

February 26, 2026

KC Mohseni, Commissioner
Department of Financial Protection and Innovation
651 Bannan Street
Suite 300
Sacramento, California 95811

Re: File No: PRO 07-24

The National Consumer Law Center is pleased to submit these comments in response to the Department of Financial Protection and Innovation's (DFPI) Second Invitation for Comments on a Proposed Rulemaking Under the California Consumer Financial Protection Law (CCFPL) Regarding Registration and Reporting of Covered Persons. We appreciate that this Second Invitation for Comments focuses on potential registration, reporting requirements, and other regulation of providers of consumer reporting services.

We urge DFPI to issue regulations that require registration and reporting by consumer reporting agencies (CRAs) that traffic in information used in connection with financial services or products, especially Equifax, Experian and TransUnion, known as the nationwide consumer reporting agencies under the Fair Credit Reporting Act (FCRA) and colloquially as "credit bureaus." We further urge DFPI to exercise supervisory authority to conduct examinations of such covered CRAs, and to take enforcement action where appropriate. In short:

1. Credit reports and scores play a vital role in the economic lives of consumers, but there are significant problems and abuses by that industry. DFPI should regulate credit bureaus, especially given that the federal Consumer Financial Protection Bureau (CFPB) has been sidelined by the Trump Administration.
2. DFPI has broad authority under the CCFPL to regulate CRAs covered under Cal. Fin Code § 90005 subd. (k)(9), including requiring registration by covered CRAs and exercising supervision authority. We urge the DFPI to do so and to take enforcement action when covered CRAs violate the law. The federal FCRA does not govern registration and supervision of CRAs, so that Act should not preempt states when they do so.
3. DFPI should include certain specialty CRAs and resellers in any proposed rulemaking requiring registration. These include bank account screening CRAs such as ChexSystems and Early Warning Services, and resellers who offer tri-merge credit reports for mortgage lending.
4. DFPI should define "consumer report information" to include credit history, other financial information, and non-financial information used in reports sold by covered CRAs in connection with decisions regarding financial services, such as driver's license or criminal records information.
5. DFPI should include data brokers that are CRAs and meet the definition under Cal. Fin Code § 90005 subd. (k)(9) in any proposed rulemaking requiring registration. Given that the California Privacy Protection Agency does not regulate CRAs due to the exemption for FCRA-covered entities in the data broker registration law, such coverage would not

run afoul of the provision in Cal. Fin. Code § 90009, subd. (a)(2)(B), which precludes DFPI from requiring the registration of a covered person who is licensed or registered by another agency.

6. DFPI should include furnishers who meet the definition under Cal. Fin Code § 90005 subd. (k)(9) in any proposed rulemaking requiring registration, to the extent they are not already covered as creditors or debt collectors.
7. DFPI should require regulated CRAs to keep records and provide annual reports. Such reports should include information regarding the CRAs' market scope and operations, data breaches, and mostly importantly, data about consumer disputes and their resolution.

A. Harms Caused by and Concerns Regarding the Big Three Credit Bureaus

Question 2. What acts or practices by consumer-reporting providers cause harm to consumers?

Question 3. What concerns do consumer-reporting providers present to consumers or the financial marketplace that warrant prioritizing the supervision of this industry over others?

Credit reports and credit scores play a crucial role in consumers' lives, and their importance has only grown in recent years. Of course, credit reports and scores can determine a consumer's ability to obtain credit and the amount they have to pay for it, which affects their ability to purchase a home – the pathway to establishing middle class wealth for most consumers. But even for renters, 90% of landlords use credit reports and scores,¹ which means a bad score could shut a renter out of apartments in a decent school district or even permanent housing.

In addition, credit reports and scores can affect whether and at what price consumers can obtain insurance and hence their ability to own a car. Some employers use credit reports, affecting a consumer's ability to find a job. It's essentially the report card for a consumer's financial life, even though its predictiveness for non-credit uses has been controversial and questionable.²

Yet for such an important record, credit reports and scores suffer from profound problems and abuses. These include accuracy problems such as:

- Consumers having their credit files “mixed” with the wrong person.
- Negative information that remains even after court judgments or legal settlements declare that a consumer doesn't owe a debt.
- The after-effects of identity theft when credit bureaus and creditors don't believe the victim.
- Consumers being labeled as dead when they are alive and breathing.

