



June 28, 2021

The Honorable Maxine Waters, Chair
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry, Ranking Member
U.S. House Committee on Financial Services
4340 O'Neill House Office Building
Washington, D.C. 20515

Dear Chair Waters and Ranking Member McHenry:

On behalf of the Consumer Bankers Association (CBA), I am writing to share our views before the hearing entitled "A Biased, Broken System: Examining Proposals to Overhaul Credit Reporting to Achieve Equity." CBA is the voice of the retail banking industry whose products and services provide access to credit for consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

The deposits that millions of hardworking individuals and business make each day provide the capital that allows our banks to extend credit through risk-based pricing models that protect Americans' funds entrusted to their bank. Fundamental safety and soundness practices require a consumer's credit report to be up-to-date, accurate, and complete so that a lender can adequately determine a consumer's ability to repay a loan. Lenders consider many factors when determining the credit risk of a borrower, however, when important or historical credit data is restricted lenders cannot accurately assess risk. Any limitation of a lender's ability to access a borrower's complete credit profile can limit credit availability and increase the cost of capital for all borrowers.

Accordingly, we have serious concerns about the unintended harm many of the legislative proposals being considered as part of this hearing will have on our banks' ability to lend responsibly and ultimately on consumer's ability to access credit.

H.R. _____, National Credit Reporting Agency Act

CBA opposes the National Credit Reporting Agency Act. CBA firmly believes the already-established credit reporting agencies provide the most certainty to lenders when determining a consumer's creditworthiness, not a newly created government entity. Beyond Consumer Financial Protection Bureau (CFPB) complaints, credit bureaus receive millions of disputes each year. CBA believes it is improbable the government will be able to manage this magnitude of consumer demand for credit bureau investigation and resolution management.

CBA further believes that initiating a significant change to the current credit reporting system has the potential to severely limit credit access for consumers in need. We are concerned section 630(c)(2),(3) of the legislation allows for significant variability in what information a consumer can allow to be used in calculating their credit score. This is problematic because each permutation of those options will require a separate scoring model, which creates increased complexity to the underwriting process.

Furthermore, by creating the Public Credit Registry (PCR), credit providers would have to create their own proprietary models based on two different sets of credit scores since section 630(h) precludes them from ignoring the PCR and only using the private credit bureaus. This adds significant complexity in the data sharing process as credit providers must put safeguards in place to ensure they know which credit bureau a consumer is

using. CBA has significant concerns with section 630(h) of the bill because it creates a hardship for lenders since this section makes it a crime to ask a Credit Reporting Agency if that consumer has opted in.

Trusted and proven credit score modeling is an essential step in the underwriting process that ensures both lender and borrower can assume the financial responsibility of either making or taking out a loan. We strongly encourage the committee to further study if there is even a need for a new government-run credit agency before moving the “National Credit Reporting Agency Act,” which could have negative consequences on affordable credit for consumers.

H.R. 4120, Comprehensive Consumer Credit Reporting Reform Act (Pressley)

Title I— IMPROVEMENTS TO THE DISPUTE PROCESS

CBA opposes the Improving Credit Reporting for All Consumers Act. Section 110 of the bill, “Injunctive Relief for Victims,” is particularly concerning because it undermines the primary authority of the CFPB and Federal Trade Commission (FTC) to enforce the Fair Credit Reporting Act (FCRA) in a manner consistent with maintaining a nationwide credit reporting system that benefits businesses and consumers. Congress enacted FCRA in 1970 with emphasis on ensuring fairness, accuracy and efficiency within the banking system, and in doing so specifically granted the federal regulators alone the right to pursue injunctive relief for violations, thus avoiding the possibility of multiple courts issuing conflicting orders. Adding this authority to existing remedies for FCRA violations, including fines and other serious penalties, is unnecessary and will have no impact on improving credit reporting for consumers. As depository institutions supervised by prudential federal regulators with deep expertise and experience in financial markets, CBA members are concerned with the potential this legislation creates for unlimited injunctive authority to impair nationwide financial systems.

CBA is also troubled by Section 104(d) of the bill, “Eliminating Furnishers’ Authority to Dismiss Disputes as Frivolous or Irrelevant.” This section would entirely remove a cost effective and efficient process by which furnishers can follow steps mandated under federal law to distinguish false or illegitimate disputes from actual consumer problems that should draw focus and proper inquiry. For disputes in which no new information is provided, or the same information is provided multiple times, furnishers may follow this well-established and regulated process to reasonably determine there is no merit to the dispute, and then provide a timely notification (no more 5 business days) providing their reasoning along with supporting documentation. Eliminating this process will require all future frivolous or irrelevant disputes to go through a full investigation and appeals process, drawing significant resources away from legitimate concerns and significantly raising costs, while ultimately generating the same result in these disputes.

Title III— STUDENT BORROWER CREDIT IMPROVEMENT ACT

CBA opposes the Student Borrower Credit Improvement Act as the private student loan rehabilitation process it creates is unnecessary given the very strong performance of private student loans (less than 2% charge off) and duplicative of the process created by the recently enacted the Economic Growth, Regulatory Relief and Consumer Protection Act (Pub. L. 115-174). This bill would layer new student loan rehabilitation provisions over the existing framework, while granting broad new authority to the CFPB to implement the programs and determine the amount of borrower payments.

