

**Consumer Action
Consumer Federation of America
Consumer Reports
National Consumer Law Center (on behalf of its low-income clients)
National Immigration Law Center
U.S. PIRG**

January 20, 2021

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

The undersigned consumer and immigrant rights organizations write to urge the Consumer Financial Protection Bureau (CFPB) to prohibit consumer reporting agencies (CRAs) from selling “credit header” information without a permissible purpose as defined by the Fair Credit Reporting Act (FCRA). This action can be taken through guidance and does not require a rulemaking.

This letter follows up on a [December 8, 2021 letter sent by Senator Ron Wyden](#) regarding the sale of credit header information from the National Consumer Telecom & Utilities Exchange (NCTUE)/Equifax to U.S. Immigration and Customs Enforcement (ICE). Senator Wyden’s letter urged the CFPB to limit the sharing of credit header data to government agencies such as ICE by amending Regulation P, which implements the privacy provisions of the Gramm-Leach-Bliley Act (GLBA). We write to propose another option to stop the sharing of credit header information, which is to remove the exclusion of credit header information from the definition of “consumer report” under the FCRA.

Credit header information generally refers to identifiers such as a consumer’s name, current and former addresses, telephone number, and Social Security number (SSN). It can also include information such as current and prior employers, mother’s maiden name, and age/date of birth. Currently, credit header information is not considered a “consumer report” under the FCRA, even when the information originated from the files of a consumer reporting agency (CRA), including the nationwide CRAs (Equifax, Experian and TransUnion).

The exclusion of credit header information stems from a provision in the Federal Trade Commission’s [40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations](#) (“FTC Staff Summary”), formerly known as the FTC Staff

Commentary to the FCRA. Section 603(d)(1), para. 6.C.ii of the FTC Staff Summary states:

ii. Lists of names and contact information. A report limited to identifying information such as a consumer's name, address, former addresses, or phone numbers, does not constitute a "consumer report" if it does not bear on any of the seven factors and is not used to determine eligibility.

Viewed in the abstract, a simple list of names, addresses and telephone numbers does not seem to be a consumer report in that the information does not appear to bear on the seven factors of a consumer's "credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living." 15 U.S.C. § 1681a(d)(1). However, such lists must be viewed in context, and 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 NCTUE indicates 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 SSNs, those numbers by themselves are extremely sensitive as well as valuable – the very keys for identity theft and the target of data breaches such as the one against Equifax. 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. Even just a list of consumers from a Big Three credit bureau 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."

We are not advocating that any and all lists of consumers with names, address and telephone numbers should be considered consumer reports. Instead, what we do urge is that CFPB make clear that credit header information is a consumer report, even if it is limited to names, addresses and other identifiers, *if the information originates from a consumer reporting agency.*

In fact, another provision in the FTC Staff Summary is relevant in this regard. Section 603(d)(1), para. 4 of the FTC Staff Summary states: "If information from a consumer report is added to a report that is not otherwise a consumer report, that report becomes a consumer report." Thus, information derived from a consumer report, such as credit header information, that would not otherwise be FCRA-covered if it originated from another source should remain a consumer report because of its origins.

Coverage of credit header information under the FCRA is both fair and important, because CRAs have the ability to compile information about consumers that are not easily and generally obtained or available to other parties. This is especially true for sensitive identifiers such as a SSNs or driver's license numbers. Such information also includes addresses and telephone numbers for consumers who do not wish to be located, including not only undocumented immigrants but debtors seeking refuge from harassing collectors, domestic violence survivors

seeking to flee abusers, or consumers who simply do not wish to be contacted. These consumers, who might take great pains to avoid publicizing their home addresses or phone numbers, should not be forced to give up that privacy in order to obtain essential services such as cell phone, Internet, or utility service.

We urge the CFPB to prohibit CRAs, including the Big Three credit bureaus, from selling consumer identifying information to those entities without a permissible purpose under the FCRA, including to government agencies and data brokers. This should be as simple as clarifying that the language cited above from Section 603(d)(1), para. 6.C.ii of the FTC Staff Summary is limited to lists of consumer's identifying information *that are not derived from the files of a CRA*. The CFPB should also note that identifying information by nature bears on one of the seven factors if it is derived from the files of a CRA.

Such a clarification does not require rulemaking because the FTC Staff Summary itself is not a regulation and can be easily clarified in the same manner it was issued, as guidance. This is especially true since the FTC never had plenary regulatory authority over the FCRA in that manner that the CFPB has under Section 1681s(e) of the FCRA.

If you have any questions about this letter, please contact Chi Chi Wu at cwu@nclc.org or 617-226-0326.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
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cc: Senator Ron Wyden (via email to Chris Soghoian)