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Via Electronic Delivery

Office of the Secretary
Federal Trade Commission
Constitution Center, Suite 5610
400 7th Street, SW
Washington, DC 20024

Re: ***Accuracy in Consumer Reporting Workshop*, No. FTC-2019-0073**
Supplementary Comment of the Consumer Data Industry Association

Dear Ms. Tabor:

The Consumer Data Industry Association (CDIA) is pleased to offer this supplementary comment following the Accuracy in Consumer Reporting Workshop that took place on December 10, 2019. CDIA's members appreciate the work of the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) in assembling the Workshop and providing a platform for all industry participants to engage in a dialogue about the current state of the industry.

The marketplace – including consumers and businesses - demands accuracy and efficiency.

As evidenced by their participation in the Workshop, consumer reporting agencies (CRAs) understand that accuracy is paramount to consumers and users of consumer report information. Accurate information ensures that consumers are evaluated fairly, and allows users to quickly make critical risk assessments in connection with credit, employment, insurance, leasing, and other business transactions. Our members are always evaluating new opportunities to improve the user and consumer experiences.

Technological advances may result in new tools that allow for efficient, accurate and objective review and evaluation of data. These tools are critical to advancing consumer's interests. Technology allows businesses to meet consumer's needs and expectations, and gives businesses some assurance that the risk decisions will be predictive. Consumers and businesses alike expect that they will quickly receive accurate information, or they will look to other sources of information that serve those needs. Thus, CRAs strive to meet those expectations and demands.

The nationwide consumer reporting agencies (NCRAs) have made a significant investment in accuracy and dispute resolution.

The three NCRAs - Equifax, Experian, and Trans Union – are all committed to the accuracy of consumer report information, and have made significant enhancements in the accuracy of credit reports and in making it easier for consumers to correct errors on their reports. The National Consumer Assistance Plan (NCAP), a voluntary settlement agreement with 30 state attorneys general and the NCRAs, was an important milestone in these efforts.

To ensure accuracy, the NCRAs focused on improvements in several key areas:

1. Limiting collections being reported, including the type of collections, the timing of reporting and updating of reporting, and requiring debt collectors to include the name of the original creditor;

2. Retiring legacy reporting formats and requiring all furnishers to report in the Metro 2 format;

3. Prohibiting reporting on medical debts until at least 180 days have passed and removing medical debts paid or being paid by insurance companies from consumer reports;

4. Requiring the date of birth to be reported for authorized users; and

5. Establishing additional standards for ensuring the accuracy of public record information.

Since NCAP, the NCRAs have continued to work together to further improve the accuracy of consumer reports and encourage consumer education and empowerment. Today, consumers have a wide variety of tools available to them to proactively manage their credit, including access to free credit freezes and free annual credit reports from the NCRAs. The NCRAs all have enhanced their focus on education, empowering consumers with information about responsible credit management.

In addition, the NCRAs also invested in improving the dispute process in several key ways, as follows:

1. Sharing information about consumers who are reported as deceased;
2. Improving notices to consumers about the results of dispute investigation, the option to submit documents or a statement on their file, and the right to obtain an additional free consumer report after the investigation is complete;

3. Enhancing the e-Oscar system that is used by NCRAs and data furnishers to communicate dispute information and the results of the investigations, including any updates or deletions, and providing for additional dispute analysis; and

4. Implementing an escalation process for addressing disputes related to mixed consumer files and identity theft.

These enhanced dispute systems, processes, and analytics will further serve to ensure the accuracy of consumer report information.

Consideration of disputes is only one component of assessing accuracy of information included in consumer reports, and misuse of the dispute process undermines the assessment of accuracy.

Closely related to accuracy is the evaluation of consumer disputes about information in consumer reports. As provided for under the Fair Credit Reporting Act (FCRA) and the Furnisher Rule, a robust dispute process is an important tool to maintain the accuracy of information in consumer reports. When a consumer identifies information in a consumer report that appears to be incorrect, the consumer may submit a dispute directly to the furnisher of the information or, alternatively, submit a dispute to the CRAs. The CRAs and furnishers must investigate the disputed information.[1] The NCRAs continually look for opportunities to enhance the efficiency of the investigation process so that consumer disputes can be resolved as expeditiously as possible. Undoubtedly, new technology and software will help evaluate the nature of disputed information and allow for swift detection and correction of errors, further ensuring the accuracy of the information on consumer reports.

Misuse of the dispute process is detrimental to consumers. Representatives from the FTC and CFPB acknowledged during comments at the Workshop that credit repair companies undermine the accuracy of consumer reports by engaging in efforts to remove accurate, derogatory information. In one enforcement action, the FTC asserted that the defendant credit repair companies "claim that they can improve consumer's credit scores by removing all negative items and hard inquiries from their credit reports or by adding seasoned tradelines to their credit histories."[2] The FTC further alleged that the companies "encourage consumers to file an identity theft affidavit to remove negative information and inquiries, even when consumers explain that they were not victims of identity theft."[3] The misuse of the FTC identity theft report as a tool for credit repair has a significant, negative effect on the overall accuracy

[1] 15 U.S.C.A. § 1681i; 15 U.S.C.A. § 1681s-2(a)(8) and (9).
[2] *Federal Trade Commission v. Grand Teton Professionals, LLC, et al.* Case No. 3:19-cv-00933-VAB (D. Conn.), Complaint at ¶ 20 (filed June 17, 2019).
[3] *Id.* at ¶ 42.

and reliability of credit reports, as it blocks accurate information from being reported and impacts a creditor's ability to collect on legitimately-incurred debts.

