November 9, 2023

Via email: CFPB_consumerreporting_rulemaking@cfpb.gov
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Outline of Proposals for Consumer Reporting Rulemaking, Small Business Regulatory Enforcement Fairness Act Review

The National Consumer Law Center (on behalf of its low-income clients) (NCLC) is pleased to submit these comments in response to the Consumer Financial Protection Bureau (CFPB)'s Outline of Proposals and Alternatives Under Consideration for its Small Business Advisory Review Panel for the Consumer Reporting Rulemaking, issued pursuant to Small Business Regulatory Enforcement Fairness Act (SBREFA) on September 15, 2023.[1] The CFPB has requested comment on 47 questions in its Outline of Proposals. Our comments address a limited number of these questions on which we have input to offer that goes beyond our July 14 comments to the CFPB's Request for Information ("RFI") in this rulemaking.

[1] The Outline of Proposals is posted at https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf. These comments were written by NCLC attorneys Chi Chi Wu, Ariel Nelson, April Kuehnhoff, and volunteer attorney Amber Feng. Carolyn Carter of NCLC provided editorial oversight.

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Executive Summary

- We support the CFPB's proposals and overall approach for regulating data brokers as consumer reporting agencies (CRAs) under the Fair Credit Reporting Act (FCRA). The CFPB's proposals will protect consumers from the significant harms of data broker practices, such as selling sensitive financial information to target harmful offers of high-cost credit or credit repair to distressed borrowers. All of the CFPB's proposals are supported by the text, purpose and legislative history of the FCRA.
- We support the CFPB's proposal to cover a data broker's sale of certain types of consumer data (*e.g.*, data typically used for credit and employment eligibility determinations) under the FCRA, regardless of the purpose for which the data was actually used or collected. We urge the CFPB to provide a list of data types for the sake of clarity and ease of compliance, but the list should not be exclusive.
- A complex array of data broker intermediaries "assemble or evaluate" consumer information and should be considered CRAs, including many data brokers that sell public records information. Aggregated and anonymized data is often used to target individual consumers, and should be considered a consumer report in those circumstances. "Credit header" data should also be considered a consumer report. Covering credit header data will not hinder fraud prevention efforts by banks and other businesses when consumers apply for services, because businesses have a permissible purpose when they have a legitimate business need in connection with a transaction initiated by the consumer.
- The CFPB should put guardrails in place when users seek consumers' written authorization to access consumer reports. These include limitations on the use of such information to the purpose disclosed in the written authorization, data minimization requirements, and other protections similar to those that the CFPB proposed in its rulemaking under Section 1033 of the Dodd-Frank Act. The CFPB should also provide that failure to protect against unauthorized access to consumer reports by third parties violates the FCRA. Such a requirement should not impose additional data security requirements on CRAs given that they are already required to comply with the Federal Trade Commission's Safeguards Rule.
- We support the CFPB's proposal to codify its interpretation that the FCRA does not distinguish between legal and factual disputes, and does not exempt CRAs or furnishers from reasonably investigating so-called legal disputes. NCLC conducted a survey of private and legal services practitioners who represent consumers in FCRA litigation. The vast majority of practitioners observed that the nationwide CRAs and data furnishers do not initially classify disputes as legal versus factual in reality, or if they do, they do not actually process the disputes differently. Furthermore, many practitioners noted in narrative responses that the legal-factual distinction is a post hoc justification raised for the purposes of a defense in litigation.
- The CFPB has proposed creating a mechanism for consumers to notify a CRA or furnisher about systemic issues. To address system issues, we recommend that the CFPB clarify that injunctive relief is available under the FCRA. We also recommend that the CFPB establish an Office of Ombudsperson for consumer reporting issues.
- We strongly support a ban on the inclusion of medical debt items in credit reports. Medical debts can significantly lower a consumer's credit score and harm their ability to qualify for affordable credit, jobs, or rental housing. The use of credit reporting is a powerful tool to collect medical debts, including debts that consumers might not

owe. However, it is not the only collection tool, and there is no evidence that banning the appearance of medical debts on credit reports will incentivize consumers to not pay their medical bills.

- Alternatives to a ban on medical debts in credit reports would not be sufficient. The voluntary reforms by the nationwide CRAs were positive, *i.e.*, waiting one year before reporting a medical debt and removing medical debts that are paid or under $500. However, consumers with unpaid medical debts over $500 still bear the burden of negative credit reporting. These consumers are likely sicker and less financially well off. A CFPB rule is also necessary because Black and brown patients do not benefit as much from the voluntary reforms. An alternative that depends on patients to dispute medical debts based on insurance issues, and then requires the CRAs and furnishers to independently investigate such disputes, would not adequately protect patients and would be highly inefficient.
- The CFPB should ensure that any ban on medical debt reporting includes prohibiting the reporting of public records information regarding medical debt, e.g., judgments for medical bills that appear on specialty consumer reports used for credit purposes, such as LexisNexis RiskView. A ban should also include negative information regarding medical credit cards and medical debts charged to general purpose credit cards

I. Data Broker Provisions

A. We Support the CFPB's Overall Approach.

1. *We support the CFPB's proposals to regulate data brokers*.

The CFPB is considering an innovative and robust approach to data brokers that would help protect consumers. These include proposals to treat information as "consumer reports" and data brokers as "consumer reporting agencies" (CRAs) in these circumstances:

> 1. A data broker's sale of certain types of consumer data (*e.g.*, data typically used for credit and employment eligibility determinations) would be treated as consumer reports regardless of the purpose for which the data was actually used or collected, or the expectations of that data broker.
> 2. Consumer information would be a consumer report if it is provided to a user who uses it for a permissible purpose, regardless of whether the data broker knew or should have known the user would use it for that purpose, or intended the user to use it for that purpose.

The CFPB is also considering proposing the following prohibitions:

> 3. A data broker that collects consumer information for permissible purposes may not sell it for non-permissible purposes.
> 4. A data broker may not obtain consumer report information from a CRA without a permissible purpose or sell such information to a user, unless the user has a permissible purpose.

With respect to these proposals, we respond to the following questions:

Q1. What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

Q.11 Are there other ways in which the CFPB should be thinking about how and when data broker data should be considered a consumer report furnished by a consumer reporting agency?

We strongly support all of the above proposals. They will protect consumers from the harms of data brokers. In fact, we had recommended Proposals 3 and 4 in our July 14 comments[2] to the

[2] NCLC, Comments re Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information, Docket No. CFPB–2023-0020, July 14, 2023, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf [hereinafter NCLC Comments to Data Broker RFI].

Bureau's March 21, 2023 RFI Regarding Data Brokers and Other Practices[3] based on the abuses we had observed in the marketplace. These abuses include the nationwide CRAs or NCRAs – Equifax, Experian, and TransUnion - selling information from their main credit reporting files for impermissible purposes, including marketing. Proposal 3 would prohibit such abuses, and should already be prohibited under the FCRA.

We also strongly support Proposals 1 and 2. Our foray into the world of data brokers prior to and after preparing the NCLC Comments to the Data Broker RFI revealed a vast swath of companies that sell sensitive financial information used to pitch offers of credit, often high-cost, or other possibly harmful products. These companies derive their data outside of the credit reporting system, but the information in which they traffic is every bit as valuable and private as a credit report and should not be used to exploit consumers.

An example we learned about after drafting the NCLC Comments to the Data Broker RFI is LCI Data, which is a company that sells data for marketing. LCI Data's products include "Catalog & Mail Order Buyer Data," "Direct Response Consumer Data," "Donor & Non-Profit Data," and most importantly for FCRA implications, "Finance & Insurance Data."[4] In that last category, LCI Data touts "Whether you're selling credit repair, catalog credit, life insurance, health insurance, family coverage, loans or credit cards, we have the perfect data segment for your next marketing campaign."

Some of the "Datacards" that LIC offers include: "AMERICAN FAMILIES - IN FINANCIAL DEBT - CREDIT RELIEF SEEKERS" which is described as:

> This file reaches the growing numbers of Americans who are in debt and the numbers are climbing. These struggling consumers have either gone online or reached out to a debt consolidation company. Their own banks are either lowering or closing their credit lines and their interest rates are climbing. These consumers are simply looking for help and are eager to explore any option given to them. The options they have at this time would be credit card balance transfer programs, restructuring offers, financial counseling, or loan modification. These in-debt consumers are also looking for a payday loan. To find the solutions to their cash flow problem they log onto the internet and search for payday cash/loan offers. All of these consumers are highly receptive to secured credit card programs, sub-prime credit offers and more. Our database is 100% direct response and multi sourced, encompassing consumers who recently responded to an online promotion or direct mail piece.[5]

[3] 88 Fed. Reg. 16,951 (March 21, 2023).
[4] LCI Data, About Us, https://www.listconnection.net/about (dropdown menu for "Data Segments")(viewed Oct. 31, 2023).
[5] LCI Data, http://mailinglists.listconnection.net/market?page=research/datacard&id=552108 Segments")(viewed Oct. 31, 2023).

A similar file called HELP NEEDED - I'M 90 DAYS BEHIND WITH BILLS is described as:

> The Help Wanted – 90 Days Behind file is comprised of consumers who are struggling to pay their bills. They are 90 days behind and are ready for some help to prevent them from getting any further behind the eight ball so to speak. They are excellent prospects for payday loan, secured credit card, debt consolidation, subprime credit, or financial assistance offers. This file is sourced from a credit processing center, not the credit card issuer. The Help Wanted – 90 Days Behind file is 100% postal but can be telephone appended.[6]

Companies such as LCI Data should be brought within the scope of the FCRA. The clearest, strongest, most direct way to do so is Proposal 1, so that there is no question that the FCRA covers these data brokers and no room for creative legal arguments to dodge coverage.

2. The proposals are supported by the text, purpose and legislative history of the FCRA.

All four of the CFPB's proposals are supported by the text, purpose and legislative history of the FCRA. With respect to Proposal 4, the first part is simply a restatement of the FCRA's statutory text – any entity must have a permissible purpose to obtain a consumer report under § 1681b(f). The second part of Proposal 4 brings data brokers that resell a consumer report into the scope of the coverage. Both elements effectuate the purposes of the FCRA to "insure that consumer reporting agencies exercise their grave responsibilities with … respect for the consumer's right to privacy," § 1681(a)(4), and that there is "proper utilization" of consumer report information, § 1681(b).

Proposals 1 and 2 also effectuate the purposes of the FCRA to ensure not only privacy and proper usage of consumers, but that CRAs conduct their business "in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." Thus, Proposals 1 and 2 are within the CFPB's authority to "prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this subchapter, and to prevent evasions thereof or to facilitate compliance therewith." § 1681s(e).

The FCRA's legislative history supports a strong regulation to protect privacy of consumer information. Privacy and confidentiality issues were among the chief concerns that led Senator William Proxmire to introduce the first version of the FCRA. When Senator Proxmire first introduced S. 823, the bill which ultimately became the Fair Credit Reporting Act, he stressed the importance of assuring confidentiality, nothing that "[w]hat is disturbing is the lack of any public standards to ensure that the information is kept confidential and used only for its intended purpose."[7]

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[6] LCI Data, http://mailinglists.listconnection.net/market?page=research/datacard&id=258629 Segments")(viewed Oct. 31, 2023).
[7] 115 Cong. Rec. 2413 (1969). *See also* 114 Cong. Rec. 24,903 (1968) (remarks of Sen. Proxmire).

Congress similarly expressed concern when it enacted the FCRA about the ever-expanding "information network" and unchecked "dossier industry,"[8] which was disseminating information about individuals' financial status, criminal history, and general reputation without "public regulation or supervision."[9] Such concerns support the proposals for a broad scope of FCRA coverage that includes data brokers that traffic in the type of sensitive information that typically is found in consumer reports.

The credit industry is simply incorrect when it objects to the CFPB's potential proposals alleging that they "push the limits of the Bureau's authority under federal law."[10] One of their critiques is that FCRA coverage based on the nature of the data allegedly conflicts with the definition of "consumer report" under the FCRA, because the definition focuses on the purpose for which the data is being used.[11] While court decisions have focused on the "purpose" element of the definition,[12] we believe that the courts have unduly and incorrectly restricted the scope of the FCRA's coverage. We discuss these decisions and why the CFPB should re-interpret the definitions by rulemaking in the NCLC Comments to the Data Broker RFI.[13] As the agency in charge of interpreting the FCRA, the CFPB clearly has the authority to undo or reverse these decisions via regulation and we urge it to do so.

Furthermore, Proposals 2 and 3 are actually congruent with a purpose-based approach. Proposal 2 provides that if a data broker provides consumer information to a user ***who uses it for a permissible purpose***, it is a consumer report. The key reform of Proposal 2 is that the data broker does not need to have intent, knowledge, or meet a "should have known" standard in order for there to be coverage. Courts have imposed a specific intent requirement not found in the Act, to the detriment of consumers.[14] The CFPB's proposal removes that requirement to better protect consumers.

Proposal 3 would provide that a data broker that collects consumer information for permissible purposes may not sell it for non-permissible purposes. In other words, if consumer information is collected ***for the purpose*** of providing a consumer report, that information will always be

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[8] Robert M. McNamara Jr., The Fair Credit Reporting Act: A Legislative Overview, 22 J. Pub. L. 78, 80 (1973) (quoting Nader, *The Dossier Invades the Home*, Saturday Rev., April 17, 1971, at 18–21).
[9] 115 Cong. Rec. 2410 (1969).
[10] Kate Berry, CFPB outlines sweeping data proposal, drawing swift bank condemnation, American Banker, Sept 21, 2023, https://www.americanbanker.com/news/cfpb-outlines-sweeping-data-proposal-drawing-swift-bank-condemnation (quoting Dan Smith, CEO and President, Consumer Data Industry Association).
[11] *Id.* ("What the CFPB is saying is they want to regulate based on the nature of the data, not on how the data is being used, which is directly in conflict with the definition under the FCRA," quoting Ron Raether of Troutman Pepper).
[12] See, e.g., Kidd v. Thomson Reuters Corp., 925 F. 3d 99 (2d Cir. 2019); Zabriskie v. Fannie Mae, 940 F.3d 1022 (9th Cir. 2019).
[13] NCLC Comments to Data Broker RFI at 11-16, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf.
[14] *Id.*

considered a consumer report and cannot be used for an impermissible purpose, because it was "collected in whole or in part" and "expected to be used" for an FCRA-covered purpose, § 1681a(d). This will prevent data brokers from repackaging consumer report information to sell for impermissible purposes such as marketing, which is something the original pioneers of the data broker industry - the nationwide CRAs - have been known to do. This will also protect consumers and prevent evasions of the FCRA's protections.

B. The CFPB Should List Types of Data that Constitute a 'Consumer Report'.

The CFPB has asked the following:

Q.10 If the CFPB proposes the approach described above with respect to data brokers that sell certain types of data, would it be sufficient to provide a standard for (or guidelines about) what types of data are "typically" used for an FCRA-covered purpose or should the CFPB provide a list of such data types? What standard, guidelines, or data types should the CFPB consider for each FCRA-covered purpose?

