a 107% increase in credit or consumer reporting complaints, of which there were 319,300, which represents more than an additional 165,000 individual complaints as compared to 2019.<sup>27</sup> Of these, 246,100 were directed toward the three largest CRAs: Equifax, Experian, and Trans Union. According to the Report:

This substantial increase is concentrated in complaints about inaccurate information and the three largest Nationwide Credit Reporting Agencies (NCRAs) — Equifax, Experian, and TransUnion. A significant portion of these complaints are about attempts to address identity theft-related issues.... Complaints related to the accuracy and completeness of information on consumers’ reports and complaints about problems that a consumer encountered in a previous investigation also increased substantially [147% and 139%, respectively] from the prior two years’ monthly average.<sup>28</sup>

Indeed, there were so many complaints against the CRAs that, for the first time, the CFPB plans to issue a separate report solely addressing those complaints and the responses received.<sup>29</sup> CFPB noted a troubling trend with regard to deteriorating responses from CRAs to complaints from consumers working with third parties, such as credit repair companies, to submit complaints to the CFPB:

In past years, the NCRAs typically provided substantive and comparatively detailed responses to the majority of complaints—including providing details of dispute investigations and outlining steps taken for consumers that are attempting to address identity theft. This year, however, NCRAs stopped providing complete and accurate responses in many of these complaints. .... As part of its ongoing complaint monitoring efforts, (the CFPB) asked Equifax, Experian, and TransUnion to review procedures and processes to ensure that complaints are closed in accordance with the Bureau’s guidelines.<sup>30</sup>

In April 2021, the CFPB issued a bulletin examining consumer complaints on a county-by-county basis.<sup>31</sup> According to the Bureau’s analysis, while consumer complaints increased across all demographic groups in 2019 and 2020, consumers in the most ethnically diverse counties submitted complaints at over four times the rate of counties with the highest white, non-Hispanic populations in the same timeframe.<sup>32</sup>

### **Disputing Report Information**

FCRA mandates a specific procedure that enables consumers to contest the accuracy of the information that appears in their credit reports, providing an opportunity to seek redress in the case of

<sup>25</sup> CFPB, [Consumer Response Annual Report](#) (Mar. 2021).

<sup>26</sup> *Id.* See also U.S. PIRG, [Consumers in Peril](#) (Mar. 2021)

<sup>27</sup> *Id.* at 20 and 25.

<sup>28</sup> *Id.* at 23.

<sup>29</sup> *Id.* at 25.

<sup>30</sup> *Id.* at 24-25.

<sup>31</sup> CFPB, [CFPB Consumer Complaint Bulletin Examines County-Level Demographic Data](#) (Apr. 28, 2021).

<sup>32</sup> *Id.*

errors in credit files.<sup>33</sup> Under FCRA, credit bureaus are required to conduct a reasonable investigation within 30 days from the date that a consumer alleges that an error has been made.<sup>34</sup> The credit bureau in question is required in such instances to consider all relevant information that is provided by the complaining customer.<sup>35</sup> As part of the process, customers are typically encouraged to also inform the company that furnished the negative information to the CRA that they are disputing such information, and such furnishing companies also have responsibilities to correct inaccurate information in credit reports pursuant to FCRA.<sup>36</sup> In addition, the CFPB supervises CRAs pursuant to its authority to implement and enforce FCRA. As such, individual consumers can also file a complaint with the CFPB if they believe that adequate redress has not been provided by the CRAs themselves.<sup>37</sup>

According to consumer advocacy groups, the dispute resolution regime relating to consumer credit reports continues to require further attention and reform in order to appropriately protect consumers and address the scale of existing problems. The National Consumer Law Center, for instance, has proposed several measures, including establishing a right to appeal credit bureau decisions relating to customer disputes, additional measures to improve credit report accuracy (such as the use of stricter matching criteria so that information is not erroneously attached to a consumer's credit report based upon only partial identifying information), enhancing credit bureaus' investment in dispute resolution, providing individual consumers with greater control over the use of their credit reports, and establishing a public credit reporting institution, amongst other measures.<sup>38</sup>

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<sup>33</sup> FTC, [Fair Credit Reporting Act](#) (Sept. 2012); [15 U.S.C. § 1681i](#) (2012) (also known as FCRA § 611).

<sup>34</sup> *Id.*

<sup>35</sup> Chi Chi Wu et al., [Automated Injustice Redux - Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors](#), NCLC (Feb. 2019); [15 U.S.C. 1681i\(a\)\(1\) and \(4\)](#) (2012).

<sup>36</sup> FTC, [Disputing Errors Credit Reports](#) (Feb. 2017).

<sup>37</sup> CFPB, [CFPB Now Taking Complaints on Credit Reporting](#) (Oct. 22, 2012).

<sup>38</sup> Chi Chi Wu et al., [Automated Injustice Redux - Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors](#), NCLC (Feb. 2019).