¹ Transunion SmartMove, TransUnion Independent Landlord Survey Insights, Aug. 7, 2017, <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

² See Chi Chi Wu and Ariel Nelson, NCLC, Mission Creep: A Primer on Use of Credit Reports & Scores for Non-Credit Purposes (Aug. 23, 2022), <https://www.nclc.org/resources/mission-creep-a-primer-on-use-of-credit-reports-scores-for-non-credit-purposes/>.

- Errors by the creditors and debt collectors, known as “furnishers,” who supply information to the credit bureaus.³

The dispute system that is supposed to serve as a safety net to fix errors is an automated travesty, with credit bureaus and some furnishers conducting pro forma, perfunctory investigations. Credit bureaus automatically defer to what a furnisher tells them, like a judge who always rules for the defendant.

The often-cited 2012 Federal Trade Commission (FTC) study on credit reporting errors found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it.⁴ With an estimated 30 million adult Californians⁵ with a credit report,⁶ this means that 6 million consumers in the state have errors, and 1.5 million have errors that can be life altering.

Another indication of the massive accuracy problems is the dramatic explosion of complaints to the CFPB about credit reporting. In 2024, there were 2.7 million complaints to CFPB about credit reporting and other types of consumer reports, making up 85% of complaints submitted to the Bureau.⁷ Over 277,000 (or over 10%) of those complaints were from California.⁸

The credit bureaus’ failure to conduct any meaningful investigation of disputes has only gotten worse as they have pushed, often successfully, their argument that they are not required to resolve “legal” disputes. Starting in 2010 with the case *Carvalho v. Equifax Info. Servs., LLC*,⁹ which originated in the Northern District of California, the credit bureaus as well as furnishers have aggressively pushed this theory with success, much to the detriment of consumers as well as the overall accuracy of the credit reporting system. The scope of what credit bureaus and furnishers successfully claim to be a legal dispute has broadened to include issues such as

³ See Chi Chi Wu, Michael Best & Sarah Mancini, NCLC, Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors (Feb. 25, 2019), <https://bit.ly/ajustre>. See also Consumer Credit Reporting: Assessing Accuracy and Compliance: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Financial Servs., 117th Cong. (2021) (statement of Chi Chi Wu), <https://www.congress.gov/117/meeting/house/112712/witnesses/HHRG-117-BA09-Wstate-WuC-20210526.pdf>.

⁴ Federal Trade Comm’n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

⁵ The Census Bureau estimates there were 39.4 million residents in California, 78.7% of whom are over the age of 18, or about 31 million adults. Census Bureau, Quick Facts; California, July 1, 2025, <https://www.census.gov/quickfacts/fact/table/CA/PST045224>.

⁶ The CFPB has estimated about 97.3% of adults have a credit report. CFPB, Technical correction and update to the CFPB’s credit invisibles estimate (June 2025), at 4, https://files.consumerfinance.gov/f/documents/cfpb_update-credit-invisibles-estimate_2025-06.pdf (only 2.7% of U.S. consumers do not have a credit report).

⁷ CFPB, Consumer Response Annual Report January 1-December 31, 2024, at 3, 11 (May 2025), https://files.consumerfinance.gov/f/documents/cfpb_cr-annual-report_2025-05.pdf.

⁸ Based on analysis of the CFPB Complaint Database.

⁹ 629 F.3d 876 (9th Cir. 2010).

forgery¹⁰ and identity theft.¹¹ The credit bureaus and furnishers are using the “legal dispute” argument to gut the investigation requirements of the FCRA, and avoid any legal responsibility for their failures.¹²

The level of errors in credit reports, volume of complaints, and biased dispute system is unacceptable for an industry so important to the financial lives of Americans. It is also the result of two critical aspects of this industry: (1) credit bureaus are entirely private companies that are publicly traded, which means their highest duty is to shareholder profit, not the public good or the American consumer and (2) the paying clients of credit bureaus are not consumers, but the creditors and debt collectors who furnish or use the information contained in the credit bureaus’ databases. Because of these factors, as the CFPB has noted, “experience indicates that [the credit bureaus] lack incentives and under-invest in accuracy.”¹³

Under previous Administrations, the CFPB attempted to address this lack of incentive through supervision and enforcement. But with the Bureau sidelined by the current Trump Administration, state regulators such as the DFPI should step up to fill this void.

B. DFPI Should Supervise and Examine the Big Three Credit Bureaus and other Covered CRAs

Question 6. How might rulemaking by the Department address the consumer and market concerns identified above?