We urge the CFPB to provide a list of data types for the sake of clarity and ease of compliance. This allows both industry and consumers to quickly and easily determine what types of information constitute a consumer report. One of the problems with data brokers is that many of them should already be CRAs but because of the convoluted nature of the definition of "consumer report" and "consumer reporting agency," these data brokers can argue they are not covered or don't even realize they are covered. Clear rules of the road are essential in this area.

However, the scope of human imagination is vast, and there will be new forms of data that involve the seven categories of information in § 1681a(d) that will not be on a list. Thus, this list should not be exclusive or exhaustive, so the CFPB should promulgate standards and guidelines for what types of information constitute a consumer report.

A list of data types that will invoke FCRA coverage should include:

- Financial information, such as
    - payment history information, including for rental, utility, telecom and other payment obligations
    - bank account transaction data
    - asset data, including deposit accounts, investments, mutual funds, stock portfolio
    - real estate holdings
    - collection accounts
- Criminal records, including
    - arrest records
    - prisoner lookup registries
    - sex offender registry entries

- Information and alerts from the Office of Foreign Asset Control
- Housing court records, including eviction records

One particular type of data that will need special treatment is medical information. In Section III.D. of the SBREFA outline, the CFPB is considering prohibiting the appearance of medical information and medical debts in credit reports. We urge that such information be prohibited from specialty reports as well, except for one particular type of specialty report - a medical records CRA used for life and health insurance underwriting (e.g., Medical Information Bureau). So the FCRA coverage provisions should say that medical information used by life and health insurance insurers is covered data, but otherwise medical information is prohibited from consumer reports.

C. A Complex Array of Data Broker Intermediaries "Assemble or Evaluate" Consumer Information and Should Be Considered CRAs or At Least Furnishers.

Q.14 What are the types of intermediaries, vendors, and other entities that transmit consumer data electronically between data sources and users? For any such company, describe the types of information the company obtains, from which data sources, who determines the sources of information to use, and how the information is transmitted, used, interpreted, or modified by the company

As the CFPB knows, one aspect of the definition of a "consumer reporting agency" is that the entity must engage in the practice of "assembling or evaluating" information.[15] Today, a variety of intermediaries assemble and/or evaluate consumer information and transmit it electronically to third parties. These entities, including those that supply public record information, should be considered CRAs or, at a minimum, furnishers.

Certain data brokers are one type of these intermediaries. As we discuss in the NCLC Comments to the Data Broker RFI, the data broker industry is vast, valued at $240.3 billion in 2021 and expected to reach $462.4 billion by the end of 2031.[16] The industry is "complex, with multiple data brokers providing data to each other."[17] Corporate structure adds to this complexity, as some data brokers are subsidiaries of other data brokers.[18] Data brokers also vary

[15] 15 U.S.C. § 1681a(f).
[16] NCLC Comments to Data Broker RFI at 4, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf.
[17] Federal Trade Commission, Data Brokers: A Call for Transparency and Accountability 46 (2014), https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf [herinafter FTC Data Broker Report].
[18] *See* Upturn, Comments in Re: FTC Request for Information Re: Tenant Screening (FTC-2023-0024) (May 30, 2023) 16 n.52, https://www.regulations.gov/comment/FTC-2023-0024-0598 [hereinafter Upturn Tenant Screening Comments] ("Several tenant screening companies are subsidiaries of the nation's largest data brokers; for example, TransUnion and LexisNexis both offer tenant screening services."); *see also* Sarah Lamdan, Data Cartels: The Companies That Control and Monopolize Our Information 3, 7

in size, ranging from huge companies like the NCRAs,[19] to contractors who specialize in collecting records from local court systems.[20]

The industry is also intentionally opaque. Some data brokers that provide public record information claim they are not CRAs. These companies refuse to comply with the most basic rights under the FCRA by prohibiting users from disclosing the reports to consumers or that the data broker even provided a report. These companies also refuse to disclose the reports to consumers who managed to figure out which entity provided a report and then requested their files.

For example, in *Carr v. Regulatory Datacorp, Inc.*, Jeffrey N. Carr Sr. alleged that his credit card account from Capital One Bank, N.A. was being closed because Capital One "discovered adverse past or present legal action."[21] Capital One told Mr. Carr that the account "can't be reopened" and that they "are not able to offer additional information about this decision."[22] Mr. Carr only learned the identity of the entity that provided the report to Capital One, Regulatory Datacorp, Inc. (RDC),[23] because he "demanded its production, over objection, in separate litigation with Capital One regarding the closing of the account."[24] RDC never responded to Mr. Carr's file disclosure request. Mr. Carr only learned that the report contained a criminal record – someone else's (his son's) criminal record – because of that separate litigation under the Equal Credit Opportunity Act and state law.[25]

Even data brokers that agree the FCRA covers them have refused to accurately disclose the sources of information contained in the consumer's file to the consumer. This includes the NCRAs, which have refused to disclose their public records vendors for years. For example, TransUnion Rental Screening Solutions, Inc. (TURSS), a subsidiary of Trans Union LLC, failed

(2003) (describing Thomson Reuters and Reed Elsevier LexisNexis (RELX) as "conglomerates, multi-industry behemoths that control swaths of resources" and "capitalize on the troves of materials that they get through taking over competitors").

[19] Nica Latto, *Data Brokers: Everything You Need to Know*, Avast Academy (Oct. 29, 2020), https://www.avast.com/c-data-brokers#gref.

[20] Mitra Ebadolahi, Natasha Duarte, & Tairan Zhang, Upturn, Comments to the CFPB on Data Brokers (July 14, 2023), https://www.upturn.org/work/comments-to-the-cfpb-on-data-brokers/ [hereinafter Upturn Data Broker Comments]; *see also* Consumer Fin. Prot. Bureau, Market Snapshot: Background Screening Reports 25 (2019) [hereinafter CFPB, Market Snapshot: Background Screening Reports] (noting background screening companies often use third party companies that provide "runner" services).

[21] Complaint at 9, *Carr v. Regulatory Datacorp, Inc.*, No 2:22-cv-02139-KSM (Oct. 14, 2022 E.D. Pa.).

[22] *Id.*

[23] RDC became part of Bureau Van Dijk in 2021. *Id.* at 2–3 (describing the acquisition and the entities' screening services).

[24] *Id.* at 11.

[25] *Id.* at 11–12; Complaint, *Carr v. Capital One Bank* (USA), N.A., No. 1:21-cv-02300-AT-JKL (June 3, 2021 N.D. Ga.).

to identify third party vendors, like LexisNexis, as the source of its public record information in file disclosures to consumers.[26]

All of these dynamics mean, as the Federal Trade Commission (FTC) recognized back in 2014, that it is "virtually impossible for a consumer to determine how a particular data broker obtained his or her data."[27] The inability to track down data brokers and data sources makes it difficult or impossible for consumers to know why they were deprived of essential opportunities, such as jobs, housing, and access to financial services. It also makes it difficult or impossible for consumers to correct inaccurate information.

Despite the industry's complexity and opacity, we know that data brokers obtain information from public records, publicly available information, and non-public consumer information that consumers provide to companies from which they obtain products or services.[28] NCLC's Comments to the Data Broker RFI provide additional high-level information about the various ways these companies gather data and how they organize and package it.[29]

Here, we focus in particular on the ecosystem of data brokers involved in providing and reporting information from public records, such as eviction and criminal records. In general, data brokers that sell public record information to end users like landlords and employers for tenant and employment screening purposes obtain their information from other data brokers that maintain private databases of aggregated records. Some large screening companies maintain databases (or have a corporate relationship with a company that maintains databases[30]) for their own use.[31] The data in these databases usually comes from many sources. It is often purchased in bulk from public sources–including law enforcement agencies, state courts, corrections offices, and criminal record repositories – or obtained from public websites via webscraping technology.[32] Some of the data also comes from smaller data brokers, including those who collect records from local court systems.[33] The data brokers that own and manage the records

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[26] Complaint at 12–13, *Fed. Trade Comm'n v. TransUnion Rental Screening Solutions, Inc.*, No. 1:23-cv-02659 (D. Colo. Oct. 12, 2023), Ecf. No. 1; *see* NCLC, Fair Credit Reporting § 3.6.4.2 & nn. 565–68 (discussing other cases where CRAs failed to disclose the public records vendor as the source of the information).

[27] FTC Data Broker Report at 46.

[28] NCLC Comments to Data Broker RFI at 4, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf.

[29] *Id.* at 4–5.

[30] *See* Upturn Data Broker Comments (discussing how some background check providers are subsidiaries of larger data brokers, such as LexisNexis and TransUnion).

[31] Ariel Nelson, National Consumer Law Center, Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing 10–12 (2019) [hereinafter Broken Records Redux].

[32] *Id.*

[33] *Id.*; Upturn Data Broker Comments; CFPB, Market Snapshot: Background Screening Reports at 25 ("[S]ome background screening companies state that they use official court repositories from each relevant jurisdiction; others rely on private databases of public criminal records information, either run internally or by third parties, which may be national in scope or state/county specific. Background

databases usually need to format the records that they purchase so that the data can be incorporated into the database. Thus, they do not merely provide unadulterated information.[34] The public records portions of tenant, employment, and other screening reports are typically then generated by running searches of the databases that try to match a consumer's personally identifying information with the information in the databases.

To illustrate the ways that data brokers transmit public records information between them and prepare consumer reports, below we provide descriptions from some court opinions and complaints. These cases also shed light on the types of data sources used and reveal some of the specific data brokers operating in this market.

At a minimum, the data brokers that collect and provide public records information should be considered furnishers. Many assemble and/or evaluate information within the meaning of the FCRA and should be considered CRAs.[35] Moreover, under the CFPB's Proposal 1 (discussed in Section I.A above), they should be considered CRAs because they sell data typically used in employment, tenant, and other screening reports.

> *Fernandez v. RentGrow, Inc.*
> In this case, a housing provider requested a report about Mr. Fernandez from Defendant RentGrow, a tenant screening CRA. RentGrow collects its data from various other CRAs and public records sources. When housing providers request information "about a prospective tenant's criminal record, RentGrow purchases data from backgroundchecks.com—a criminal records vendor—and matches those records to consumers."[36]
>
> *Grant v. RentGrow, Inc.*
> "[A]ccording to its expert, 'RentGrow prepared a tenant screening report using, in part, housing record information from a consumer report obtained from TUBDS [TransUnion Background Data Solutions, a subsidiary of TransUnion].' The evidence does not show that RentGrow merely forwarded a report prepared by TUBDS or other CRA. RentGrow

screening companies often also use third party companies that provide 'runner' services or may have those services in-house that will search individual courthouse records directly. Some large companies that maintain national databases for their own use sell access to their databases to other companies." (citations omitted)).

[34] *See, e.g., Henderson v. CoreLogic National Background Data, LLC,* 178 F. Supp. 3d 320, 322–23 (E.D. Va. 2016). For more information about how background screening companies modify, interpret, repackage, and assign priority or value to information from records, including how they sort criminal records into categories, see Upturn Tenant Screening Comments at 12–13, 16.

[35] Broken Records Redux at 10–12; *see also* NCLC, Fair Credit Reporting § 2.5.3.2 (discussing the meaning of "assembling or evaluating" according to the FTC and case law).

[36] Fernandez v. RentGrow, Inc., 341 F.R.D. 174, 184 (D. Md. 2022) (citations omitted).

obtained information and prepared its own screening report based on the gathered information."[37]

Scott v. Resolve Partners, LLC

"Defendant [Resolve Partners] contracts with Trade House Data ('Trade House') to provide criminal records for employment screenings. Trade House is a private data vendor that supplies criminal charges and convictions to Defendant from a 'national alias database report.' Trade House pulls its data from multiple online sources, such as backgroundchecks.com and RapidCourt. Trade House conducts its search based on the identifiers supplied by Defendant and returns a 'pointer file' to Defendant with possible criminal records of an applicant. Per the contract between Defendant and Trade House, Trade House explicitly disclaims the accuracy, reliability, or content of any public records provided through its services."[38]

Jackson v. Genuine Data Services, LLC

"Defendant [Genuine Data Services, LLC] sells bulk public record data, which it obtains from third-party public record data collection vendors, and provides this data to its clients periodically. . . . Defendant 'does not know about whom or for whom its clients use [its] bulk public record data,' or whether its clients use the data at all."

. . .

"Plaintiff's prospective landlord ordered a background check from RealPage, which provides consumer reports to landlords for tenant screening purposes under the name 'The Leasing Desk,' in December 2020. Using the public record data that it received from Defendant and Defendant's predecessor, RealPage included Plaintiff's July 2000 traffic infraction in the background check that it provided to The Nexus. As a result, [the apartment complex] denied Plaintiff's rental application."

"At the time when the record at issue was first collected, Defendant did not exist. Instead, Defendant's predecessor collected the record and first provided it to RealPage, then later transferred the record to Defendant. Defendant also provided the record to RealPage in a bulk public data file."[39]

This last case illustrates how data is frequently transferred between data brokers, in various forms (e.g., in bulk public data files).[40]

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[37] Grant v. RentGrow, Inc., No. SA-21-CV-1172-JKP, 2023 WL 5813140, at *10 (W.D. Tex. Sept. 6, 2023) (citations omitted).

[38] Scott v. Resolve Partners, LLC, No. 1:19-CV-1077, 2023 WL 6388202, at *2 (M.D.N.C. Sept. 29, 2023) (citations omitted). The court mentions in a footnote that the defendant uses other data vendors to supply criminal records, but that it used the particular vendor mentioned here–Trade House Data–for the plaintiff's report.

[39] Jackson v. Genuine Data Servs., LLC, No. 3:21CV211 (DJN), 2022 WL 256281, at *2 (E.D. Va. Jan. 26, 2022).

[40] By referring to the defendant's "predecessor," this paragraph also appears to demonstrate how data brokers frequently acquire other data brokers. However, neither the court's decision nor the underlying

United States v. Appfolio, Inc. (Complaint)

"Defendant obtained criminal and Eviction Records for inclusion in Tenant Screening Reports from a third party vendor, CoreLogic National Background Data, LLC or CoreLogicScreening Services, LLC ('Corelogic')."

. . .

However, Defendant had limited knowledge of the procedures CoreLogic used to match, retrieve, and return criminal records and Eviction Records to defendant."[41]

In re: TransUnion Rental Screening Solutions, Inc. FCRA Litigation (Consolidated Class Action Complaint)

These private actions (consolidated as a multi-district litigation) against TURSS paralleled the FTC/CFPB action. The consolidated complaint alleged that:

"TURSS does not always obtain complete and up-to-date public records from the source. For many years, TURSS has purchased records of civil and criminal cases from one or more private sources known as 'vendors,' rather than retrieving for itself the actual underlying court records. TURSS also relies heavily on information that is available online, and that can be retrieved through the use of automated procedures. TURSS frequently fails to obtain data that could be obtained through an in-person or telephonic visit to a courthouse, and also fails to obtain data that exists online, but requires a user to advance beyond an initial summary screen. TURSS also relies on old data, meaning that it fails to catch changes to public records, such as expungements or notations that a criminal charge has been dismissed or reduced."

