January 28, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
The Capitol H-232
Washington, DC 20515

The Honorable Kevin McCarthy
House Majority Leader
U.S. House of Representatives
The Capitol H-204
Washington, DC 20515

Dear Speaker Pelosi and Majority Leader McCarthy:

On behalf of the Consumer Bankers Association (CBA), I am writing in opposition to H.R. 3621, the Comprehensive Credit Reporting Enhancement, Disclosure, Innovation, and Transparency ("CREDIT") Act of 2020. 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. It is important to recognize these deposits, made each day by millions of hardworking Americans and businesses, provide the capital that enable our financial institutions to provide broader access to credit for all communities. The safety and soundness of our banking systems requires that lenders be able to rely on a consumer's credit report to be up-to-date, accurate, and complete in order to 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 are unable to use their discretion to properly determine and price risk and are required to increase the cost of credit to offset loan losses caused by insufficient data.

A safe and sound banking system operating with stringent credit underwriting provides greater consumer benefit through increased access to affordable lending products. Federal mandates to remove adverse—yet accurate—consumer information make loans riskier. The importance of ensuring safe and sound banking practices and utilizing the most accurate data available provides the basis of our core concerns with this legislation, as well as specific problematic provisions.

Title I—Improvements to the Dispute Process

Providing "Injunctive Relief for Victims," is highly concerning because it undermines the Consumer Financial Protection Bureau's (CFPB) and Federal Trade Commission's (FTC) primary authority 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 exercised by multiple court systems to impair nationwide financial systems.

CBA is also troubled by language entitled “Duties of furnishers relating to dispute procedures, notices, and disclosures” that would eliminate the process for dispensing with frivolous or irrelevant disputes, which currently saves lenders and consumers time and resources to focus instead on actual errors that should deserve 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 of consumer credit information will interfere with prudent risk assessments and raise costs for all consumers.

This legislation also adds considerable new compliance burdens by creating an obligation on furnishers to retain specific records on consumers, mandating new and potentially frequent disclosures on the furnishing of adverse information, and establishing an expanded dispute resolution process that is unneeded and seeks to only delay the dispute resolution process. CBA is concerned the provisions in Title I will ultimately lead to inferior credit modeling, which in turn will result in less reliable determinations of a consumers’ creditworthiness, ultimately creating more risk in lending.

Title II—Free Credit Scores for Consumers

CBA appreciates the desire for consumers to have easy access to their credit scores, but language included in Title II would impose an impractical and duplicative requirement for private student loan lenders to provide potential borrowers with any consumer report or credit score used in evaluating a loan application before approving a loan. This will delay the time-sensitive process while lenders compile the information, causing increased stress on families trying to determine the best way to finance college. In addition, redundant language in this section duplicates consumers’ existing ability to obtain their credit reports.

The ambiguous definition of “consumer reports” in this section will likewise disrupt the college financing process. Many students and families base their decision on which college to attend on the available financing required to pay for it. Individual private student loan lenders have developed effective proprietary methodologies for quickly processing loan applications and making a credit decision. Imposing new requirements to provide additional and unnecessary paperwork before a loan can be made will slow down and further complicate the credit approval process without an added benefit to consumers.

Title III—Student Borrower Credit Improvement Act

The private student loan rehabilitation process created under this section is unnecessary given the very strong performance of private student loans (less than 2% of which are nonperforming) 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 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 already 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

This section will provide new authority to the CFPB by allowing it to determine the validity of student loan borrowers claiming they have been defrauded by their institutions of higher education. CBA strongly supports efforts to eliminate fraudulent practices by institutions of higher education and to correct inaccurate credit reports. However, the approach taken grants the CFPB new authority to determine fraudulent claims despite the courts' current authority to already 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

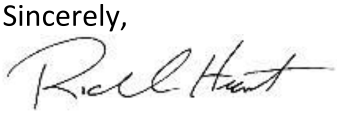
The notion to allow the CFPB oversight of the credit modeling process is a significant deviation from the Bureau's core mission of examining institutions to protect consumers from abuse in the financial marketplace. Minimizing lender involvement in this key underwriting function could erode lender trust in credit scores, increase consumers' loan costs due to increased risk across the system and reduce innovation of loan products. This unnecessary expansion of CFPB authority should be carefully reviewed to better understand the potential impact on lenders and consumers access to credit.

Title VI—Restrictions on Credit Checks for Employment Decisions

In order to help customers fulfill their financial goals, bank employees often need access to customer funds, confidential account information and sensitive customer data. The protection of personal information and customer funds is of the highest importance to our member institutions, reinforcing 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 fraud prevention. This legislation raises serious concerns because it would diminish a bank's ability to review a potential employee's credit history, limiting insight to their financial stability and restricting a bank from making an informed hiring decision.

Thank you for your consideration of our views. CBA remains eager to assist your efforts at improving outcomes for all borrowers.

Sincerely,



Richard Hunt
President and CEO
Consumer Bankers Association