States such as California have an important role to play in regulating the credit bureaus and other covered CRAs. State agencies have long had a role in combating the abuses of the credit reporting system, going back to multistate Attorneys General actions in the early 1990s. In 2015, a group of 31 states, including California, obtained a multistate settlement with the credit bureaus in which they agreed to a number of reforms.¹⁴

¹⁰ See, e.g., *Uppal v. Wells Fargo Bank, N.A.*, 2020 WL 6150923 (M.D. Fla. Oct. 20, 2020) (dismissing claim where plaintiff alleged forgery of documents as a legal dispute).

¹¹ See, e.g., *Reyes v. Equifax Info. Servs., L.L.C.*, 140 F.4th 279, 287 (5th Cir. 2025)(where plaintiff alleged that credit card debt was due to identity theft, it was “based on a not-yet-adjudicated position that the debt is not legally valid”); *Suluki v. Credit One Bank, NA*, 138 F.4th 709 (2d Cir. 2025)(affirming summary judgment for furnisher in intra-familial identity theft case); *Milgram v. Chase Bank*, 72 F4th 1212 (11th Cir. 2023) (upholding grant of summary judgment to furnisher; legal dispute existed as to whether thief had apparent authority and thus plaintiff was liable for debt); *Walker v. Experian Info. Sols. Inc.*, 2024 WL 1337851 (M.D. Ala. Mar. 28, 2024)(assertion of fraud is a legal defense to enforceability of a debt).

¹² National Consumer Law Center, *Fair Credit Reporting* §§ 4.5.3.4.6, 6.10.2.5 (10th ed. 2022), updated at www.nclc.org/library.

¹³ Consumer Financial Protection Bureau, *Supervisory Highlights Consumer Reporting Special Edition*, Winter 2017, at 21, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

¹⁴ Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, In re *Equifax Info. Serv. L.L.C., Experian Info. Sols., Inc., & TransUnion L.L.C.* (May 20, 2015), <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx>.

DFPI has broad authority under the California Consumer Financial Protection Law (CCFPL) to address the problems created by credit bureaus and covered CRAs. DFPI can investigate and take enforcement action against covered CRAs. Cal. Fin. Code §§ 90012 to 90015. The agency can also require registration and licensing of covered CRAs by regulation. Cal. Fin. Code § 90009, subd. (a)(1). Most importantly, DFPI has the legal ability to supervise credit bureaus and covered CRAs as either registrants, Cal. Fin. Code § 900010, subd. (a)(2), or covered persons after notice, *id.* at subd. (a)(3).¹⁵

We strongly urge DFPI to issue regulations that would require registration of the Big Three credit bureaus and other covered CRAs. Such registration would allow the DFPI to supervise these covered CRAs, and we urge the agency to do so on a regular basis. Supervision would allow DFPI to examine the policies and procedures that lead to systemic inaccuracies, such as loose matching criteria, as well as the dispute policies that are biased in favor of furnishers. It would enable DFPI to address systemic problems that cause consumer harm in a way no individual consumer can address. And because the federal FCRA does not address the issue of supervision of consumer reporting agencies, there are no express provisions subject to the stricter preemption provisions of that Act at 15 U.S.C. § 1681t(b).

C. The DFPI Should Include Certain Specialty CRAs and Resellers in the Scope of Its Regulatory Authority

Question 4. Do any market segments, such as specialty consumer reporting, require particular attention? If so, why?

Question 7. How does the definition in Financial Code section 90005, subdivision (k)(9), compare with existing definitions in state or federal law, including the federal Consumer Financial Protection Act of 2010, the federal Fair Credit Reporting Act (FCRA), and the Consumer Credit Reporting Agencies Act (CCRAA) (Civ. Code, § 1785.1 et seq.)?

Question 15. Are resellers—entities that assemble and merge consumer information from other consumer reporting companies to furnish such information to third parties—covered persons under the CCFPL? Should they be? Why or why not?

The authority of DFPI is not limited to the Big Three credit bureaus and we urge you to include other financially-related CRAs in requiring both registration and supervision. Under the CCFPL, the scope of the DFPI’s authority extends to any entity that is engaged in:

[c]ollecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service [with exceptions for affiliate sharing and firsthand experience information]

¹⁵ See also Cal. Fin. Code § 90006, subd. (a) (granting DFPI authority to “exercise nonexclusive oversight and enforcement authority under California consumer financial laws”). In general, DFPI has broad authority to “regulate the offering and provision of consumer financial products or services under California consumer financial laws,” which includes consumer reporting. *Id.*

Cal. Fin. Code § 90005, subd. (k)(9).