"Regardless of whether data comes from a vendor or directly from a jurisdiction, TURSS does not obtain complete records, often obtaining only summary data available online or in bulk. For criminal records, TURSS' procedures result in data that does not include sufficient information to positively identify the criminal defendant, such as SSN, date of birth, middle names, and address. Relying on the sparse data points it does collect leads TURSS to erroneously match criminal records with innocent individuals to whom they do not belong."[42]

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briefing or exhibits specifically state that Genuine Data Services acquired another data broker–both simply refer to Genuine Data Services' "predecessor." This lack of explanation contributes to the opacity of the data broker industry.

[41] Complaint at 5, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (Dec. 8, 2020 D.D.C.), ECF No. 1, https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf.

[42] Consolidated Amended Class Action Complaint at 12–13, *In re: TransUnion Rental Screening Solutions, Inc. FCRA Litigation*, No. 1:20-md-02933-JPB (N.D. Ga. June 21, 2021), ECF No. 80, https://www.rentalscreeningsettlement.com/admin/api/connectedapps.cms.extensions/asset?id=623dc559-a945-4775-9369-648410c0d0a1&languageId=1033&inline=true. This multidistrict litigation settled in fall of 2023. For more information about the settlement, see TransUnion Rental Screening Settlement (last visited Oct. 23, 2023), https://www.rentalscreeningsettlement.com/.

Another type of intermediary that transmits consumer data are data aggregators, which support data users and/or data holders in enabling authorized data access pursuant to Section 1033 of the Dodd-Frank Act. These entities include companies such as Fincity, Plaid, Yodlee and others. They transmit deposit account transaction and cashflow data for numerous purposes, such as credit underwriting, personal financial management, tax preparation, and more. We have argued on multiple occasions that data aggregators should be considered "consumer reporting agencies" under the FCRA,[43] and even some data aggregators have agreed they are FCRA covered.[44]

D. Aggregated and Anonymized Data is Often Used to Target Individual Consumers and Should Be Considered a Consumer Report in Those Circumstances.

The CFPB has asked the following about aggregated data:
Q.23 Is there a level of aggregation of consumer report information at which consumer privacy would not be implicated? Are you aware of instances in which aggregated information that is drawn from a consumer reporting database is later linked back by a third party to specific consumers, for example when a consumer responds to an advertisement?

As discussed in the NCLC Comments to the Data Broker RFI,[45] data brokers offer a number of products with aggregated or anonymized data derived from consumer reports. The nationwide CRAs (Experian, Equifax and Trans Union) all offer products that consist of financial information that should be considered "consumer reports" but for aggregation, anonymization, or identification based on an entity other than an individual consumer. In the case of Experian, these products actually use information from its main credit reporting files. To reiterate:

> *Experian*
> Experian sells several products that it does not treat as consumer reports based on either aggregation or anonymization. These include ConsumerView, which is used for marketing and includes "Aggregated credit information" "Financial data segments" and the "ConsumerViewSM Profitability Score, which ranks "households most likely to pay

[43] National Consumer Law Center, Comments to the CFPB Regarding Consumer Access to Financial Records Under Section 1033 of the Dodd-Frank Act, Feb. 4, 2021, https://www.nclc.org/resources/comments-to-cfpb-in-response-to-anpr-regarding-consumer-access-to-financial-records-under-section-1033-of-the-dodd-frank-act/; NCLC Written Statement for CFPB's Symposium on Consumer Access to Financial Records, Section 1033 of the Dodd-Frank Act, February 12, 2020, https://www.nclc.org/wp-content/uploads/2022/08/NCLC-statement-for-CFPB-1033-Symposium-1.pdf
[44] Finicity, FCRA and Data Agents White Paper, February 2021, https://www.finicity.com/fcra-data-agents/.
[45] NCLC Comments to the Data Broker RFI at 16-27, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf.

their debts."[46] The information contained in ConsumerView appears to be derived in part from Experian's many credit reporting databases. However, Experian claims that the information is not a consumer report because the information is being aggregated and organized by zip code, and does not pertain to an individual "consumer" or natural person. Unfortunately, the 9th Circuit has upheld this theory in *Tailford v Experian*.[47] This is despite the fact that while the information might be organized by zip code, it is delivered to customers to use for the purpose of targeting individual consumers for marketing. Experian states in its marketing of ConsumerView that "[w]e also attach a unique, permanent identifier to each consumer record, which helps maintain contact with consumers wherever they move."[48]

Equifax

Equifax offers a suite of products from its IXI Network, which it describes as an "exclusive network of more than 95 leading financial institutions, [from which] we directly measure about $27.5 trillion in anonymous U.S. consumer assets and investments, representing about 45 percent of all U.S. consumer invested assets. We utilize our patented process to collect and classify anonymous consumer asset data and then combine it with additional proprietary measures of income, discretionary spending, and credit to provide a more complete picture of households' financial and economic positions. …" [49] Equifax then distributes this information via products such as Credit Styles Pro, which Equifaxx claims "includes Detailed Credit Variables, Risk Scores, Intent Indicators, and Aggregated FICO® Scores."[50] Equifax also claims these are not FCRA covered because "household scores and variables are aggregated to the ZIP+4 level,"[51] Yet despite being aggregated and anonymous, Credit Styles Pro also claims it "Better represents households' credit usage by de-duplicating individuals on joint and shared accounts." Thus it appears that the aggregated data is subsequently linked to individuals or households.[52]

TransUnion

TransUnion's offerings are based on its TLOxp platform, now known as TruLookup, which it does not appear to consider to be FCRA covered.[53] TLOxp/TruLookup appears

[46] Experian, ConsumerView, at 5 (Feb. 2018), www.experian.com/assets/dataselect/brochures/consumerview.pdf.
[47] 26 F.4th 1092 (9th Cir. 2022).
[48] Experian, ConsumerView, at 7 (Feb. 2018), www.experian.com/assets/dataselect/brochures/consumerview.pdf.
[49] Equifax, Foundation of IXI data solutions, 2022, https://assets.equifax.com/assets/ixi/foundationOfIXIData_ps.pdf.
[50] Equifax, CreditStyles Pro, 2019, https://assets.equifax.com/marketing/US/assets/CreditStyles-Pro-ps.pdf.
[51] *Id.*
[52] *Id.*
[53] See TransUnion Risk & Alternative Data Sols., Inc. v. Challa, 676 F. App'x 822, 823 (11th Cir. 2017)("TRADS is a 'data fusion' company, offering products that aggregate fragmented information

> to be used for both FCRA covered purposes, such as debt collection[54] and insurance,[55] and non-covered uses, such as law enforcement[56] and marketing.[57] In particular, the debt collection products are troubling in that they imply use of the TransUnion main credit reporting database, stating "TruVision Trended Income Estimator is more accurate because it has been constructed from various income data sources and leverages best-in-class data assets including TransUnion's proprietary TruVision Trended credit database."[58]

Thus, it appears that the nationwide CRAs are actively using data that should be considered a consumer report, and in some cases were derived from a consumer credit report, to target individual consumers for marketing purposes, but claiming these are not consumer reports because the data is aggregated or anonymized. We urge the CFPB to address this dodge and adopt an additional proposal with respect to the definition of a "consumer report" and state that:

> Information that would be considered a consumer report but for being aggregated or organized on a basis other than the individual consumer will constitute a consumer report if it is ever subsequently used for any purpose involving an individual consumer, i.e. marketing to an individual consumer.

E. Credit Header Data Should be Covered as a Consumer Report, Which Can Still be Used for Fraud Prevention.

The CPFB is considering a proposal that would reduce, perhaps significantly, CRAs' ability to sell or share credit header data from their consumer reporting databases without a permissible purpose. The CFPB asks:
Q18. If the CFPB proposes a rule clarifying when credit header data is a consumer report, are there certain categories of credit header data you believe should be included or excluded as a consumer report? If so, under what circumstances?

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about people, businesses, and assets. Its core product, TLOxp, enables TRADS's clients—typically government, law enforcement, licensed investigators, and corporate fraud divisions—to obtain a cohesive set of data on identified entities.").

[54] Press Release, TransUnion Announces Rebrand of its Business Solutions with Focus on Providing a Tru Picture of Consumers, Feb. 21, 2023, https://www.tlo.com/blog/transunion-announces-rebrand-of-its-business-solutions.

[55] TransUnion, Annual Report Pursuant to Section 13 Or 15(D) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2022, at 6.

[56] *Id.*

[57] TransUnion, TruAudience Marketing Solutions, https://www.transunion.com/solution/truaudience (viewed Oct. 16, 2023).

[58] TransUnion TruVision Trended Income Estimator, 2023, https://www.transunion.com/content/dam/transunion/global/business/documents/3PC-income-estimator-asset-sheet.pdf.

As stated in the NCLC Comments to the Data Broker RFI[59] as well as letters to the CFPB in February 2023[60] and January 2021,[61] we believe that the credit header exception should be eliminated. As all three of the above documents noted, the exception for credit header data from FCRA coverage did not originate from the FCRA statutory text or even a regulation, but from FTC Staff Commentary. Thus, the CFPB has more than adequate authority to eliminate the exception by rulemaking.

Viewed in the abstract, a simple list of names, addresses and telephone numbers might not seem to bear on the seven factors in § 1681a(d)(1). However, the fact that the information originates from a CRA not only can bear on one of the seven factors, but reveal sensitive information. For example, a list of consumers from the CRA National Consumer Telecom and Utilities Exchange indicates that those consumers have obtained service from one of the member companies, *i.e.* the consumers have a mobile phone, cable, utility, or Internet service, which would be a "personal characteristic" or "mode of living." If a list of consumers includes Social Security Numbers, those numbers by themselves are extremely sensitive as well as valuable. In addition, the fact that the consumer's entry is missing an SSN or uses another identification number such as a matricula consular or Individual Taxpayer Identification Number can be revealing of the consumer's immigration status, which is a personal characteristic. A list of consumers from a nationwide CRA standing alone provides important information, in that it informs the user that each consumer has a file with those companies and is not "credit invisible."

One of the arguments that the industry has made to preserve the credit header exception is that it is useful in fraud prevention and that eliminating the exception would hinder such efforts. For example, Lindsey Johnson, president and CEO of the Consumer Bankers Association is quoted as saying that "Banks spend millions of dollars to protect their customers' data and prevent fraud, sometimes utilizing credit header data to do so."[62] This implies that banks would no longer be able to use credit header data for such efforts if the credit header exception were eliminated. And the same American Banker article suggests that another consequence of eliminating the credit header exception would be that "the use of data for identity verification to access a streaming service or an online account would be prohibited without a consumer's written authorization." [63]

Such arguments fail to note that fraud prevention *is* a permissible purpose when conducted based on a consumer's application for credit, a bank account, or other "transaction initiated by the consumer." 15 U.S.C. § 1681b(a)(3)(F). Thus, use of credit header data would be allowed if the

[59] NCLC Comments to the Data Broker RFI at 39, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf.
[60] https://www.nclc.org/wp-content/uploads/2023/02/2023-02-08-Coalition-Letter-to-CFPB.pdf.
[61] https://www.nclc.org/wp-content/uploads/2022/10/credit_headers_ICE_ltr.pdf.
[62] Kate Berry, CFPB outlines sweeping data proposal, drawing swift bank condemnation, American Banker, September 21, 2023, https://www.americanbanker.com/news/cfpb-outlines-sweeping-data-proposal-drawing-swift-bank-condemnation.
[63] *Id.*

consumer initiated the transaction by applying for a deposit account at a bank or a streaming service. Use of credit header data would *not* be allowed to verify a consumer's identity for marketing or solicitation purposes – which would be a positive result that protects the privacy of consumers and our ability to control our own information.

We understand there are some concerns about the ability of law enforcement personnel to access credit header data. However, we note that law enforcement personnel can obtain limited information from a consumer reporting agency pursuant to § 1681f, which allows government agencies to obtain the consumers name, addresses (including former addresses) and employers (including former employers) without a permissible purpose. Thus, Congress made a deliberate decision to allow government and law enforcement to access specific limited data elements without a permissible purpose, but to exclude other elements from this provision, such as Social Security numbers, dates of birth, and phone numbers.

Congress likely had good reason to allow only limited data elements to be supplied to government officials without a permissible purpose. Allowing unfettered access by law enforcement to consumer reports could enable fishing expeditions and dragnet-type access to data for a wide swath of individuals without any sort of reasonable suspicion, raising Fourth Amendment and due process concerns. Furthermore, if law enforcement personnel require consumer report information because they have a specific target and reasonable suspicion, they can seek a subpoena, which is a permissible purpose under § 1681b(a)(1). Obtaining a subpoena from a court ensures there are some due process protections and prevents wholesale fishing expeditions, while allowing access to consumer reports when law enforcement has specific information that a specific individual may be violating the law.

Finally, requiring a permissible purpose for credit header data will promote data security and prevent criminal activity. A recent article from 404 Media documented how, for a mere $15 (or $20 with SSNs), anyone can obtain credit header information from a bot operated by criminal hackers. The hackers appear to be using stolen login credentials of law enforcement officials The writer of the article was able to obtain:

> a file containing every address that person had ever lived at in the U.S., all the way back to their college dorm more than a decade earlier. The file included the names and birth years of their relatives. It listed the target's mobile phone numbers and provider, as well as personal email addresses. Finally, the file contained information from their drivers' license, including its unique identification number. [64]

Restricting access to credit header data will help prevent the abuses documented in the 404 Media article.

[64] Joseph Cox, The Secret Weapon Hackers Can Use to Dox Nearly Anyone in America for $15, $04 Media, Aug. 22, 2023, https://www.404media.co/the-secret-weapon-hackers-can-use-to-dox-nearly-anyone-in-america-for-15-tlo-usinfosearch-transunion/.

F. The CFPB Should Tighten Up the Written Authorization Permissible Purpose.

With respect to the permissible purpose based on a consumer's written authorization under § 1681b(a)(2), the CFPB asks:

Q.24 Describe the consumer authorizations or certifications of written instruction typically relied upon to furnish or obtain consumer reports pursuant to this permissible purpose.

Q25. What should the CFPB take into consideration when evaluating proposals to ensure that consumers understand the scope and import of their authorization to furnish or obtain their consumer report?

As the CFPB knows, consumers often provide written authorization or consent unknowingly or as a pro forma matter, without seeing, reading, or understanding what they are consenting to. How many of us have spent less than 30 seconds scrolling through a long terms of service webpage and clicked "Agree"? We do so for several reasons, including out of habit, because we think we have no choice in the matter, or because of the sheer length and density of the terms of service.