Student loan debt in America stands at \$1.6 trillion – 92% of that total is held by the federal government and the remaining 8% is held by private lenders. Ninety-eight percent of private student loans are being successfully repaid due to strong upfront disclosures and underwriting as well as targeted repayment assistance tools that effectively help the very small subset of private loan customers experiencing financial distress avoid default. While well intended, this legislation could in fact work to undermine existing repayment assistance tools as lenders might have to divert financial and organizational resources to manage the mandatory loan rehabilitation programs. It would be unfortunate if private student loan borrowers were steered into programs that reverse default at the price of access to programs that prevent default in the first place. Federal student loan borrowers, on the other hand, are struggling – collectively experiencing double-digit delinquency and default rates. The fact is there is a federal student loan crisis, and this legislation diverts attention away from addressing the roots of the problem.

Furthermore, this bill would drastically limit the information available to lenders regarding student loan accounts, thereby making student lending riskier and reducing access to credit for higher education. When lenders cannot accurately assess the credit risk associated with consumers seeking a student loan, they will ultimately underwrite fewer loans, and those loans will likely have higher interest rates to compensate for the increased risk.

Title IV— CREDIT RESTORATION FOR VICTIMS OF PREDATORY ACTIVITIES AND UNFAIR CONSUMER REPORTING PRACTICES

CBA is concerned about provisions in the Restoring Unfairly Impaired Credit and Protecting Consumers Act which seek to remove legitimate information from consumer credit reports. It is important that a consumer's credit report be an up-to-date, accurate, and complete credit history for lenders to determine a consumer's ability to repay a loan. Lenders consider many factors when determining credit risk and may weigh credit data differently depending on their individual underwriting models. However, lenders are unable to properly identify and manage risk when the use of certain data is restricted. For example, the bill's reduction in the amount of time adverse information can stay on reports and the ability to clear certain adverse information harms lenders' ability to make informed credit decisions. Lenders constantly update credit models to paint the most complete picture of a consumer's creditworthiness, and overly restrictive limits on the data lenders may use to make credit decisions will harm both lenders and consumers throughout the credit process.

Furthermore, the bill provides new authority to the CFPB to determine the validity of cases of student loan borrowers claiming they have been defrauded by their institutions of higher education. CBA strongly supports efforts to eliminate fraudulent practices of institutions of higher education and to correct inaccurate credit reports. However, the approach taken in this proposal grants the CFPB new authority to determine fraudulent claims despite the courts' current authority to do so. As a result, this legislation would create a confusing and conflicting set of rules for borrowers, schools, and lenders alike. A greater understanding of the impact this language would have on stakeholders and the need for the Bureau to be granted this new authority should be studied by policymakers before the passage of this legislation.

Title V— CLARITY IN CREDIT SCORE FORMATION

CBA is concerned about legislation granting the CFPB oversight of the highly complex credit modeling process. Credit scores are used by lenders to determine the risk of a borrower by considering a variety of historical and current financial data points. Sound underwriting principles rely on the accuracy of credit score

data and the models the credit reporting bureaus have perfected over time to predict risk. Granting the CFPB broad control over the modeling process with the ability to change how credit scores are calculated, with little to no input from stakeholders, could potentially erode lender trust in credit scores for underwriting purposes and increase consumers' loan costs due to increased risk across the system. We encourage the committee to reevaluate the need for this legislation and its impact on underwriting.

Title VI— RESTRICTIONS ON CREDIT CHECKS FOR EMPLOYMENT DECISIONS

Financial depository institutions offer a variety of products to help consumers and businesses gain access to credit and fulfill their financial goals. In order to help our customers reach these goals, bank employees may need access to funds, confidential company information and sensitive customer data. The protection of customer information and funds is of the highest importance at our member institutions, which is why it is imperative bank employees undergo a thorough vetting process. During this process, it may be necessary for an employer to view a credit report to evaluate the financial stability of a future employee for the purpose of preventing fraud. Diminishing a bank's ability to review a potential employee's credit history limits what can speak to their financial stability and can be insightful to a bank during the hiring process.

H.R. ____, Protecting Your Credit Score Act (Gottheimer)

CBA opposes the Protecting Your Credit Score Act. Congress enacted FCRA in 1970 with emphasis on ensuring fairness, accuracy, and efficiency within the banking system, and in doing so specifically protected federal regulators' sole authority to pursue injunctive relief for violations, to avoid any possibility of multiple courts issuing conflicting orders. Undoing this deliberate design is unnecessary given the serious fines and other existing penalties already in place under the FCRA as depository institutions supervised by prudential federal regulators with deep expertise and experience in financial markets, CBA members are concerned with the potential for unlimited injunctive authority to impair nationwide financial systems.

CBA is also troubled by Section 4, "Improved Dispute Process for Consumer Reporting Agencies." The CFPB already has authority to enforce fines for FCRA violations, and this proposal would complicate existing cost effective and efficient processes furnishers are mandated to use under federal law to distinguish false or illegitimate disputes from actual consumer problems that should draw focus and proper inquiry. Safety and soundness considerations require the highest standards for complete and accurate consumer information in the underwriting process. Modifying or deleting disagreeable, but accurate consumer information from any report without proper input from furnishers will interfere with prudent risk assessments and raise costs for all consumers.

Furthermore, the "Bureau Credit Reporting Ombudsman" as written under this section has seemingly unrestrained individual authority that could make determinations on a consumer's credit profile without the due process or appeal mechanisms generally required under the Administrative Procedure Act (APA). This unilateral decision-making authority could have a serious and negative impact on a bank's ability to determine risk and extend affordable credit.



Thank you for your consideration of our views. CBA remains eager to assist your efforts at ensuring an accurate and reliable credit reporting system to the benefit of all borrowers.

Sincerely,

A handwritten signature in black ink that reads "Richard Hunt". The signature is written in a cursive style with a large, prominent "R" and "H".

Richard Hunt
President and CEO
Consumer Bankers Association