This definition includes any entity that traffics in third party information used or expected to be used in connection with the offering or provision of financial services. Thus, it would include, not only credit reports, but consumer reports used for deposit account screening, such as ChexSystems and Early Warning Services.

This definition is narrower than the definition of “consumer report” under the FCRA, which includes many more categories of information that are used for purposes beyond financial services, such as employment or tenant screening. 15 U.S.C. § 1681a(d). It overlaps with the definition of “consumer credit report” under the CCRAA; the latter is narrower in that it is limited to information “bearing on a consumer's credit worthiness, credit standing, or credit capacity,” but broader in that it covers such information when used for employment or tenant screening purposes. Cal. Civ. Code 1785.3 subd. (c). It appears to be most similar the scope of “consumer reporting” under the federal Consumer Financial Protection Act of 2010 (*i.e.*, the Dodd-Frank Act) which defines a covered “financial product or service” to include “collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service.” 12 U.S.C. § 5481 (15)(A)(ix); 12 C.F.R. § 1090.104(a).

Notably, both the CCFPL and the Dodd-Frank Act clearly cover bank account screening, such as Chex and EWS. We urge the DFPI to include such CRAs in the scope of their enforcement, registration, and supervision programs. These CRAs determine whether a consumer can obtain a bank account, which is critical to a consumer’s financial life. Yet these CRAs, like the Big Three credit bureaus, have significant problems with accuracy and dispute resolution.¹⁶

We urge the DFPI to include other companies that sell information for credit approval decisions in the scope of its regulation. This includes LexisNexis, which offers products such as RiskView Liens and Judgments reports, which is marketed an enabling lenders to “to make timely, informed decisions and mitigate financial losses and regulatory risk.”¹⁷ This also includes Equifax’s The Work Number, which is used in mortgage underwriting.

The CCFPL definition also appears to include certain resellers. It is unclear whether resellers are defined under CA law.¹⁸ In any event, resellers would be covered to the extent the account or

¹⁶ San Francisco Office of Financial Empowerment, Blacklisted: How ChexSystems Contributes to Systemic Financial Exclusion (June 2021), <https://www.sfgov.org/ofe/blacklisted-how-chexsystems-contributes-systemic-financial-exclusion>; NCLC, Account Screening Consumer Reporting Agencies: a Banking Access Perspective (Oct. 1, 2015), <https://www.nclc.org/resources/account-screening-consumer-reporting-agencies-a-banking-access-perspective/>.

¹⁷ LexisNexis, RiskView™ Liens & Judgments, <https://risk.lexisnexis.com/products/riskview-liens-and-judgments-report> (viewed Feb. 18, 2026).

¹⁸ The CCRAA does have a provision that governs “a person that procures a consumer credit report for the purpose of reselling the report.” Cal. Civ. Code § 1785.22. That provision contains protections to ensure that the consumer report is resold to a user with a permissible purpose. Under the FCRA, resellers are defined as:

credit information is “used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service”. That certainly fits the description of certain resellers used in the mortgage lending industry, namely “tri-merge” companies such as Cotality (former Corelogic Credco) or Equifax Mortgage Solutions,¹⁹ which combine information from all three credit bureaus into a one report for use in mortgage underwriting.

D. Regulated information Should Be Defined Broadly

Question 8. Should the Department define any terms relevant to consumer reporting that are not currently defined in the CCFPL? If so, why and how?

Question 9. Should the Department define “consumer report,” “consumer report information,” or “account information” in Financial Code section 90005, subdivision (k)(9)? If so, why and how? 10. Should the Department clarify what “information” is described in Financial Code section 90005, subdivision (k)(9)(A)(ii)? If so, why and how?

The DFPI should define scope of coverage as any information used in connection with consumer financial product or service, not just information on credit history. Cal. Fin. Code § 90005, subd. (k)(9)(A)(ii) includes within its scope “consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service.”

This appears to cover more than just credit history, since that term is framed as a category thereof. Information that is not credit history per se, but can be used in connection with the decision to approve or deny a financial product or service can include information about “character, general reputation, personal characteristics, or mode of living,” to the extent it is either account information or is otherwise consumer report information.