The written authorization provision is a huge potential loophole for data brokers and their customers to exploit. The CFPB could spend significant time, resources, and political capital to expand the scope of the FCRA to cover data brokers, only to have them avoid the requirement to ensure users have a permissible purpose by burying authorizations in the fine print of a click-thru webpage. Based on these click-thru authorizations, consumer reports could be sold and resold, as we discussed in the NCLC Comments to the Data Broker RFI.[65]

To avoid allowing the written authorization provision of § 1681b(a)(2) to undermine the protections that the CFPB is seeking to establish, we urge the Bureau to adopt substantive protections or guardrails around such authorizations. We also urge the CFPB to issue model forms or language so that there is a better chance that the authorizations represent real, knowing, and meaningful consents. Finally, we urge the CFPB to do everything it can to ensure that authorizing the access to consumers reports is viewed by the consumer as voluntary and optional.

<u>Substantive protections in the use of consumer authorizations</u>

To avoid the risks to consumer privacy and misuse of data, we urge the CFPB to adopt the following limitations on the ability to obtain consumer reports pursuant to the consumer's written authorization. Many of these suggested limitations are similar to the ones adopted by the CFPB in its Notice of Proposed Rulemaking to implement Section 1033 of the Dodd-Frank Act.[66]

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[65] NCLC Comments to the Data Broker RFI at 36-38, https://www.nclc.org/wp-content/uploads/2023/07/NCLC-Comments-to-CFPB-RFI-on-Data-Brokers-Chi-Chi-Wu.pdf.
[66] CFPB, Required Rulemaking on Personal Financial Data Rights, 88 Fed. Reg. 74,796 (Oct. 31, 2023).

Authorization should be for a specific purpose. Users should be required to disclose the specific purpose for which they are seeking written authorization, and should not be allowed to use the authorization for any other purpose.

Authorization should be limited to the data that is required for a specific purpose (*i.e.*, data minimization). For example, if a business is basing the decision to charge a deposit based on the applicant's credit score, the business should only be able to obtain the score and not the entire credit report.

Authorization should be limited to a one-time use or time period. A written authorization for a specific transaction should be a single, one-time pull and use. An authorization for ongoing access and use should expire after a certain period (e.g., one year) and require renewal.

Consumers should have a simple option to revoke authorization for ongoing access and to have users delete their data.

Model clauses and formatting

The formatting and language of written authorizations need standardization to ensure that consumers actually see, read, and understand what they are authorizing. Authorizations should consist of a standalone disclosure with no extraneous text. There should be a requirement that the language used in the disclosure be kept at a sixth-grade level. There should be a maximum word count to prevent overly long, dense, and thus hard-to-read text. We highly encourage the CFPB to consult literacy experts on how to ensure that consumers give authorization in a knowing manner with adequate understanding, and are not engaged in click-through consent based on boilerplate.

The CFPB should develop model clauses, formatting, and interfaces. There should be mobile friendly version, required when disclosures are made on a mobile phone.[67] Many low-and moderate-income consumers – indeed, many consumers generally – now primarily rely on their mobile phones to view disclosures and websites. Model clauses should be translated into the primary languages used by limited English proficient consumers.

The authorization disclosure should include the name of the user and the specific CRA from which the user will obtain the consumer report. As for timing, disclosures should be provided and authorization sought immediately before the report is accessed. Providing the disclosures and obtaining authorization too early uncouples the authorization from the access and risks the consumer forgetting that they had granted authorization to this information.

[67] *See* Jeff Sovern and Nahal Heydari, Not-So-Smartphone Disclosures (August 12, 2022). St. John's Legal Studies Research Paper No. 22-0010, 2022, available at SSRN: https://ssrn.com/abstract=4188892 or http://dx.doi.org/10.2139/ssrn.4188892 (finding that consumers understood credit card disclosures significantly less well on smartphones).

A consumer should be given a copy of the authorization. Furthermore, if there is ongoing access, there should be information on the consumer report and the consumer's online account profile for the product, if they have one, that shows the existence of such access.

Making consent truly voluntary

In some cases, consumers will provide a consent or authorization because they believe they have no choice in the matter. To combat this perception, the CFPB should require that authorization disclosures include information about the alternatives if the consumer does not provide authorization. For example, if a dating website is using credit reports or scores, the authorization disclosure should say "You may still use our dating app if you do not give permission to share your credit score, but you may get fewer matches."

In other cases, the authorization is for a use that the consumer might not desire or might be indifferent to. That is why clear disclosure of the specific purpose of the authorization is important, e.g., "If you authorize the sharing of your credit score, it will allow us to send you more personalized marketing materials."

G. CRAs are Already Required to Comply with the Safeguards Rule, so Requiring Data Security under the FCRA is Reasonable.

The CFPB is considering providing that failure to protect against unauthorized access to consumer reports by third parties may violate §§ 1681b or 1681e(a) of the FCRA. The CFPB asks:

Q29. What data security improvements, and associated costs, would consumer reporting agencies incur if they were liable under the FCRA for all data breaches?

We do not have information regarding the costs that CRAs would incur for additional security improvements if they were liable under the FCRA for data breaches. However, we would argue that CRAs should not actually be incurring any additional costs for instituting new data security measures, because they should already have data security improvements in place to prevent data breaches. CRAs are subject to the FTC Safeguards Rule and have been for many years. The FTC Safeguards rule was strengthened in late 2021,[68] almost two years ago, and CRAs should be in compliance with the new requirements.

The FTC Safeguards Rule requires CRAs and other non-bank "financial institutions" to develop, implement, and maintain a comprehensive security system to keep consumer information safe. Thus, CRAs have been under a mandate to "protect against unauthorized access" for many years now. Treating a failure to adequately protect against a data breach violation of the FCRA should

[68] Federal Trade Commission, Final Rule: Standards for Safeguarding Customer Information, 86 Fed. Reg. 70,272 (Dec. 9, 2021).

not impose additional security improvement requirements, but would give the CFPB its own regulatory authority to supervise larger participant CRAs to make sure those security improvements are actually in place.

Thus, we would support a proposal that treated a failure to reasonably protect consumer report data against unauthorized access by third parties as a form of "furnishing" such information under §§ 1681b and 1681e(a). Currently, a number of courts have held that failure to prevent a data security breach does not violate these sections.[69] The CFPB has the authority to interpret the FCRA, including §§ 1681b and 1681e(a), to counter these decisions, which we believe do not adequately hold the CRAs accountable and protect consumers.

II. Disputes

A. CRAs and Furnishers Rarely, if Ever, Distinguish Between Legal and Factual Disputes in Actual Practice: An NCLC Survey

1. Introduction

The CFPB is considering a proposal to codify its interpretation that the FCRA does not distinguish between legal and factual disputes, and does not exempt CRAs or furnishers from reasonably investigating so-called legal disputes. This is in response to attempts, often successful in the courts, by the nationwide CRAs and furnishers to create such a distinction and argue that the FCRA only requires them to investigate supposedly factual disputes.[70] The CFPB asks:

[69] In re Horizon Healthcare Servs. Inc. Data Breach Litig., 2021 WL 6049549, at *3 (D.N.J. Dec. 21, 2021) (health insurance provider involved in data breach was not a CRA because information was not gathered for the purpose of furnishing consumer reports); Dolmage v. Combined Ins. Co. of Am., 2015 WL 292947 (N.D. Ill. Jan. 21, 2015) (insurance provider involved in data breach was not CRA because information was not gathered for purpose of furnishing consumer reports); Strautins v. Trustwave Holdings, Inc., 27 F. Supp. 3d 871 (N.D. Ill. 2014) (third-party vendor involved in data breach was not CRA because its purpose was not to "furnish data" to identity thieves); In re Sony Gaming Networks and Customer Data Security, 996 F. Supp. 2d 942 (Jan. 21, 2014) (dismissing FCRA claims; defendants were not CRA when consumer information was stolen by third-parties during security data breach); Willingham v. Global Payments, Inc., 2013 WL 440702, at *12–13 (N.D. Ga. Feb. 5, 2013) (no impermissible use claim available where hackers gained unauthorized access to consumer report information: "The relevant fact is that the data was stolen, not furnished."); Holmes v. Countrywide Fin. Corp., 2012 WL 2873892, at *16 (W.D. Ky. July 12, 2012) (plaintiffs failed to state FCRA claim against defendant where defendant's employee "independently stole [defendant's] customer information"). Cf. Frechette v. Health Recovery Servs., Inc., 2022 WL 974383, at *7 (S.D. Ohio Mar. 31, 2022) (plaintiffs could not show willful or negligent FCRA violation because theft of consumer information does not amount to furnishing)

[70] NCLC, Fair Credit Reporting at §§ 4.5.3.4.6, 6.10.2.5.

Q30 - Do you have knowledge about the practice of distinguishing between disputes classified as relating to legal issues and those classified as relating to factual issues, and if so, how do those that engage in this practice distinguish these types of disputes? Do they process or handle the disputes differently, and if so, what are the differences?

To answer this question, we conducted a survey of attorneys who handle FCRA cases, both in private practice and legal services settings. We received 31 responses, 28 from private attorneys and 3 from legal services attorneys. All but one of the respondents had litigated lawsuits involving FCRA claims against information furnishers, and all but two of the respondents had litigated cases against CRAs.

Our survey asked four questions about what these attorneys observed in handling FCRA cases. The first two questions asked about the NCRAs, and the second two asked about furnishers. The one respondent who had not litigated against either a CRA or a furnisher did not respond to these questions and thus their response is not included in the results. Also, Questions 2 and 4 were follow up questions, so not all respondents answered them.

2. NCLC's Survey: Questions about NCRAs

The first question asked:
"Question 1: Based on your experience litigating FCRA cases, do the NCRAs actually classify disputes as relating to a legal issue versus a factual issue when they initially receive the disputes?"

A significant majority of (60%) said No to this question. A minority of respondents (27%) said Yes, while a smaller minority of respondents (13%) answered "Other." Of the respondents who answered Yes to this question, the vast majority (75%) answered No to the following question about whether the NCRAs actually processed or handled the disputes differently based on their classification.

Do NCRAs Actually Classify Disputes as Legal vs. Factual When They Initially Receive them? (N=30)	Number	Percentage
Yes	8	27%
No	18	60%
Other	4	13%

Three of the 4 respondents who answered "Other" noted that:

"Not at the time the dispute is received and/or investigated. The only time the NCRAs raise the legal v. factual issue is as a defense to litigation."

- A private attorney in Mississippi

"In my experience, they will attempt to characterize everything possible as a legal dispute so as to avoid conducting any investigation"

- A private attorney in Florida

"They do in litigation but not in the actual processing of disputes."

- A private attorney in Minnesota

Respondents were also given the opportunity to give narrative responses. As with the private attorney from Mississippi and Minnesota above, many other private practitioners (Arizona, Illinois, Kansas, Georgia, Maryland, New York, and North Carolina" reported that the legal versus factual distinction was only raised in litigation and is an attorney-created defense. Narrative responses include:

"While CRAs may assert a legal-factual distinction as a defense in a lawsuit, I have seen no evidence that disputes are actually treated any differently when received, or even that any assessment is made by the CRAs about whether a dispute received is legal or factual at the time it is received."

-A private attorney in Maryland

"In processing disputes, the NCRAs do not treat supposed "legal" disputes any differently than supposed "factual" disputes. The distinction is something that only arises in litigation as an after the fact attorney created defense. Nowhere in any document production of NCRA guides or manuals about dispute procedures that I've ever seen have they made any distinction."

-A private attorney in Arizona

"I have been either personally been involved in or reviewed hundreds of disputes of inaccurate information in consumer credit files, information that was inaccurate for a myriad of reasons. I have never had a NCRA ask for additional information concerning a legal or factual basis for a dispute or refuse to resolve a dispute claiming that it involves a legal as opposed to factual matter. More often than not, disputes, even including good documentation are summarily denied."

-A private attorney in Georgia

Responses from North Carolina, Kansas, Arizona, and Pennsylvania also noted that the NCRAs merely defer to or "parrot" the furnisher:

"If a human looked at the dispute for greater then 30 seconds it's amazing. Bureaus just confirm the furnished information. "

-A private attorney in North Carolina

"Legal/Factual is a construct of lawyers post facto. Truth is, they will 90ish% of the time parrot the furnisher."

-A private attorney in Kansas

Finally one response noted the impact that these practices have on consumers:

> "Many consumers do not have the resources or knowledge to resolve a "legal dispute," so they are strong-armed into paying disputed accounts. If the CRA's are not able to determine legal disputes, then the debts not reduced to judgment by the creditor are unverifiable. It needs to flow both ways."
>
> -A private attorney in Florida

The second question asked:
Question 2: If you answered yes to Question 1 (i.e. that the NCRAs do distinguish between purportedly legal disputes and factual disputes), do the NCRAs actually process or handle the disputes they classify as legal differently than disputes they classify as factual?

While only 8 respondents had answered Yes to Question 1, there were 15 responses to this question. We only consider the 8 respondents who answered Yes to Question 1. Of those, the vast majority of respondents answered No (75%) while 1 respondent answered Other (12.5%); and 1 respondent answered Yes (12.5%).

Process or Handle Disputes Differently for Legal vs. Factual (N = 8)	Number	Percentage
Yes	1	12.5%
No	6	75%
Other	1	12.5%

The respondent who answered Other noted that: "They don't investigate at all."

Respondents were also given the opportunity to give narrative responses. A North Carolina attorney echoed the comments above regarding the legal versus factual distinction only arising in litigation while an Arizona private attorney also mentioned the NCRAs' parroting of furnishers' responses. In addition, a private attorney in Pennsylvania noted:

> "It's possible the CRAs may refuse to investigate after determining that the dispute was "frivolous." However, they do not always send the notice of frivolous dispute (per 15 USC 1681i(a)(3)(B)) which would allow the consumer to rectify any alleged deficiency the CRA thinks makes the dispute 'frivolous.'"
>
> -A private attorney in Pennsylvania

3. NCLC's Survey: Questions about furnishers

The third question focused on furnishers of information. It asked:
Question 3: Based on what you've learned litigating FCRA cases, what portion of furnishers actually classify disputes as relating to a legal issue versus a factual issue when they initially receive the disputes?

The vast majority of respondents (70%) that they had never seen a furnisher distinguish between legal and factual disputes, or had only seen a few furnishers do so. The remaining 30% had seen all, most, or some furnishers do so.

What Portion of Furnishers Classify Disputes as Legal vs. FactuaL When They Initially Receive Them (N = 30)	Number	Percentage
Almost all furnishers	3	10%
Most furnishers	1	3%
Some furnishers	5	17%
Only a few furnishers	2	7%
I have never seen a furnisher distinguish between legal and factual disputes	19	63%

Respondents were also given the opportunity to give narrative responses. As with the NCRAs, practitioners in Florida, Illinois, Mississippi, New York, and Pennsylvania reported that the legal versus factual distinction only arose in litigation. These responses included:

> "Just as with the NCRAs, I have never seen actual procedures produced that differentiate between legal and factual disputes. I have only seen such distinctions made after the fact as a litigation defense to justify the reasonableness of their investigation."
>
> -A private attorney in Mississippi
>
> "Similar to the CRA's, the data furnishers are attempting to characterize everything as a legal dispute to avoid compliance with the FCRA. If there is an unresolved legal issue, they should resolve it in court prior to reporting or collecting. No other area of law allows you to collect a judgment prior to actually obtaining it. Why are consumers subjected to this type of conduct?"
>
> -A private attorney in Florida

A private attorney in Kansas also noted the paucity of furnisher investigations, stating:

> "Investigations are either initiated or not. They come to a conclusion based on the information they have in front of them. I don't see deep analysis as often being a factor."

