September 6, 2017

Hon. Jeb Hensarling, Chairman
Hon. Maxine Waters, Ranking Member
U.S. House Financial Services Committee
Washington, DC 20515

Re: *H.R. 2359 (Rep. Loudermilk), FCRA Liability Harmonization Act (Oppose)*

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned public interest organizations write to urge your opposition to H.R. 2359, titled the "FCRA Liability Harmonization Act." The legislation would restrict remedies for American consumers whose credit reports and background check reports were recklessly distorted and who suffered serious consequences as a result, including losing their ability to access credit such as a mortgage, a car loan, rental housing, or employment. Limiting damages in Fair Credit Reporting Act (FCRA) legal actions, as this bill proposes, would embolden credit reporting and background check agencies to disregard federal protections meant to ensure accurate reporting of credit records and other consumer reports. The bill would allow bad actors in the credit reporting industry to wrongfully label consumers as deadbeats, terrorists, and criminals without fear of meaningful consequences. It also would have a deleterious effect on the marketplace due to the spread of defective data and information on millions of consumers and workers that almost inevitably would result.

H.R. 2359 would restrict Americans' access to justice without sound justification. It would amend the FCRA to eliminate punitive damages awards for individuals when credit reporting and background check agencies willfully break the law, no matter how egregious the industry player's conduct. It also would dictate a one-size-fits-all cap on damages in class actions to $500,000 for groups of consumers who seek accountability against bad actors in the industry, no matter how many thousands or millions of consumers harmed or the extent of their losses caused by the illegal conduct. An arbitrary cap on statutory damages in class actions would deter and practically block the most effective method for harmed consumers to stop systemic willful violations of the FCRA. And without class actions, it is not economically feasible in many cases for consumers to pursue claims on their own.

FCRA violations are far from just "technical" as supporters of this bill suggest. FCRA statutory and punitive remedies are only awarded when a company willfully violates the law. The bill's provisions would restrict damages where harmed consumers already have met the burden of proving that the perpetrator understood the law and violated it anyway. And notably, the three credit reporting agencies consistently are among the top most complained-about companies, with the vast majority of complaints involving incorrect information on consumers' credit reports.[1]

Consumer losses caused by credit reporting malfeasance are all too real. **For example,** Angela Williams of Cocoa, Florida was rightfully awarded actual and punitive damages by a jury after spending 13 years wrangling with, and submitting multiple disputes to, Equifax to fix her credit report, which had contained at least 25 accounts that did not belong to her. Ms. Williams was wrongfully pursued by creditors and debt collection agencies and repeatedly denied credit due to the company's systemic

[1] Consumer Financial Protection Bureau, *Monthly Complaint Report*, Vol. 20, February 2017, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Monthly-Complaint-Report.pdf

failure to fix the errors in her credit report. She suffered an enormous financial and emotional toll from the experience.

Just this year, a California jury awarded statutory and punitive damages to 8,000 consumers in a class action after finding that the credit reporting agency TransUnion violated the FCRA when it willfully misidentified class members as terrorists and criminals in their credit reports, confusing the consumers with similarly named individuals on a government watch list. TransUnion's liability for willfully engaging previously in the exact same conduct had been upheld by an appellate court, but initially declined to implement changes that could have reduced false matches making it a serial willful violator of the FCRA. Trans Union's failure to properly verify affected consumers' information caused them tremendous injury. The lead class member for example alleged that he was prevented from buying a car because TransUnion told lenders he potentially matched two entries on a government watch list. The remedies in these cases were aimed at compensating harmed consumers, deterring similar bad behavior, and protecting the marketplace from future damage.

Under H.R. 2359, a company that willfully violates the law would escape punitive damages meant to punish and deter wrongdoing, and consumers would be denied justice for the losses caused by poor credit reporting and data practices. As demonstrated, careless and inaccurate credit reporting and data collection can devastate a consumer's well-being and financial health, including his or her pursuit of employment and access to credit. Liability for wrongful acts is a powerful incentive for companies to comply with the law. By removing key tools to hold industry players accountable, the bill would weaken incentives to act properly and would exacerbate misconduct in this sector, injuring more consumers and ultimately the marketplace.

The Committee should reject this harmful proposal.

Sincerely,

A New Way of Life Re-Entry Project
Allied Progress
American Association for Justice
Americans for Financial Reform
Baltimore Neighborhoods, Inc.
Center for Digital Democracy
Center for Justice & Democracy
Center for Responsible Lending
Community Justice Project
Community Service Society of New York
Connecticut Legal Services, Inc.
Consumer Action
Consumers for Auto Reliability and Safety
D.C. Consumer Rights Coalition
Demos
East Bay Community Law Center
Florida Alliance for Consumer Protection
Georgia Watch
Greater Hartford Legal Aid, Inc.
Homeowners Against Deficient Dwellings
The Impact Fund
Legal Action Center
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Workrights Institute
Ohio Justice & Policy Center
Public Citizen
Public Justice
Public Justice Center
Social Justice Law Project
Texas Watch
U.S. PIRG
Virginia Poverty Law Center
Workplace Fairness
Youth Represent