Such information is often used in connection with decisions regarding financial services. For example, ChexSystem reports might include driver’s license information.²⁰ NCLC has received reports of consumers having credit card or deposit accounts closed due to criminal records. Driver’s license data or criminal records are often included in reports that constitute “consumer

a consumer reporting agency that— (1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and (2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.”

15 U.S.C. § 1681a(u).

¹⁹ For a list of tri-merge resellers, see Fannie Mae, Credit Information Providers, <https://singlefamily.fanniemae.com/credit-information-providers> (visited Feb. 18, 2026).

²⁰ See ChexSystems, Sample Disclosure Report, <https://www.chexsystems.com/-/media/project/chexsystems/chexsystems/pdf/chexsystems-sample-disclosure-report.pdf> (visited Feb. 18, 2026).

reports” under both the federal FCRA and the California Investigative CCRA. In contrast, the scope of “consumer credit report” under the CCRAA is limited to information “bearing on a consumer’s credit worthiness, credit standing, or credit capacity,…” Cal. Civ. Code 1785.3 subd. (c).

We urge DFPI to exercise oversight over information such as criminal records or drivers licenses when it is included in reports used in connection with decisions regarding credit or deposit accounts. If such information is inaccurate or causes a disparate impact on protected classes, DFPI should have the ability to take enforcement action or correct abuses using its oversight authority.

E. The DFPI Should Include Certain Data Brokers in the Scope of Its Regulatory Authority

Question 5. To the extent the CCFPL covers other participants in the consumer-data industry, such as data brokers, aggregators, or other intermediaries, what concerns do these providers present to consumers or the financial marketplace?

The market for the sale of consumer data has exploded in the past few decades. The data industry has existed for decades, if not centuries, but current technology allows companies to collect, store, and interconnect data in ways that were not possible before. The size of the industry is enormous. In 2024, global data broker market size was estimated at \$278 billion and is projected to reach \$512 billion by 2033.²¹

The industry is intentionally opaque,²² but we do know a number of ways in which data brokers collect data. They 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.²³ Some companies gather data on individuals directly from firms they own,²⁴ while others “purchase, license, or otherwise acquire data second-hand from companies that directly collect this information from their users.”²⁵ Some firms collect publicly available

²¹ Grand View Research, Data Broker Market (2025-2033), <https://www.grandviewresearch.com/industry-analysis/data-broker-market-report> (viewed Feb. 18, 2026).

²² “Many data brokers admit that their work is a black box because of the ‘veil of secrecy surrounding the origins of the information, how it is analyzed, and who buys it.’” See Chih-Liang Yeh, *Pursuing consumer empowerment in the age of big data: A comprehensive regulatory framework for data brokers*, Telecommunications Policy 42, no. 4 (Dec. 2017), at 288 (quoting Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (2015), MA: Harvard Univ. Press, at 33) (hereinafter “Yeh, *Pursuing consumer empowerment*”).

²³ National Consumer Law Center, *Fair Credit Reporting* § 2.7.5 (10th ed. 2022), updated at www.nclc.org/library.

²⁴ Sarah Lamdan, *Data Cartels: The Companies That Control and Monopolize Our Information* (2022), Stanford University Press, at 3, 7 (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”).

²⁵ Justin Sherman, *Data Brokers and Sensitive Data on U.S. Individuals: Threats to American Civil Rights, National Security, and Democracy*, Duke Sanford Cyber Policy Program, at 2 (Aug. 2021),

web-based data through web crawlers (programs that capture content across the internet and transmit it back to the firm's servers). They likewise crawl government records to develop profiles on individuals.²⁶

Data brokers sell all manner of information about individuals, going far beyond the actual or "raw" data (e.g., an individual's name, address, age, ethnicity, occupation and income).²⁷ Data brokers combine scores of datasets to create a "mosaic" of "where we go, who we know, and what we do each day."²⁸ Data brokers offer potential buyers pre-packaged databases of information organized around certain consumer preferences or predictive behaviors.²⁹ "By tailoring their services for different purposes, data brokers sell products to various types of customers," such as advertising and marketing, credit and insurance, identity verification and fraud detection, health care, education, government agencies, law enforcement, and customer services.³⁰

The activities of data brokers ultimately harm consumers in a number of ways. Consumers are besieged with unwanted written solicitations and phone calls. This harassing behavior is not only annoying, but interferes with consumers' ability to be reached by contacts they actually want to hear from. Lead generators selling information for telemarketing has contributed to the scourge of unwanted and excessive robo-calls plaguing consumers.