The fourth and final question asked:
Question 4: If you have observed furnishers distinguish between disputes they classify as legal and those they classify as factual, do these furnishers actually process or handle these disputes differently?

While only 11 respondents had answered Question 3 reporting that they had seen a few, some, most, or all furnishers actually classify disputes as legal vs factual upon receipt , there were 17 responses to this question. We only considered the 11 respondents who answered they had observed furnishers actually classifying disputes as legal vs factual in response to Question 3. Of those, most respondents answered that furnishers rarely or never processed the disputes differently (55%) while a significant minority (36%) responded that almost all or some of furnishers processed the disputes differently; and 1 respondent did not answer the question (9%).

Do these furnishers actually process or handle these disputes differently? (N=11)	Number	Percentage
Yes, almost all these furnishers process the disputes differently	3	27%
Some of the furnishers process the disputes differently, some of them do not	1	9%
Furnishers rarely or never process these disputes differently	6	55%
No response	1	9%

Respondents were also given the opportunity to give narrative responses. A private attorney in Arizona noted the lack of meaningful investigations by furnishers while a private attorney in Florida noted the "guilty until proven innocent" nature of the system:

> "The current legal landscape allows for creditors to report debts without providing the validity in a court of law. But consumers, for some reason, now have to prove they don't owe the debt in court before these unverified debts are removed. It is basically "guilty until you prove your innocence" at this point. In no other area of law can an entity publicly file a judgment without proving liability, and then demand the defendant to vacate the judgment if they can. Why is it acceptable in the consumer credit context, where there is such a disparity in knowledge and resources?"

4. Conclusion

In summary, the vast majority of practitioners observed that the NCRAs and furnishers do not initially classify disputes as legal versus factual, or if they do, they do not actually process them differently. Furthermore, many practitioners noted in narrative responses that the legal-factual distinction is a post hoc justification raised for the purposes of a defense in litigation. A number of practitioners noted that the NCRAs automatically defer to or "parrot" furnishers. Finally, several practitioners questioned why, if there is a legal dispute, that debts not reduced to judgment can be reported and that consumers are considered "guilty until proven innocent." Thus, we support the CFPB's proposal to codify its interpretation that the FCRA does not distinguish between legal and factual disputes, and does not exempt CRAs or furnishers from reasonably investigating so-called legal disputes.

B. FCRA Injunctive Relief and a CFPB Ombudsperson Would Be Stronger Measures to Address Systemic issues

The CFPB is also considering whether to give consumers a specific process through which they could notify a CRA or furnisher of possible systemic consumer reporting issues that affect other similarly situated consumers. This could facilitate consumers' ability to receive collective relief from CRAs and furnishers when they do not appropriately address systemic issues. The CFPB asks:

Q32. How might the CFPB define "systemic" issues for purposes of the proposals it is considering? What may be the cause(s) for a furnisher or consumer reporting agency to have erroneous reporting for multiple consumers of the same type (e.g., issues with common processes, policies and procedures, infrastructure limitations, training)?

There are a number of problems with both the nationwide CRAs and specialty CRAs that appear to be widespread and systemic, which are documented in both NCLC advocacy reports[71] and in our legal treatise *Fair Credit Reporting*. [72] The treatise includes citations to legal cases that involve these systemic problems.

[71] *See* Chi Chi Wu, Michael Best & Sarah Mancini, National Consumer Law Center, Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors, at 14 (Feb. 25, 2019), available at www.nclc.org ["Automated Injustice Redux"]; Chi Chi Wu, National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports, at 7-9 (Jan. 2009), available at www.nclc.org ["Automated Injustice 2009"]. *See also* Broken Records Redux; Persis Yu, National Consumer Law Center, Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses (Apr. 11, 2012), available at www.nclc.org ["Broken Records 2012"].

[72] NCLC, Fair Credit Reporting (10th ed. 2022).

Examples of systemic problems include:

- *Matching issues*
  One of the core critical tasks in consumer reporting generally is ensuring that information is matched from a source - either a furnisher or a public record - to the correct consumer. Unfortunately, both the nationwide CRAs and specialty CRAs have had systemic problems in properly tagging the right consumer with information.[73] For specialty CRAs, the use of name-only matching and overly loose criteria prompted the CFPB to issue its Advisory Opinion on the issue.[74] For the nationwide CRAs, their use of partial Social Security number matches and overly loose matching criteria can lead to mixed files, one of the worst types of credit reporting errors, where information regarding one consumer is erroneously added to the file of another, different consumer.[75] Conversely, overreliance on first names and other flaws cause the "fragmentation" of credit reports for transgender and nonbinary consumers when they change their first or full names as part of a gender transition.[76]

- *Reporting consumers as deceased*
  One of the most bizarre credit reporting problems is the reporting of a living consumer as deceased.[77] The CFPB has warned CRAs against this in its Advisory Opinion on Facially False Data or "Junk Data."[78] And in the multistate Attorney General settlement, the nationwide CRAs agreed to develop best practices for identifying and preventing inaccurate reporting regarding reporting consumers as deceased.[79] Despite this, consumers are still reporting problems with being erroneously reported as deceased.[80]

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[73] NCLC, Fair Credit Reporting, § 4.3.3 (discussing matching [problems by nationwide and specialty CRAs).
[74] CFPB, Advisory Opinion on Fair Credit Reporting; Name-Only Matching Procedures, 86 Fed. Reg. 62,468 (Nov. 10, 2021).
[75] NCLC, Fair Credit Reporting, § 4.3.3.
[76] See Letter from 145 Organizations Call on Credit Bureaus to Fix Credit Reporting for Trans and Nonbinary Consumers, February 24, 2022, https://namecoalition.org/2022/02/24/145-organizations-call-on-credit-bureaus-to-fix-credit-reporting-for-trans-and-nonbinary-consumers/; NAME Coalition, Fact Sheet: Credit Report Challenges for Trans Consumers, May 2022, https://namecoalition.org/wp-content/uploads/2022/05/Trans-Credit-Report-Issues-Fact-Sheet.pdf. These problems do not appear to occur when consumers change their last names, as is common for cisgendered women when they get married.
[77] See NCLC, Fair Credit Reporting, § 4.4.6.3.3; Automated Injustice Redux at 20-21.
[78] CFPB, Fair Credit Reporting; Facially False Data, 87 Fed. Reg 64,689, October 26, 2022.
[79] Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, In re Equifax Info. Serv. L.L.C., Experian Info. Sols., Inc., & TransUnion L.L.C. § IV (F)(2)(a) (May 20, 2015).
[80] See, e.g., CFPB Complaint **7428915**, filed Aug. 20, 2023 (" On XX/XX/2023 Equifax reported 24 changes to my equifax credit report bringing my credit score down to XXXX. Sharing that 24 accounts were closed becoming consumer deceased. I am XXXX not deceased."); CFPB Complaint **7232824**, filed July 11, 2023 (consumer and spouse rejected for credit card; "Speaking with a XXXX XXXX rep on the phone at the store, we were told we would receive an explanation on the mail. We did and it said that Experian had stated that we were both deceased"); CFPB Complaint **6996371**, filed May 19, 2023 ("I

- *Duplicate information*
  For the nationwide CRAs, duplicate accounts can occur when debts are sold or transferred due to a servicing change, placement for collection, or as part of the sale of a portfolio of loans. This problem especially affects student loans and debt collection accounts.[81] The nationwide CRAs rely upon furnishers to follow the Metro 2 Reporting Format to prevent duplicate accounts, but any change in account number, identification number, portfolio type, and/or date opened may cause a duplicate tradeline.[82] Specialty CRAs are even worse, reporting different stages of a criminal or civil case as separate items, making them appear to be different crimes or lawsuits.[83]

- *Sloppy data practices by debt collectors*
  The CFPB has documented how debt collectors play an outsized role in the millions of disputes that consumers submit regarding credit reporting errors, with collection items representing almost 40 percent of disputes but only 13 percent of tradelines.[84] They are often responsible for whole categories of errors, such as re-aging debts in order to report them past the seven year limit of § 1681c(a).[85] And their errors are often egregious, as discussed in NCLC's petition requesting an FCRA rulemaking on debt collector furnishing.[86]

- *Bias for furnishers in dispute*
  Furnishers are often responsible for errors in credit reports.[87] A systemic abuse on the part of the nationwide CRAs is that they automatically defer to furnishers when consumers try to fix these errors.[88] One of the most egregious examples of this is when a CRA refuses to remove a debt from a credit report despite the consumer's having obtained a court judgment that they do not owe the debt or a legal settlement to fix reporting.[89]

Theoretically, the FCRA provides for relief to consumers impacted by these practices, in the form of the ability to seek judicial relief for its violations. Specifically, §§ 1681n and 1681o

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have been recently made aware that my credit profile has been marked as me being deceased. This is 100 % inaccurate.").
[81] NCLC, Fair Credit Reporting, § 4.3.8.
[82] *Id.*
[83] Broken Records Redux at 21.
[84] CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation's Largest Credit Bureaus Manage Consumer Data 27, 29 (Dec. 2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.
[85] NCLC, Fair Credit Reporting at § 5.2.3.5.
[86] NCLC, Requests for FCRA Rulemaking: Debt Collector Furnishing, Language Access, Credit Reporting Ombudsperson Office, March 7, 2023, https://www.regulations.gov/document/CFPB-2023-0021-0001.
[87] NCLC, Fair Credit Reporting at Ch. 6, § 4.3.2.
[88] Automated Injustice Redux at 13-22; NCLC, Fair Credit Reporting at § 4.5.3.4.5, 4.5.6.
[89] Automated Injustice Redux at 16-17.

provide for actual damages for reckless violations of the Act or statutory and punitive damages. But money damages have not been sufficient to bring about real reform of the systemic abuses by the nationwide CRAs. After five decades of lawsuits and tens of millions in monetary relief, including jury awards of $18 million[90] and $60 million,[91] the nationwide CRAs are still engaged in the very practices that give rise to these problems. In addition to monetary judgments, the CFPB's supervision program and a multistate Attorney General settlement have attempted to bring about reform. Yet on an annual basis, the CFPB still receives hundreds of thousands of complaints and the NCRAs receive millions of disputes from frustrated consumers over inaccurate information in their credit reports

Simply put, the nationwide CRAs have been intractable. Monetary damages have not been sufficient to fix the systemic problems, nor has CFPB supervision or the multistate AG settlement. Another sign of consumers' desperation is that over one-third of FCRA cases involve pro se consumers. Indeed, a Westlaw search of FCRA cases for a one-year period from November 1, 2022 to November 1, 2023 reveals 1030 cases overall, and 496 in which the term "pro se" appears - or almost half!

To combat these systemic problems, consumers need stronger tools to require compliance by the CRAs with the FCRA. Two of these tools would be injunctive relief and a CFPB Office of Ombudsperson.

- *Injunctive relief*
  One form of relief sorely lacking under the FCRA is the ability to ask a judge to tell a CRA or furnisher to "fix those reports" or "fix that systemic problem." The FCRA does not explicitly provide for injunctive relief in actions by private parties, and the vast majority of courts have held that it is not available.[92] The FCRA is an anomaly in this respect, as the Supreme Court decision in *Califano v. Yamasaki*[93] holds that injunctive relief is available to enforce most other laws "[a]bsent the clearest command to the contrary from Congress."[94] However, the key case on this issue, *Washington v. CSC Credit Services*,[95] held that because the FCRA grants the FTC the ability to enforce the Act under the FTC Act and the FTC Act provides for equitable relief, there was a negative inference that the FCRA's private remedy provisions do not provide for an injunctive remedy for consumers.

[90] Tara Siegel Bernard, An $18 Million Lesson in Handling Credit Report Errors, N.Y Times, Aug. 2, 2013, https://www.nytimes.com/2013/08/03/your-money/credit-scores/credit-bureaus-willing-to-tolerate-errors-experts-say.html.
[91] Ramirez v. Trans Union, L.L.C., 951 F.3d 1008 (9th Cir. 2020) (reducing $60 million award to $40 million), rev'd in part on other grounds, ___ U.S. ___, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (reversing in part on Article III standing grounds, remanding).
[92] NCLC, Fair Credit Reporting, § 12.6 (collecting cases).
[93] 442 U.S. 682, 99 S. Ct. 2545, 61 L. Ed. 2d 176 (1979).
[94] *Id.* at 705.
[95] 199 F.3d 263 (5th Cir. 2000).

The Bureau should issue an interpretation that refutes *Washington v. Credit CSC Services*, stating that the mere cross-reference to the FTC Act in § 1681s(a) is not the type of "clearest contrary command from Congress" that would deprive a federal court of its inherent equitable authority. Indeed, the language of § 1681s(a) does not explicitly grant injunctive relief to the FTC but only refers to the FTC Act, which includes injunctive relief among its many provisions. This sort of veiled, indirect reference to injunctive relief is hardly the "clearest contrary command" that the Supreme Court spoke of in *Califano v. Yamasak*i. In refuting *Washington v. CSC Credit Services*, the CFPB would simply be interpreting the FCRA, and would not be attempting to create a new right or new private remedy by regulation.

- *CFPB Office of Ombudsperson*
  We reiterate the request in our March 7, 2023 petition[96] for the CFPB to establish an Office of Ombudsperson to deal with credit and consumer reporting disputes. Not only does the credit reporting system suffer from systemic errors, but consumers also face daunting barriers to get to the point of composing and filing a credit reporting dispute. Credit reporting is complicated and technical, and many consumers lack the educational skills, or even just the time, to submit a dispute by themselves. As a result, desperate consumers sometimes end up in the hands of credit repair organizations that charge them expensive fees and often prepare questionable or outright fraudulent disputes, or rely on form templates on the Internet.

  Consumers need knowledgeable assistance when they are dealing with CRAs. This is especially true for consumers from vulnerable communities, such as domestic violence survivors, consumers with limited English proficiency, older consumers, those with disabilities, and low- and moderate-income consumers generally. Thus, we urge the CFPB to create an Ombudsperson role in the CFPB's Office of Consumer Response that can assist consumers with disputes. In addition to assisting consumers, the Ombudsperson should have an independent office empowered to serve as a post-dispute appeals or resolution function.

