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April 14, 2017

The Honorable Mike Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

By email: submissions@banking.senate.gov

Re: Fostering Economic Growth

Dear Chairman Crapo and Ranking Member Brown:

I write on behalf of the Consumer Data Industry Association (CDIA) in response to your joint request of March 20 for proposals to foster economic growth. We offer three suggestions: harmonizing the FCRA class action liability cap with other financial consumer protection laws, reforming the Credit Repair Organizations Act (CROA), and fostering credit score competition through Fannie Mae and Freddie Mac.

CDIA is an international trade association, founded in 1906, with more than 130 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data, which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help ensure fair and safe transactions for consumers, facilitate competition, and expand consumers' access to a market that is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

CDIA members empower economic opportunity every day. We feel there are several ways Congress can act to foster economic growth by undertaking some reasonable changes to laws and procedures.

1. **The Fair Credit Reporting Act (FCRA) should be amended to place a cap on class action damages to harmonize the Act with other financial consumer protection statutes.**

Class action litigation brought under the FCRA creates great legal and economic uncertainty for consumer reporting agencies (CRAs), employers, retailers, banks, and enterprises of all shapes and sizes.[1] In order to improve the economic climate in which these businesses operate, the FCRA should be aligned with other federal, financial consumer protection statutes, like the Electronic Funds Transfer Act (EFTA), the Fair Debt Collection Practices Act (FDCPA), the Truth in Lending Act (TILA), and the Equal Credit Opportunity Act (ECOA). These other financial consumer protection statutes impose caps on the total amount of statutory damages that can be recovered in class actions.

Harmonizing FCRA class action damages with other financial consumer protection statutes has several positive economic effects:

- **Excessive Liability for FCRA Violation Harms a Credit Reporting System that is Important to Consumer Credit and the Economy.** The U.S. economy relies heavily on consumer credit, and the consumer credit industry in turn is very dependent on a voluntary consumer reporting system that provides complete, accurate and reliable information. The extraordinary potential liability for statutory damages, even for the most technical violations, creates substantial disincentives for companies to use consumer reports, provide information to CRAs, or provide consumer reports. Failure to correct the problems associated with statutory damages threatens full participation in the consumer reporting system, and competition among consumer reporting agencies, all to the disadvantage of the consumer credit industry and the U.S. economy.
- **Excessive Liability for FCRA Violations Unnecessarily Increases Business Costs and Harms the Economy.** Plaintiffs' lawyers are provided inappropriate incentives to bring frivolous cases because the statutory damages are so excessive. Defendants are forced to consider settlements of matters, rather than defend their legitimate practices, because the potential liability for statutory damages can be so high that settlement is the only reasonable course of action for a business, particularly a small business. The high cost of defending and settling these lawsuits is borne by businesses, and results in increased operating costs,

[1] In the first quarter of 2017, at least ten large, non-CRAs have been subject to news stories over FCRA litigation: Comcast, DirectTV, Schlumberger, Jimmy Choo, UPS, Century Link, McDonalds, Dillard's, Amazon, and Michaels Stores.

economic waste, and slower job creation. Excessive potential statutory damages even creates challenges for credit reporting businesses to obtain errors and omissions insurance at reasonable rates.

- **Appropriate Caps on Statutory Damages Will Foster the Expansion of Information Businesses to the Benefit of Consumers.** Excessive potential liability for statutory damages presently discourages new companies from entering the marketplace and companies already in the market place from expanding the services they offer. Technological developments continue to provide important opportunities for companies to use "big data" to provide better products and services to consumers in a more efficient manner and lower cost. Placing common sense, consistent limits on liability for FCRA violations will alleviate a significant impediment to business growth and innovation.

2. The Credit Repair Organizations Act (CROA) should be reformed to help educate consumers of their credit standing and how they can improve their credit status.

The Credit Repair Organizations Act was passed in 1996 in response to a specific predatory practice engaged in by "credit repair clinics" or "credit repair organizations."[2] These organizations often represent to consumers that they can remove accurate but derogatory information from consumers' credit reports in exchange for a fee, sometimes a substantial fee, paid before any of the promised services are performed. Congress, the Federal Trade Commission, and the credit bureau industry all agreed that the practices of credit repair organizations cause harm to consumers, credit reporting, and creditors.

The Act was intended to protect consumers from the abusive acts and practices of Credit Repair Organizations (CROs).[3] However, broad definitions in CROA have labeled traditional consumer reporting agencies as CROs, subjecting consumer reporting agencies to CROA's strict liability provisions when they seek to offer legitimate credit education services to consumers.