The data sold or shared by data brokers provides the fuel for targeted marketing and direct solicitations that can lead to consumers falling victim to scams. Data collected by companies leads to privacy breaches and identity theft. Data collected by companies may be inaccurate, leading to lost employment opportunities, loss of government benefits, or reputational injury.

The lack of transparency from data brokers is its own form of harm. Data brokers collect and sell consumer data without their consent, so that "most people are unaware of [data brokers] existence and their substantial impact on daily transactions."³¹ This opaqueness compounds the other problems posed by data brokers, such as inaccurate information. A consumer has no ability to correct errors in information if they are not even aware of its existence.

<https://therealistjuggernaut.com/wp-content/uploads/2025/10/1.-Data-Brokers-and-Sensitive-Data-on-US-Individuals-Sherman-2021.pdf> [hereinafter "Sherman, *Data Brokers and Sensitive Data*"]

²⁶ See, e.g., Whitepages, <https://about.whitepages.com/>; PeopleSearch, <https://peoplesearch.com/>.

²⁷ FTC, *Data Brokers: A Call for Transparency and Accountability* (2014), at 19,

<https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf> [hereinafter "FTC, *Data Brokers*"]

("For example, a data broker might infer that an individual with a boating license has an interest in boating, that a consumer has a technology interest based on the purchase of a Wired magazine subscription, that a consumer has an interest in shoes because she visited Zappos.com, or that a consumer who has bought two Ford cars has loyalty to that brand.")

²⁸ David E. Pozen, *The Mosaic Theory, National Security, and the Freedom of Information Act*, Yale Law Journal 115, no. 3 (December 2005), 628-79.

²⁹ Sherman, *Data Brokers and Sensitive Data*, at 2; FTC, *Data Brokers*, at 19.

³⁰ Yeh, *Pursuing consumer empowerment*, at 285.

³¹ *Id.* at 283.

While data brokers pose a risk for all Americans, servicemembers and their families are particularly vulnerable. As research by the Data Brokerage Project at Duke University has noted “[d]ata brokers gather, package, and advertise highly sensitive data on current and former members of the U.S. military, which poses privacy and safety risks to servicemembers.³² Selling lists of servicemembers and their families opens them up to exploitation, because they are historically more likely to be targeted by unscrupulous and predatory businesses or outright scammers.³³

14. Certain data brokers, aggregators, and other participants in the consumer-data industry appear to provide the service described in Financial Code section 90005, subdivision (k)(9), and would be subject to registration. Should the Department clarify the application of the CCFPL to these entities in light of any of the following provisions? [List includes the Data Broker Registration law, Cal. Civ. Code, § 1798.99.80, subd. (c); Cal. Fin. Code § 90002, subd. (a); Cal. Fin. Code § 90009, subd. (a)(2)(B); and Cal. Fin. Code § 90002, subd. (a)]

The term “data brokers” is extremely broad, both under common understanding³⁴ and under California law, which is “a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.” Cal. Civ. Code, § 1798.99.80, subd. (c). This definition would encompass consumer reporting agencies, if not for the exception for entities covered under the federal FCRA. *Id.* at subd. (c)(1). Thus, the California Privacy Protection Agency does not have authority over FCRA-covered CRAs under the Data Broker Registration Law.

Notably, Cal. Fin. Code § 90005, subd. (k)(9) does not include an exception for FCRA-covered entities. Thus, data brokers should be covered under this subdivision to the extent that the data broker sells information “used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service.”

We urge DPFI to clarify that it has regulatory authority over data brokers if they meet this definition. Given the carve out for FCRA-covered CRAs in the data broker registration law, such coverage would not run afoul of the provision in Ca. Fin. Code § 90009, subd. (a)(2)(B), which precludes DFPI from requiring the registration of a covered person who is licensed or registered by another agency. And the fact that the California Privacy Protection Agency does not have authority over CRAs under the Data Broker Registration law makes it critical that DFPI have oversight of as many data broker CRAs as it can. Such oversight is necessary to ensure that Californians are protected from overreach, privacy invasions, and abuse by data brokers. Note

³² Who is Selling Your Data: A Critical Examination of the Role of Data Brokers in the Digital Economy: Hearing Before the Subcomm. on Oversight and Investigations of the H. Fin. Serv. Comm., 118th Congr. (2023) (testimony of Justin Sherman, Senior Fellow, Data Brokerage Project at Duke University). https://d1dth6e84htgma.cloudfront.net/Sherman_Testimony_4_19_23_b40d947a8e.pdf?updated_at=2023-04-17T17:40:42.415Z.