The CFPB appears to be suggesting a third type of mechanism, a process by which a consumer could notify a CRA of possible systemic issues that affect similarly situated consumers. However, while such a mechanism could be useful, it will not be sufficient to address systemic issues. Few consumers will have the sophistication, the information, or the technical knowledge to identify problems as systematic or to determine whether they have been impacted by one. A consumer represented by an attorney might be able to divine whether a problem is systemic, but it would be much more effective to give that attorney a legal tool to compel reform, *i.e.*, injunctive relief, than providing a rubric or template to submit disputes that may be systemic.

[96] NCLC, Requests for FCRA Rulemaking: Debt Collector Furnishing, Language Access, Credit Reporting Ombudsperson Office, March 7, 2023, https://www.regulations.gov/document/CFPB-2023-0021-0001.

III. Medical Debt

A. We Support the CFPB's Proposal to Ban Medical Debts from Credit Reports

In its SBREFA outline, the CFPB proposed prohibiting CRAs from including medical debt collection tradelines on consumer reports used for credit eligibility determinations. The CFPB proposes to use its authority under Section 604(g) of the FCRA, 15 U.S.C. § 1681b(g), which generally prohibits creditors from considering medical information, subject to exceptions in Regulation V. The CFPB proposes to remove an existing Reg. V exception for medical financial information that was added by the prudential banking regulators in 2006. Regulation V, 12 C.F.R. § 1022.30(d). The Bureau would then prohibit CRAs from including medical debt information since creditors would not be able to consider it.

We strongly support a ban on the inclusion of medical debt items in credit reports. In fact, NCLC submitted a petition in September 2022 asking the CFPB to adopt such a ban,[97] which was co-signed by 90 other consumer, civil rights, healthcare, and advocacy organizations. Community Catalyst submitted a similar petition in April 2023.[98]

The appearance of medical debt on credit reports can be one of the worst financial consequences of getting sick in the US, especially with catastrophic or chronic conditions such as a major accident, diabetes, kidney disease, cancer, or long COVID. Patients often mention credit reporting damage or fear of it as a major financial consequence of their illness.[99] This is simply unjust and wrong. No one should suffer major damage to their credit report and score, which essentially serves as their financial report card, simply because they got sick.

B. Credit Reporting of Medical Debt is Powerful Collection Tool That Is Subject to Abuse, But Is Not the Only Collection Tool

Q35. Under the proposals under consideration, would you anticipate that medical debt collectors would stop furnishing medical debt collection information to consumer reporting agencies and use alternative debt collection methods? If so, which ones?

As courts have recognized, credit reporting is a "powerful tool designed, in part, to wrench compliance with payment terms . . ."[100] CFPB Director Chopra and other Bureau leadership

[97] NCLC, Request for Rulemaking to Ban Medical Debt from Credit Reports, September 26, 2022, https://www.regulations.gov/document/CFPB-2022-0067-0001.
[98] Community Catalyst, Request for Rulemaking Pursuant to the Fair Credit Reporting Act (FCRA), April 5, 2023, https://www.regulations.gov/document/CFPB-2023-0027-0001.
[99] *See* CFPB, Complaint Bulletin: Medical billing and collection issues described in consumer complaints (Apr. 2022), https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf (highlighting consumer complaints about credit reporting medical debts).
[100] Rivera v. Bank One, 145 F.R.D. 614, 623 (D. P.R. 1993). *See* NCLC, Fair Credit Reporting, § 6.13.1

have expressed concerns that negative credit reporting may be coercing consumers to pay medical debts that they do not owe.[101]

In fact, credit reporting has been so effective as a debt collection tool that debt collectors have found it works without the need to send letters or make calls to dun the patient. The CFPB documented in its February 2022 and December 2014 reports on medical debt how many collectors engaged in the practice of passive collection, a.k.a. "parking."[102] This practice consisted of reporting a debt to an NCRA without engaging in any other collection activity and then waiting until the consumer applied for credit. The consumer would discover the medical debt collection item in the midst of the credit application process, at which point they would need to scramble to address it.

The CFPB took steps to address parking in its recent amendments to Regulation F by requiring that certain information be provided to the consumer before a debt is furnished to a CRA. 12 C.F.R. 1006.30(a)(1). However, in NCLC's survey of consumer advocates six months after Regulation F took effect, only 7.7% of survey respondents reported observing debt collectors providing notice to consumers as required by Regulation F, while 63.5% answered that they observed debt collectors reporting the debt without providing notice to consumers.[103] Additionally, 26.9% of respondents observed debt collectors claiming that they provided notice as required by Regulation F even though the consumers never received the notice.[104] Appendix A contains a sampling of complaints from the CFPB Complaint database involving medical debt; at least six complaints appear to involve a failure to provide the notice required by Regulation F.

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[101] *See* CFPB, Prepared Remarks of CFPB Director Rohit Chopra on Medical Debt at a Press Call Hosted by Vice President Kamala Harris, Sept. 21, 2023, https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-medical-debt-at-a-press-call-hosted-by-vice-president-kamala-harris/ (CFPB "is launching a rulemaking to block medical debt collectors from weaponizing the credit reporting system to coerce patients into paying bills they may not even owe"); CFPB, Prepared Remarks of Director Rohit Chopra on New CFPB Medical Debt Report, Mar. 1, 2022, https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-director-rohit-chopra-on-new-cfpb-medical-debt-report/ (" I am concerned that the credit reporting system is being weaponized as a tool of coercion to get people to pay medical bills they may not even owe"). *See also* CFPB, Prepared Remarks of Seth Frotman, General Counsel and Senior Advisor to the Director, at New Jersey Citizen Action Education Fund's 14th Annual Financial Justice Summit, Oct. 4, 2023, https://www.consumerfinance.gov/about-us/newsroom/new-jersey-citizen-action-education-funds-14th-annual-financial-justice-summit/ ("We are very concerned that the credit reporting of medical bills is being used inappropriately as a debt collection tool.").

[102] CFPB, Medical Debt Burden in the United States 44, Feb. 2022, https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf; CFPB, Consumer credit reports: A study of medical and non-medical collections 36, Dec. 11, 2014, https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[103] Yaniv Ron-El and April Kuehnhoff, National Consumer Law Center, Evaluating Regulation F: A Six-Month Check-Up on New Federal Debt Collection Regulations 40 (Nov. 2022), https://www.nclc.org/wp-content/uploads/2022/10/report-evaluating-regulation-f.pdf.

[104] *Id.*

Even when debt collectors comply with Regulation F's notice requirements before parking a debt, credit reporting still remains a powerful tool to compel payment, in some cases even when the consumer does not owe or disputes the debt. Such instances are common with medical debt because of the unique nature of having a third party (i.e., the private or government insurer) responsible for payment of a large portion of the bills.[105]

One objection voiced by debt collectors is that without the ability to place medical debts on credit reports, patients will not pay their bills. However, not only is there no evidence that consumers who can afford and do not dispute their medical bills fail to pay them, debt collectors will still have ample tools to actively collect medical debts. For better or for worse, collectors can attempt to seek payment using dunning letters and calls, lawsuits, liens,[106] and wage garnishments.[107] Court cases,[108] advocacy reports,[109] and media articles[110] document that debt

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[105] CFPB, Medical Debt Burden in the United States 44, Feb. 2022, https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf; CFPB, Consumer credit reports: A study of medical and non-medical collections 36, Dec. 11, 2014, https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf. *See also* CFPB, Medical Billing and Collections Among Older Americans (May 30, 2023), https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/ (discussing medical billing errors for older adults and difficulty addressing inaccurate bills).

[106] Jay Hancock & Elizabeth Lucas, 'UVA has ruined us': Health system sues thousands of patients, seizing paychecks and putting liens on homes, Wash. Post (Sept. 9, 2019), available at www.washingtonpost.com; Press Release, Univ. of Va., UVA Health Announces Billing Policies and Practices (Apr. 19, 2021) (announcing the end of this billing practice), available at https://newsroom.uvahealth.com; Elisabeth Ryden Benjamin & Amanda Dunker, Cmty. Serv. Soc'y, Discharged Into Debt: Nonprofit Hospitals File Liens On Patients' Homes (Nov. 2021), available at www.cssny.org; Nat'l Nurses United et al., Preying on Patients: Maryland's Not-for-Profit Hospitals and Medical Debt Lawsuits (Feb. 2020) (Maryland's nonprofit hospitals filed 145,746 medical debt collection lawsuits between 2009–2018 and 4432 liens), available at www.nationalnursesunited.org.

[107] Chris Arnold & Paul Kiel, From the E.R. to the Courtroom: How Nonprofit Hospitals Are Seizing Patients' Wages, ProPublica & Nat'l Public Radio (Dec. 9, 2014) (hospital in Missouri that filed more than 11,000 lawsuits in a four-year period, and garnished at least $12 million from the wages of about 6000 patients); Elisabeth Benjamin, Amy Chung & Renee Philips, Health Law Unit—Legal Aid Soc'y of N.Y., State Secret 2005: How Government Statutes and Hospitals' Voluntary Efforts Fail to Protect Uninsured Patients (Jan. 2005) (finding that 27 out of 31 New York City nonprofit hospitals use wage garnishments as a collection tactic).

[108] *See generally*, NCLC, Collection Actions, §§ 9.1.2, 9.2.4 (5th ed. 2020)(citation of FDCPA and collection cases involving medical debt), *updated at* www.nclc.org/library.

[109] Cmty. Serv. Soc'y of New York, Discharged into Debt: A Pandemic Update (Jan. 2021), available at https://smhttp-ssl-58547.nexcesscdn.net; Nat'l Nurses United et al., Preying on Patients: Maryland's Not-for-Profit Hospitals and Medical Debt Lawsuits (Feb. 2020), available at www.nationalnursesunited.org.

[110] See, e.g., Jenny Deam, ProPublica, Some Hospitals Kept Suing Patients Over Medical Debt Through the Pandemic (June 14, 2021), available at www.propublica.org. *See also*, Noam N. Levey, KFF Health News, Hundreds of Hospitals Sue Patients or Threaten Their Credit, a KHN Investigation Finds. Does Yours? (Dec. 21, 2022), https://kffhealthnews.org/news/article/medical-debt-hospitals-sue-patients-threaten-credit-khn-investigation/ (documenting hospital collecting tactics, including: denying care, credit reporting, lawsuits, and selling debt).

collectors do engage in such tactics. In addition, Appendix A includes a number of complaints that describe liens, garnishment and lawsuits being used to collect medical debts.

Finally, we note that some healthcare providers themselves, as opposed to debt collectors, have decided to forego credit reporting as a means of collection. The American Hospital Association stated in a comment letter that its patient billing guidelines "encourag[e] hospitals to forego adverse credit reporting of medical debt" and that the "guidelines, therefore, largely align with the CFPB's proposals…"[111]

C. Medical Debt on Credit Reports Currently Has a Significant Impact on Credit Scores

Q36. To what extent do creditors currently use medical debt collection information when making credit eligibility determinations, including to comply with other laws or requirements? Do creditors use medical debt collection information for other purposes in connection with a credit transaction?

In their eligibility determinations, many creditors use credit scores, which medical debt can significantly lower, depending on the scoring model used. The CFPB's own research found that consumers experience a 25-point increase in their credit score in the first quarter after their last medical collection is removed from their credit report; consumers with medical collections under $500 experience an average increase of 21 points, compared to 32 points for people with medical collections over $500.[112] The Urban Institute similarly found that consumers who had medical debt collection items on the credit reports in August 2022—about 27 million adults—experienced a 30 point increase in their Vantage scores by August 2023, from 585 to 615 points.[113] This was likely due to the NCRAs' voluntary removal of some items and the fact that VantageScore stopped considering medical debt in its latest models, VantageScore 3.0 and 4.0.

While credit scoring model developers have reduced or eliminated the impact of medical debt in some of their more recent models, older models that do consider medical debt are still used by large numbers of creditors. The latest FICO models – FICO 9 and 10/10T – do not consider paid medical debt but do consider unpaid medical debt, although they reduce the impact of it. In

[111] American Hospital Association, Comments re: Small Business Advisory Review Panel for Consumer Reporting Rulemaking: Outline of Proposals and Alternatives Under Consideration, Oct. 30, 2020, https://www.aha.org/system/files/media/file/2023/10/AHA-Letter-CFPB-Medical-Debt-Reporting-Feedback.pdf.

[112] CFPB, Data Point: Consumer Credit and the Removal of Medical Collections from Credit Reports 2, April 2023, https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-removal-medical-collections-from-credit-reports_2023-04.pdf. It was unclear which scoring model and version was used in this report.

[113] Fredric Blavin, Breno Braga, Michael Karpman, Urban Institute, Medical Debt Was Erased from Credit Records for Most Consumers, Potentially Improving Many Americans' Lives, Nov. 2, 2023, https://www.urban.org/urban-wire/medical-debt-was-erased-credit-records-most-consumers-potentially-improving-many.

contrast, older FICO models – Classic FICO and FICO 8 – still treat both paid and unpaid medical debts negatively, apparently the same as other debt collection items.

Unfortunately, Classic FICO is still used by most of the mortgage market because it is mandated by many of the secondary market players that essentially set the rules of the mortgage market, such as Fannie Mae, Freddie Mac, and the Federal Housing Administration. Fannie Mae and Freddie Mac will be updating the scoring models they use to FICO 10T and VantageScore 4,[114] but the timeline for that change is uncertain.[115] Furthermore, we understand that FICO 8 is used by many non-mortgage lenders, such as auto lenders and credit card issuers.

Thus, even if a creditor does not view a full credit report, it is likely considering a medical debt that shows up on the report via the credit score. And there are some creditors, particularly mortgage lenders, that do consider the entire credit report. Other users that view and consider a full credit report include employers and landlords. No consumer should be denied credit, a job, rental housing, or treated adversely because they got sick and could not avoid being burdened with medical debt.

D. The CFPB Should Ensure That Credit Card Debt and Judgments for Medical Debt Do Not Appear on Reports Used for Credit Determinations

Q37. From what sources do creditors obtain consumers' medical debt collection information, other than consumer reports?

Creditors can obtain information about medical debts from another type of consumer report beyond a nationwide CRA credit report, namely a report from LexisNexis. LexisNexis RiskView sells a "Liens & Judgments" report to lenders that consists of public records information, including court judgments.[116] It specifically markets the reports to mortgage lenders, stating that the report "provides lenders with detailed, reliable data for making credit decisions."[117] These reports likely include public record court judgments related to medical debt.