There is universal agreement that consumers should have access to innovative, legitimate financial education and CDIA members stand ready to offer these services, yet they are threatened by courts due to a misinterpretation of the law. Misinterpretation of CROA by the courts has stretched the law beyond its Congressional intent of combatting fraudulent credit repair practices. Recent judicial

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[2] Pub. L. No. 104-208, § 2451; 15 U.S.C. §§ 1679 *et seq.*

[3] Restrictions on CROs include: (1) Prohibiting collection of fees before completion of promised services; (2) prohibiting performance of services within first 3 business days; (3) requiring disclosures of strong, warning disclosure language, discouraging participation.

decisions have even swept in standard credit monitoring services and identity theft protection services, as well as other credit education services that consumers seek. [4] This expansion has deterred trusted companies from providing legitimate credit education products to consumers, including innovative credit simulators that help consumers understand personalized steps to improve their credit scores. If CROA remains unchanged, consumers are effectively prevented from accessing these tools.

In Congressional testimony FTC has said it "sees little basis on which to subject the sale of legitimate credit monitoring and similar educational products and services to CROA's specific prohibitions and requirements."[5] Indeed, credit reporting agencies have a critical and vested interest in maintaining the accuracy and integrity of their credit reporting databases and are in the best position to help consumers understand and improve their credit scores.

Amending CROA to enable the nationwide consumer reporting agencies to provide innovative credit education directly to consumers would have a real impact on our economy and the lives of Americans. Industry analysis shows that personalized credit education could improve a consumer's score by roughly 20 points. This would mean that the more than 23 million consumers in the United States who are just 20 points or less from a prime score could realize an annual savings of more than $2,800 on an average 30-year mortgage.

The data is supported by recent independent research by the Policy and Economic Research Council (PERC). In November 2016, PERC released a final report finding that within 90 days after completing a personalized credit education session with a credit advisor from a nationwide consumer reporting agency:

- 62 percent of consumers had an increase in their credit scores, with 30 percent of the increases greater than 20 points and 19 percent moved up at least one band in credit.
- 88 percent of small business owners completing a personalized credit education session reported that they had a better understanding of how their credit behavior impacts their credit scores. [6]

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[4] *See*, *Stout v. FreeScore*, 743 F.3d 680 (9th Cir. 2014)

[5] *Oversight of Telemarketing Practices and the Credit Repair Organizations Act (CROA): Hearing Before the Senate Committee on Commerce, Science, and Transportation,* 110th Cong. 8 (2007) (written statement of Lydia B. Parnes, Dir., Bureau of Consumer Prot., Fed. Trade Comm'n).

[6] http://www.perc.net/wp-content/uploads/2016/11/CE_PERC_FinalReport_113016web.pdf

Congress should promote economic growth by expanding options for consumer education to improve their credit standing and credit scores. One easy way to accomplish this objective is through legislation to reform the Credit Repair Organizations Act.

3. Promote Credit Score Competition by Fannie Mae and Freddie Mac

Congress has the power to end a government-sanctioned, quasi-monopoly that, for more than a decade, has choked off innovation to the detriment of consumers seeking better rates in the mortgage market. A key way to make better mortgage rates available to more consumers is by allowing other proven credit score models to be used in the underwriting process.

Since before the housing market collapse in 2008, Fannie Mae and Freddie Mac's seller-servicer guidelines have required mortgage lenders to price and underwrite their loans using credit scoring models that were developed using data from 1995 to 2000. This critical gateway today serves to discourage, disqualify, or "price out" many would-be borrowers, who today pay penalties as high as 3.25% based on their credit scores. This credit scoring requirement remains even though there are other validated scoring models that are more predictive, more inclusive, and more consumer-friendly. These other models are readily available and have been widely-adopted by lenders in the credit card auto, and personal lending industries.

A statutory requirement to allow for credit scoring competition within Fannie and Freddie would benefit the economy. Without competition, many credit-worthy consumers may be unfairly shut out of homeownership, lenders and the GSEs.

We encourage you to support legislation that would require the GSEs to establish a process under which developers of credit scoring models could submit their models for evaluation, validation and possible approval by the GSEs for lender choice. In its capacity as regulator of the GSEs, the Federal Housing Finance Agency would have the authority to establish standards and criteria for any process used by either Fannie Mae or Freddie Mac to validate and approve credit scoring models. This proposal would not mandate that the GSEs necessarily adopt other scoring models but simply put in place a mechanism for consideration and review of other scoring models. Likewise, this proposal would not in any way undermine the rigorous underwriting standards in place today.

Conclusion

Thank you very much for the opportunity to comment on your joint request soliciting proposals to foster economic growth. We hope you will agree that the three legislative suggestions we make will foster economic growth and create changes in credit and credit education that empowers consumers and small business owners

We hope that this information is helpful to you. We welcome your support for our suggestions and we are happy to answer any questions you may have.

Sincerely,

Eric J. Ellman
Interim President and Chief Executive Officer
Senior Vice President, Public Policy & Legal Affairs