The time and resources expended investigating disputes made by credit repair companies take away time and resources from focusing on legitimate disputes. The disputes are often baseless and lack any supporting documentation, but still require the attention and efforts of the NCRAs and data furnishers. These disputes artificially inflate the statistics about dispute volumes and types of disputes and also distort the statistics reflected in the CFPB's complaint portal (which is similarly misused by credit repair companies), making the system appear less accurate than it is.

Credit repair companies also provide misinformation or mislead consumers into disputing accurate information simply because it is negative, and in some cases when there is no negative information at all. In other cases, consumers are expecting instant updates of information and may dispute a tradeline that was accurate at the time it was furnished and which will be updated in the normal furnishing process.

Given the influence and actions of credit repair companies, CRAs caution against using dispute or complaint volumes as the main indicator of accuracy. Volume is merely one factor that must be further explored before understanding the reliability of this factor.

The use of alternative data creates new opportunities for consumers to access credit.

In addition to accurate, traditional credit reporting products, the federal banking agencies have recognized the value and importance of alternative data in certain risk decisions. In the *Interagency Statement on the Use of Alternative Data in Credit Underwriting*, "alternative data" is described as "information not typically found in the consumer's credit files of the nationwide consumer reporting agencies or customarily provided by consumers as part of applications for credit."[4] The federal banking agencies noted that alternative data "may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. These innovations reflect the continuing evolution of automated underwriting and credit score modeling, offering the potential to lower the cost of credit and increase access to credit."[5]

Further, alternative data, consisting, for example, of utility and telecom payment behavior, is already in use in other national credit reporting systems. This type of data has proven to be predictive. As such, regulatory agencies should work with industry to remove barriers to reporting and use of this data.

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[4] *Interagency Statement on the Use of Alternative Data in Credit Underwriting,* December 3, 2019, https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/

[5] *Id.*

Seeking ways to improve the accuracy of public records is critical to risk assessments that are in the public interest.

As discussed in detail in CDIA's prior comment letter, and which was borne out during the Workshop, enhancement of individual identifiers available in public records is key to the accuracy of public record information. It is not in the best interest of the public that such information no longer be available for inclusion in consumer reports. Rather, public record information, and in particular criminal record information, is often used to protect the most vulnerable members of public.

Reports demonstrate that individuals are at risk of abuse that may be avoided if public record information is available to employers, landlords, and others in a position of caring for vulnerable individuals. For example, in June 2019, the GOA issued a report finding that, "as many as 1 in 10 older adults in the United States—age 60 or older—experience abuse each year. Elder abuse may involve physical, sexual, emotional, or financial abuse or neglect. It can occur by family, guardians, or caregivers as well as by strangers and international criminal enterprises, which operate schemes for monetary gain or to facilitate other criminal activities."[6] Further, public records can serve to protect children and communities. Further, the Dru Sjodin National Sex Offender Public Website (NSOPW) relies on records from local jurisdictions. "The U.S. Department of Justice does not maintain the sex offender information displayed on NSOPW and therefore does not have information to provide. All of the information provided through this website is maintained by the separate jurisdictions, and access to that information is controlled by the agency within each jurisdiction responsible for registering sex offenders."[7] Public records, therefore, are a tool that can be used to help identify potential sources of harm to older adults and children.

Prior criminal activity can also be a predictor of future action. A 2018 report shows that rates of recidivism are significant.

> The cumulative arrest percentage among released prisoners increased 15 percentage points when the follow-up period was extended from 3 years to 9 years. Sixty-eight percent of prisoners had been arrested for a new crime 3 years after release, while 79% of prisoners were arrested after 6 years following release. At the end of the 9-year follow-up period, the percentage of prisoners arrested after release increased to 83%.
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> The cumulative out-of-state arrest percentage among released prisoners doubled when the follow-up period was extended from 3 years to 9 years. Three years after release, 7.7% of prisoners had been arrested outside the state of release. At the end of the 9-

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[6] GAO Report, *Elder Justice: Goals and Outcome Measures Would Provide DOJ with Clear Direction and a Means to Assess its Efforts*, June 2019, available at: https://www.gao.gov/assets/700/699559.pdf
[7] *See* https://www.nsopw.gov/

> year follow-up period, the percentage of prisoners arrested outside of the state of release increased to 15.4%.[8]

Importantly, this study showed that when examined over longer periods of time, rates of additional criminal activity increased.

> There is no standard length for follow-up periods used in studies of the criminal careers of released prisoners or any other cohort offenders. This study shows how recidivism and desistance measures change when longer or shorter follow-up periods are used.[9]

Given the important public interest at stake, and the risk associated with repeat criminal activities, CDIA's members are committed to taking steps to ensure accurate information is available. CDIA invites government intervention to help improve access to identifiers that will improve accuracy and allow employers, landlords, and others to have the resources available to make informed decisions.

Conclusion.

CDIA and its members thank the FTC and the CFPB for the opportunity to submit these supplemental comments.

Sincerely,

Francis Creighton

Francis Creighton
President & CEO

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[8] U.S. Department of Justice, Special Report: *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*, May 2018, available at https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf.
[9] *Id. at* p. 14.