Thus, we urge that CFPB ensure that creditors cannot learn of medical debt information via public records that are reported in consumer reports, whether from the NCRAs or other types of

[114] Press Release, *FHFA Announces Validation of FICO 10T and Vantage Score 4.0 for Use by Fannie Mae and Freddie Mac,* Oct. 24, 2022 – https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx.
[115] Press Release, FHFA Announces Next Phase of Public Engagement Process for Updated Credit Score Requirements, September 11, 2023, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Next-Phase-of-Public-Engagement-Process-for-Updated-Credit-Score-Requirements.aspx.
[116] LexisNexis Risk Solutions, RiskView™ Liens & Judgments Report, https://risk.lexisnexis.com/products/riskview-liens-and-judgments-report (viewed October 6, 2023).
[117] LexisNexis® RiskView™ Liens & Judgments Report Delivers New Confidence for Home Mortgage Lenders and Limits Risk, May 23, 2017, https://www.prnewswire.com/news-releases/lexisnexis-riskview-liens--judgments-report-delivers-new-confidence-for-home-mortgage-lenders-and-limits-risk-300462383.html.

consumer reporting agencies such as LexisNexis.[118] The proposed rule prohibiting the appearance of medical debts on credit reports must be written to prohibit not just collection items for medical debts, but public records involving medical debt such as judgments or liens.

The proposed rule should also prohibit the appearance of negative information about medical debt that is charged to credit cards. First, the rule should prohibit negative information from tradelines reporting on specialized medical credit cards, such as CareCredit. Second, the rule should require issuers to exclude negative information about debts from merchants who are coded under Merchant Category Codes as medical providers.[119]

E. Alternative Approaches Would Not Be Sufficient to Protect Consumers

Q38. What are the pros and cons of an alternative approach of mandating a delay in the furnishing and reporting of medical debt for a particular period of time, and not reporting or furnishing medical debt below a particular dollar amount?

This question appears to be referring to the voluntary changes by the credit bureaus announced in March 2022[120] to stop reporting medical debts that are paid or under $500, and to wait one year before reporting a medical debt. While those voluntary measures were positive, they were nowhere near sufficient to protect consumers from the unfair impacts of medical debt.

The voluntary changes did not help consumers who had unpaid medical debts over $500. The CFPB previously estimated that, "Fifty percent of those with medical collections on their credit report will continue to have medical collections on their credit report and so may experience limited benefits from the change."[121]

The consumers who still have medical debt on their credit reports are likely to be the most vulnerable consumers – those who had greater medical needs and thus higher healthcare costs, and could not afford to pay for bills out of pocket. In order words, the voluntary reforms failed to protect sicker, poorer patients, who are the consumers most likely to need relief. Moreover, the CFPB's analysis concluded that, "Although residents of lower income, majority Black or

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[118] While LexisNexis often fails to properly treat its products as consumer reports, it appears that the company does consider the Liens & Judgment reports to be covered by the FCRA. LexisNexis Risk Solutions, RiskView™ Liens & Judgments Report, https://risk.lexisnexis.com/products/riskview-liens-and-judgments-report (viewed October 6, 2023) ("RiskView™ Liens and Judgment Report is a consumer reporting agency product provided by LexisNexis Risk Solutions Inc. and may only be accessed in compliance with the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.").

[119] See, e.g., Visa Merchant Data Standards Manual - Visa Supplemental Requirements, Apr. 2023, 102 (MCC 8011 - Doctors and Physicians (Not Elsewhere Classified)), https://usa.visa.com/content/dam/VCOM/download/merchants/visa-merchant-data-standards-manual.pdf.

[120] CDIA, National Credit Bureaus Support Consumers with Changes to Medical Collection Debt Reporting, March 18, 2022, https://www.cdiaonline.org/news/2022/03/18/equifax-experian-and-transunion-support-u-s-consumers-with-changes-to-medical-collection-debt-reporting/

[121] CFPB, Data Point: Consumer Credit and the Removal of Medical Collections from Credit Reports 2 (Apr. 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-removal-medical-collections-from-credit-reports_2023-04.pdf.

Hispanic census tracts are more likely to have medical collections tradelines on their credit reports than residents of high income and majority white census tracts, they are slightly less likely to benefit from the announced changes by having all their medical collections tradelines removed."[122]

Furthermore, the voluntary changes by the credit bureaus are just that – they are voluntary, which means the credit bureaus could reverse them at any time with little or no notice. Legally binding changes are necessary to protect consumers. All consumers with medical debt should be protected, including consumers with greater healthcare needs and thus higher bills - it is not enough simply to codify the NCRAs voluntary changes. Thus, we urge the CFPB to proceed with its rulemaking to eliminate all medical debt from credit reports

Q39. What are the pros and cons of an alternative approach of requiring consumer reporting agencies and furnishers, upon receiving a dispute, to conduct an independent investigation to certify that a disputed medical debt is accurate and not subject to pending insurance disputes?

An approach that depends on the patient to dispute medical debts based on insurance disputes would not adequately protect patients, and would be highly inefficient. It would only address one type of problematic medical debt, *i.e.*, debt that should have been paid by insurance. It would not help patients saddled with thousands of dollars in medical debts due to high cost sharing, *i.e*., high deductibles or co-pays, or due to inadequate coverage. It would not protect patients who are subject to balance billing not prohibited by the No Surprises Act, *e.g.*, ambulance bills. And it would require patients who may be sick and struggling with the side effects of medical care to take on the additional, complicated burden of filing a credit reporting dispute.

Furthermore, even with the requirement to provide the validation notice before credit reporting, many patients are not aware of the presence of a medical debt on their credit report until they are in the midst of a mortgage or other credit application and it creates a problem for their approval. By that point, there is not sufficient time to process a credit reporting dispute. This is why collectors engage in parking – to obtain powerful leverage to force the consumer to simply pay the medical debt collection item in order for the mortgage or other application to be approved. And as discussed in our response to Q35 above, there appears to be significant noncompliance with the notice required by Regulation F that is intended to prevent parking.

Finally, and most significantly, as NCLC and others have repeatedly documented, the NCRAs and furnishers often conduct very pro forma, inadequate investigations when consumers lodge disputes over errors in their credit reports.[123] The FCRA already requires CRAs and furnishers to conduct a "reasonable" investigation of disputes, 15 U.S.C. §§ 1681i(a), 1681s-2(b). Yet after years of advocacy and attempted reform, the credit reporting industry is still conducting perfunctory, automated investigations that consist of nothing more than ensuring data

[122] *See* CFPB, CFPB Publishes Analysis of Potential Impacts of Medical Debt Credit Reporting Changes (July 27, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-publishes-analysis-of-potential-impacts-of-medical-debt-credit-reporting-changes/.
[123] *See* Automated Injustice Redux; Automated Injustice 2009.

conformity. There is no reason to think the CRAs and furnishers will do any better if required to conduct "independent" investigations of disputed medical debts.

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Thank you for the opportunity to submit these comments. If you have questions about these comments, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

Respectfully submitted,

National Consumers Law Center
(on behalf of its low-income clients)

Appendix A

Complaints to CFPB re Collection of Medical Debts

Categories of complaints (some complaints deal with more than one issue)

Parking: Credit Reporting Without Providing Notice

1/20/2023	REMEX INC MEDICAL DEBT COLLECTION in the amount of {$600.00} Original creditor is XXXX XXXX XXXX at XXXX Opened on XX/XX/2022. I never received any documentation or written notice regarding this debt collection. I found about it today when it showed up on my credit report. This is adversely affecting the interest rate on my student loans - I had a near perfect credit score of XXXX with XXXX that is being damaged by this unlawful collection. They did not fulfill their legal obligation to notify me in writing before marking the collection on my credit report. I immediately disputed the charge with XXXX and XXXX. When I called them to find out more and request an itemized bill or any form of written documentation, they claimed they had already sent it in XX/XX/2022. XXXX of XXXX XXXX was extremely rude and accused me of lying. I am also filing a complaint with the XXXX. I dispute this charge in full it is unlawful, unprofessional, unwarranted and disgraceful. My credit score is essential for me as a young XXXX looking to enter the industry and this is damaging my financial future. Thank you for your help.	6463937

3/29/2023	In review of my XXXX credit report I noticed that there is a Collection being reported that I do not identify. This medical collection was placed on my credit file by Americollect in the amount of {$260.00}. I do not know who this is and what its pertaining to. this debt collector needs to " Validate " this debt and show that it actually pertains to me.	6770104

3/23/2023	I recently was denied credit based on a collection account reported on my XXXX credit report which drastically dropped my credit score substantially. Upon investigation with the credit bureau I noticed that a company called Phoenix Financial services on XX/XX/XXXX placed the collection account on my XXXX credit report. I also contacted Phoenix Financial Services and was told that it was am ambulance bill from XX/XX/XXXX from XXXX which I did not pay in the amount of {$1500.00}. I had a XXXX XXXX XXXX in which it was settled and the medical bills were paid through the attorney that I had in the XXXX XXXX XXXX case. Contacted the attorney 's office and the medical bill was paid through my insurance company XXXX XXXX with which I had full ambulance benefits covered under my plan. I contacted XXXX XXXX and we was on a three way call with ambulance company. In that discussion, the ambulance company XXXX never submitted the bill to XXXX. XXXX had my XXXX card membership number which my Daughter game them while I was being transported to XXXX hospital on the direction of my Daughter. Now because of the statute of limitations XXXX told XXXX that they can not pay the bill because it was never submitted to them for payment and now they are trying to biil me directly. My coverage and medical benefits has not change since XXXX. XXXX did merge with another company who in turn decided to report the debt as a collection account to XXXX. Please note that I never received a bill since XXXX from XXXX until XX/XX/XXXX from a collection agency without even notifying me what the debt was for. I want this removed from my XXXX Credit report immediately and any other Credit reporting agencies.I believe it is a violation of my rights under FDCPA and FCRA.	6738128

4/21/2022	I recently received my credit report in order to apply for a mortgage. There were numerous medical collections from a company called Radius Global Solutions. I had never received a letter or phone call from this company and	5477142

	had no idea this debt was out there. I contacted them and paid all of the invoices they had on file, there were XXXX. I asked them to also make sure they would remove this information from my credit history. They refused. No explanation as to why they needed to continue to report this information. They were not interested at all in helping me.	

3/23/2022	I had a medical procedure done in XXXX. I payed a co-pay of roughly {$300.00} at the time and was initially advised that I would only owe the remainder of my deductible ; which was {$900.00} additional. After the procedure my insurance company sends a bill saying that I owed around {$2500.00}. I called the hospital billing department and the insurance company to verify and after a few back and forths the Hospital 's billing department advised that I would actually owe nothing and to disregard the bill. Fast Forward to XX/XX/XXXX I receive a notification from XXXX XXXX of a derogatory mark on my credit report. (At this time my score is around XXXX as I have been managing my bills and credit very well.) My credit immediately drops down 20 or so points before coming back up within a month. I file a dispute as I'm unsure why this bill from the hospital is on my report as I had not received a notice from the collection agency. I reach out to the credit agency and they advise me that they sent a notice in XXXX of XXXX and attempted to reach me via my mobile number but I never received any communications from them. I asked them to provide proof that they had attempted to contact me but they never provided it. (See Recording XXXX) This derogatory mark caused me to be denied for a home equity loan as I had put in my application in XXXX right after the credit report was updated. I have since paid the debt. I feel as though this company use a predatory tactic in order to force me to pay a debt that I was never even aware of owing. Instead of using standard procedures and contacting me with a notice they chose to wait the required time, then file my dept with the credit reporting agency. This tactic has caused a severe hardship for me and my family as I was not able to gain access to my home equity. We planned to purchase a rental property and fix up our basement to allow us to rent out the space to guest ; ultimately helping us combat the economic downturn and build additional wealth for our family.	5358985

6/8/2022	In XXXX of XXXX I took a medical leave of absence from my job. Knowing this would involve several months as an outpatient, my physician and I were careful to select a reputable IN XXXX XXXX - XXXX XXXX XXXX XXXX. At the time, I was fortunate enough to have top-of-the line insurance through my employer. This gave me many options for treatment while staying completely IN XXXX For over 2 months I attended daily sessions at XXXX XXXX, billed to insurance. I completed the program and life moved on. Fast-forward to XX/XX/XXXX, when I pulled my credit to find 2 collections from CMRE Financial reporting to both my XXXX and XXXX reports. CMRE lists XXXX XXXX as the Original Creditor on this debt, which makes no sense. Not only did I select XXXX XXXX precisely because of its in-network status, but I was ON SITE DAILY, ambulatory, talking to staff, actively engaged in my own treatment planning. No bill was mentioned then, or since (I have lived at the same address for XXXX years). I was annoyed but thought it would be no big deal to clear this up. Thus began a several months-long odyssey of disputing, writing CMRE, calling my former insurer, etc., all to learn NOT A SINGLE THING about a debt that has apparently been affecting my credit for over 4 years. So far I have : >Disputed to XXXX and XXXX (XX/XX/XXXX, see attached) >XXXX verified both items.. XXXX verified one. (XX/XX/XXXX & XX/XX/XXXX. No explanation.) >Mailed letter directly to CMRE Financial requesting information (XX/XX/XXXX, see attached. No response) >Re-disputed the CMRE entries to both bureaus, attaching my aforementioned validation letter to CMRE. (XX/XX/XXXX) >XXXX and XXXX promptly verified these items yet again. (HOW IS EVERYONE BUT ME, THE ALLEGED DEBTOR, ABLE TO VERIFY THIS DEBT?!?) >Finally, XXXX XXXX I called my former insurance company even though it has been XXXX years since I lost my policy with them after being laid off. Unsurprisingly, they don't keep old records around pertaining to previous members. TO THIS DAY I HAVE NOT HEARD ONE WORD FROM CMRE FINANCIAL. And the kicker? This company I had never heard of, much less entered into an agreement with IS CHARGING INTEREST ON DEBTS THEY HAVE NEVER COMMUNICATED I OWE!!! The original mystery bills of {$320.00} and {$470.00} have now ballooned to {$430.00} and {$630.00}, respectively.	5647743

	It pains me to think of the thousands of Californians they have extorted by parking unsubstantiated debts on credit reports.adding interest and just waiting for their victims to apply for a loan. Shame on them.	

Liens

1/8/2022	I found a lien against my house when I did a property search on XXXX last night. I have no knowledge of this lien and had no knowledge of this debt either. The lien was filed in 2018 in the amount of almost XXXX. When I was younger I was very irresponsible with my credit, i didn't pay my bills or credit cards, along with medical bills, they all went unpaid. If this lien has incurred from those debts, I'd assume this is illegal since I've had no notice of this debt in over a decade. No phone calls or letters, no knowledge of a court date. According to ORS XXXX the lien was supposed to be perfected which includes a statement of demand, which I never received. I believe ray Klein inc is guilty of violating ORS XXXX of false swearing because the court records for this lien mention the owner of the debt being notified or having knowledge and under the comments the only thing it says is " personal. " What does that even mean? Someone from ray Klein inc claims they personally notified me of the debt or court notice? I can only guess what any of it means since I wasn't notified nor was I there to defend myself. Also in oregon the statue of limitations for debt is SIX YEARS. again I have no knowledge of this debt but I would love to see proof of this debt being as recent as six years ago because I highly doubt that. If this debt is a medical bill which ray Klein inc is known for collecting debt for (providnece) then ray Klein inc is guilty of violating ORS XXXX Q- attempts to collect any debt that the collector knows, or after exercising reasonable diligence would know, arises from medical expenses that qualify for reimbursement under the oregon health plan or under XXXX. I have been insured through XXXX for the last six years and it is not possible for me to have any medical debt that has not been paid. Another violation.. ORS XXXX files legal action to collect or files a legal action to collect a debt if the debt collector knows, or after exercising reasonable diligence would know that the statue of limitations bars the collection I could go on and on for all the violations this company is guilty of since there are so many laws to protect consumers for this very reason, for businesses like ray Klein inc . I plan to sue this company and hopefully they will be known for the fraud, falsifying, lying dirty rats they are.	5120884

4/18/2022	Please refer to the attachments. The first attachment will show an intercepted tax refund lien by XXXXXX/XX/XXXX, which intercepted my	5463866

	XXXX tax refund to pay their debt in full. The amount applied was {$380.00}, which paid the debt in full in XXXX XXXX. However, BullCity acct : XXXX, through their client XXXX XXXX is currently reporting the collection on my XXXX Credit Report as a balance owed (Please refer to the attached XXXX Screen shot of my credit report. Bull City has reported the collection in XXXX, XXXX, and now in XX/XX/XXXX. Additionally, I have contacted XXXX XXXX and XXXX disputing the inaccurate paid debt, which neither has taken action.	