³³ Jennifer Sauer, AARP Research, Veterans Battle Surprise Attacks from Fraud and Scams, Nov. 9, 2021, <https://www.aarp.org/pri/topics/work-finances-retirement/fraud-consumer-protection/fraud-scams-military-veterans/>;

³⁴ Data brokerage is generally defined as, “the practice of buying, aggregating, selling, licensing, and otherwise sharing individuals’ data.” See Sherman, *Data Brokers and Sensitive Data*, at 2.

that FCRA-covered entities are also exempted from regulation under the CA Consumer Privacy Act, Cal. Civ. Code § 1798.145 subd. (d), which provides additional reason for DFPI to assert its authority over data brokers that are covered CRAs.

F. The DFPI Should Include Furnishers in the Scope of Its Regulatory Authority, to the Extent Not Already Covered

Question 16. Are furnishers—entities that furnish information relating to consumers to one or more consumer-reporting companies for inclusion in a consumer report—covered persons under the CCFPL? Should they be? Why or why not?

Most of the major furnishers to the Big Three credit bureaus are either creditors or debt collectors, and thus are already covered persons under the CCFPL. Major furnishers to bank account screening CRAs are also generally covered because they are financial institutions that provide deposit accounts.

To the extent there are furnishers that are not already covered, such as public records vendors, they should still be covered under Cal. Fin. Code § 90005 subd. (k)(9) as entities that engage in the “[c]ollecting, ... maintaining, or *providing* consumer report information ... used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service...” (emphasis added). This language not only applies to the CRA itself, but any furnisher of information that supplies or “provides” the CRA with information covered under subd. (k)(9). While subd. (k)(9)(a) does have an exception for when an entity “collects, analyzes, or maintains information that relates solely to the transactions between a consumer and that person,” this “firsthand experience” information does not apply when an entity *provides* that information to a third-party CRA. Furthermore, some furnishers (such as public records vendors) do not report firsthand experience information.

F. DFPI Should Require Regulated CRAs to Keep Records and Provide Annual Reports

Question 19. Should the Department require consumer-reporting providers to maintain certain records? (Fin. Code, § 90009, subd. (b).) If so, what records and why?

Question 21. Should the Department require registrants to provide the following information in annual or special reports? (Fin. Code, § 90009, subd. (f)(2).) Why or why not? What other information should the Department collect and why?

We agree and urge DFPI to require CRAs covered under Cal. Fin. Code § 90005, subd. (k)(9) to maintain certain records and provide annual reports to DFPI. Such reports should include all of the categories of information listed in Question 21, including information regarding the CRAs’ market scope and operations, consumer disputes and complaints, and data breaches.

We especially urge DFPI to require covered CRAs to report information on the number of disputes they received per period, what type of issue is being disputed, and the outcome of the dispute. With respect to outcome, the DFPI should require CRAs to report how many of the disputes are resolved with relief, how many are resolved without relief after an investigation, and most important, how many disputes are not investigated because the CRAs treated them as

“suspicious” or frivolous/irrelevant. With respect to the last category, the CRAs should be required to report how many disputes they rejected because believed the dispute had been submitted by a credit repair organization. Unfortunately, the Big Three credit bureaus have been overly aggressive in rejecting disputes as suspicious or the product of credit repair, and the prior CFPB administration had criticized these companies for similar behavior in ignoring complaints submitted to the CFPB.³⁵

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Thank you for this opportunity to comment, and for considering a rulemaking to regulate the Big Three credit bureaus and other CRAs. If you have any questions about these comments, please contact Chi Chi Wu, Director of Consumer Reporting and Data Advocacy at cwu@nclc.org or 617-542-8010.

³⁵ See CFPB, Annual Report of Credit and Consumer Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, and TransUnion 4 (Jan. 2022), https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf (nationwide CRAs failed to process about many of the complaints received against them and only provided relief in 2% of cases, leading the CFPB to state that the “responses to these complaints raise serious questions about whether [the nationwide CRAs] are unable—or unwilling—to comply with the law.”).