6/22/2022	They put a lien on my property for a debt that I do not owe it is a medical debt through Hillcrest credit agency Tennessee and Kentucky I had for medical Medicare and Medicaid at the time of services the receptionist in the doctors office build it wrong I was not informed and now there are five or six liens against my property Ive called them and they will not negotiate or Remove the debt I do not notice I had for medical services were rendered	5698258

Garnishment

2/26/2022	I had medical debt that was sold to the debt collector, XXXX XXXX XXXX in Oregon. Original amount was $ XXXX. I was never notified of any intent to sue. In XXXX, I was informed there would be a garnishment of my wages and provided a paper that stated they had received a judgement against me back in XXXX. I was NEVER notified of this intent to sue or the outcome of the judgement. I lived at the same residence from XXXX until XXXX so there is no excuse for this. Additionally, when I called them to ask- they stated they served my Husband on behalf of me- in XX/XX/XXXX. This also did not happen. When pressed further on a specific date and location of when they served him- the call suddenly became dead air and I waited on the line for a while before ultimately disconnecting the call. This judgement was almost double the amount originally owed. Recently I had to pay off the full amount for a loan purpose- and they did not inform my employer that they had collected the full amount until after I had been garnished again and overpaid by almost {$500.00}. I had to call and insist they email my payroll to correct this. During this time I was also informed that they had been charging a 9 % interest rate which ultimately resulted in paying nearly {$1000.00} more than the original judgement.	5263240

5/4/2022	In XXXX, I signed for a certified letter from Credit Management , Inc. In XXXX, I ended up paying off my debt through the doctor 's office. I recently received a letter letting me know that this collector is now garnishing my wages. I tried to work with the company, but they were unwilling to work with me. Garnishing my wages is going to cause me to lose my house. They have not reached out to me in over four years. They said they didn't have a good number or address for me. They were able to get my address from the court, and my phone number is online. They didn't try too hard to get in touch with me at all.	5539973

3/9/2022	In XXXX, I was transferred to XXXX XXXX Hospital in XXXX, MS from another hospital. XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX I had XXXX insurance at the time. I gave all my insurance information. My insurance was filed, and XXXX paid XXXX XXXX. Later XXXX resended the payment stating out of network. When	5301470

	it is an emergency XXXX, I was told you couldnt do that. Fast forward. XXXX XXXX sent bills to an old address. I was not notified of this until XXXX. I was notified by Advanced Recovery Systems in XXXX, MS. XXXX was the man who called. He stated that I had received a check from XXXX for XXXX. I stated to him I didnt know what he was referring to I had not received any check from XXXX . He was very ugly, and hung up. Fast forward to XX/XX/XXXX. While at work, I was served a garnishment in the amount XXXX. It was served by XXXX Law Firm in XXXX, MS. Advanced Recovery Collections had turned it over. I called Advanced REcovery, and spoke with XXXX. He stated to me that by law XXXX XXXX had to write the balance off since it was an emergency XXXX. He stated to me that he would accept the write off, but I needed to pay them XXXX in fees. He stated that if I could not pay off the XXXX in full the garnishment would be for the full amount of XXXX even the XXXX XXXX that has been written off. I have been having my check deducted since XX/XX/XXXX. I have paid XXXX to them. I do not believe this is legal. Please help!	

5/6/2023	I was noticing by paychecks from work were not right..Come to find out I was being garnished XXXX an hour. of my check by Atlas Collections ACI out of New Castle Indiana for medical bills that occured when I was XXXXXXXX and was almost stomped to death by XXXX XXXX.This happened in XXXX..I never went to court or was able to dispute this debt and they just started taking {$210.00} a week I make a little over {$17.00} an hour..I am almost forced to quit my job after turning my life around..A Judge out of XXXX XXXX XXXX XXXX XXXX signed document allowing this..Something is not right and this debt should be out of date if not unlawful..Please help me, I dont wan na quit my job, I just turned my life around recently and dont wan na throw it away	6945934

10/7/2022	I was in a car accident in XXXX and thought all of my medical bills were paid from my settlement. I NEVER received a bill from XXXX XXXX, I never received a call from them, they never reported the debt to any credit reporting agency -- They just sued me in XXXX. I thought this was settled and done, I didn't think I owed any money because I told the lawyer how little money I had at the time and my health, I had a XXXX not long after this. There was no mediator in the room with us, it was just me and the lawyer, I don't think that was right. It doesn't feel right. I didn't understand what was happening and yeah, I understand that I signed the paper but I did so under false understanding. There was no third person in the room with us to be an impartial party. Since that day in court, I haven't heard anything from this, I have received NOTHING stating I owe XXXX XXXX and the only calls I've received are robocalls that don't even include my name so I assumed they were spam. I was not properly notified and now they are garnishing my wages and refuse to work with me when I reach out. As soon as I was aware of the debt I reached out. The garnishment is preventing me from paying other debts I knew and agreed to and my credit score has dropped over 100pts. I really think there should have been a mediator, I feel like if there was a third party in the room they probably would have made sure I actually understood what I was to do and none of this would be happening.	6063844

Collection Lawsuits

5/18/2023	Valley Empire Collection XXXX XXXX XXXX Washington filed a lawsuit against my wife and added both our names on the lawsuit for a medical debt that was not communicated to us. My XXXX XXXX XXXX was served the legal paperwork and refused to accept the paperwork. They left it on the door steps. No communication were made in regards to the collection. The medical debt in the amount of {$430.00} plus interest {$27.00} and filing fee {$73.00} and process fee of {$98.00} for XXXX XXXX. They refuse to work with us on correcting the issue or make communication with us other than filing a lawsuit.	6994616

6/11/2023	The law firm of Celentano, Stadtmauer, Walentowitcz, LLP (" debt collector ") has continued to notify me by mail about a medical debt that is incorrectly directed to me (XXXX XXXX, XXXX XXXX XXXX, XXXX NJ XXXX), as I am not the primary account holder or member name of the group medical insurance policy associated with the false claim, and the claim is baseless as the insurance provider (XXXX XXXX XXXX XXXX) paid the agreed upon rate for this claim, and the hospital (XXXX XXXX XXXXXXXX XXXX) is simply abusing the billing process and adding additional out of pocket costs to my family. I have attempted to contact XXXX XXXX XXXXXXXX numerous times via phone about this claim to dispute it, but their customer support lines have wait times over over an hour in most cases. I have had email communications with XXXX XXXX XXXX at the above mentioned debt collector, last being XX/XX/2023, explaining the incorrect nature of the two claims (incorrect person as the member name (account holder) of the insurance, and the excess charge for agreed upon rates already collected). The information and documentation provided by the debt collector clearly shows the discrepancy in the member name as the primary account holder with XXXX, XXXX XXXXXXXX). On XX/XX/2023, I received another postal letter from the debt collector, saying a lawsuit will be filed against me no earlier than XX/XX/2023 in regards to this matter. XXXX XXXX	7099947

4/11/2023	I was notified about a debt through a lawsuit. There is no information provided about the debt owed. After a review of medical bills and health insurance records, I find no debt owed to the XXXX. Now, this debt collector is threatening me with legals fees and seeking a settlement. The alleged debt owed is {$570.00} and a lawsuit is a very heavy-handed approach. I'm not an attorney and it's costly to hire one for the amount in question.	6816728

9/1/2023	I was sued by a third party debt collector. When the process server served me with notice of the law suit, it was the very first time the debt collector contacted me in any way about the debt. Furthermore, the original party claiming the debt was owed, never contacted me at all about the debt. I'm being sued for medical expenses for my daughter that I had no knowledge of for services that I never consented to. None of the parties involved contacted me AT ALL prior to the lawsuit filed by the third party debt collector. I have not been provided enough documentation to substantiate the debt or the services alleged in the lawsuit. I advised the third party debt collector that they had not followed the requirements of the Fair Debt Collection Practices Act and they have ignored me and proceeded with the lawsuit. I had no knowledge of the information, because my ex-wife was the individual they dealt with ... nobody contacted me at all until the lawsuit was filed against me. After violating my rights under the FDCPA, the third party debt collector went on to file a motion and order for summary judgement against me claiming that I did not answer the lawsuit when I actually did. It was a false affidavit filed with the Court. I was forced to respond to the false allegations and have the oder for default vacated. The actions of the third party debt collector in this case, I believe are in violation of law and have caused extreme anxiety and stress. XXXX This is an unfair, deceptive and abusive practice. The third party debt collector is : XXXX XXXX XXXX XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXX, XXXX XXXX XXXX XXXX, SD I believe this is a pattern and practice for this debt collector to file lawsuits against fathers who were not involved in the medical decisions or care, in order to gain leverage over them in a pending lawsuit.	7489048

Bank Account Levies

1/24/2022	Early XXXX - late XXXX I called CSO financial to set up payments on my account. I was told I was unable to make any payments as they were suing me- and I had a pending judgement and had to wait to be served. Next month my ENTIRE bank account- leaving a balance of literally {$0.00} was garnished- which is also a joint account with my husband. Both bank accounts to be exact. Total taken was about {$2500.00}. I had other pending charges- and bills due and now face overdraft fees, NOR have money to even buy food or gas for my children. No notice of garnishment. No notice of judgement - wouldnt even accept Payments when I Tried. I believe they should have left some money in the account- how are people supposed to live?	5143292

5/19/2023	I had a {$500.00} doctor bill from XX/XX/XXXX and in XX/XX/XXXX Profesional credit service in XXXX Oregon garnished my bank account {$1200.00}. I have called the collection agency three times since asking for a breakdown of what the {$1200.00} was for. I was told to go to their website and look it up there. The website doesn't show that information. When I called back the man at PCS told me since my balance owed is now XXXX he can't send me any information of what I paid.	6999524

8/14/2022	XXXX XXXX XXXX XXXXXXXX XXXX collection attorneys where I live levied my bank accounts, froze them the problem Im having is that the same attorneys Garnished my husbands wages on or about XX/XX/XXXX the judgment was satisfied on XX/XX/XXXX the same attorney I fired in a family law case has jumped into the collection business freezing or XXXX XXXX accounts XX/XX/XXXX. The very same medical facility that my husband just paid summoned me on XX/XX/XXXX XX/XX/XXXX I was XXXX for a due this company requesting again and again and being granted non wage garnishments of bank accounts the court documents state service for this non wage garnishment wage garnishment XX/XX/XXXX sent to a process server	5878186

	and returned to themXXXX while XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXXXXXX XXXX where I remained until XX/XX/XXXX. This medical debt for {$1500.00} levy on our accounts for services I couldnt possibly be served for sending them to my address where my husband and I shared for 20 years now. He didnt understand it as he was already garnished, he tried to tell this company that I wasnt there and hadnt been, not once could they have sent a process server to garnish wages and banks sending them to my house. XX/XX/XXXX I was in a XXXX XXXX XXXX XXXX in XXXX Kansas far from my home in XXXX and being XXXX the following month. The last job I worked ended XX/XX/XXXX I have XXXX XXXX XXXX XXXX XXXX XXXXXXXX making that very difficult to do my husbands income is all we have to try and pay the bills, mortgage and food for our XXXX XXXX XXXX son. Back taxes are now owed on our home, the state has already offset XXXX of our federal income tax return, we have applied for KHAF loans to pay our mortgage, insurance and now a bounced ach to utilities water and electric. {$450.00} on our water bill was paid by community action while we waite for KHAF funding.our water is going to be shut off again this week while my husbands paychecks smaller and smaller with hour cuts at his job. and Kansas is holding income tax offset we absolutely do not owe in fact 3 years we had a refund coming.	

2/6/2022	First off, I have been dealing with XXXX for a while now. They unlawfully received a list of medical procedures and tests that I had done from XXXX XXXX XXXX and filed that within the court system, making those public records. They then tried to garnish money from my bank account. My bank account has my husband 's VA money and my student loan funds in it. Of course, there wasn't any money in the account due to us living paycheck to paycheck and paying our bills. The attorney actually accused me of moving money when I went to court on XX/XX/2022. Next, I call XXXX who is the XXXX of operations at XXXX and leave him a voicemail stating that I am willing to make payment arrangements. A few days later, instead of a call back, I get another garnishment from one of my places of employment. I do not even make {$500.00} in a paycheck and they are trying to garnish my wages. I have read many complaints against this company that state that they do not allow people to make payment arrangements and when they do, you need to keep track of your payments because they will say they never received them. I have never felt so humiliated by a company before. They have probably spent more in attorney 's fees than what I owe. They never call me back. They never mail me anything when I asked for items in	5191034

	writing. They never even sent me information before they started court proceedings that I owed anything.	

12/8/2022	First of all this is a medical debt from more than 7 years ago. In XX/XX/XXXX I suffered a serious work accident that made it impossible for me to work for more than 3 years. When this happened, I called the cards that I was paying to inform them that I would not be able to pay the debt, telling them about the situation and wanting to reach a payment arrangement. They did not want to understand the situation nor did they want to come to a payment arrangement with me. In XXXX I received a letter from a levy that they put into my bank account withdrawing around {$500.00} in order to collect this debt. Now again on XX/XX/XXXX my bank account was seized and debited in the amount of {$490.00}. There was no previous notice for this nor the right or opportunity to defend myself. IS THIS LEGAL??? I ask sarcastically being sure not. On countless occasions I have tried to contact them and they do not respond, when they do they can not answer me because I do not speak XXXX and they do not have anyone available in XXXXXXXX or translation for me. This is discrimination and also, they have made it impossible for me to reach an agreement which is too unfair and goes against my rights as a consumer. This is not in compliance with the equal opportunity law that these companies are supposed to abide by. I did not receive any news of any of this in my mail. This is super illegal. Currently, I am the head of the family, I have a wife and XXXX dependent children who depend on my work to survive. I have spent hours and hours on hold trying to contact them. They have damaged my credit and my rent payments.	6298093