

November 17, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Request that the CFPB's FCRA Rulemaking Process be Subject to an Advanced Notice of Proposed Rulemaking (ANPR) before it Publishes a Notice of Proposed Rulemaking (NPRM)

Dear Director Chopra:

On September 15, the Consumer Financial Protection Bureau (CFPB or the Bureau) unveiled potentially sweeping changes to the Fair Credit Reporting Act (FCRA) rules (Regulation V) when it issued its "Outline of Proposals and Alternatives Under Consideration for the Small Business Advisory Review Panel for Consumer Reporting Rulemaking."¹ The undersigned trade associations urge the CFPB to issue an Advanced Notice of Proposed Rulemaking (ANPR) before it publishes a Notice of Proposed Rulemaking (NPRM) to amend Regulation V. A rushed, inadequate rulemaking process raises the stakes for dramatic changes to the foundation of the American economy.

We request an ANPR for four reasons:

First, the American economy is based on a strong, vibrant credit system. The CFPB is considering changes to Regulation V to substantially overhaul the rules that undergirds the American credit economy. Before making such sweeping changes, the CFPB should solicit the widest range of input via an ANPR.

Second, the CFPB's Outline in the Small Business Regulatory Enforcement Fairness Act (SBREFA) review process lacked sufficient detail to enable participants to fully identify and respond to all the issues and implications at stake. Thus, we encourage the Bureau to build on the comments received through the SBREFA process and issue an ANPR that offers more specificity about the regulatory changes under consideration. Specificity in rule-writing, without a repetition of the SBREFA outline, will allow input from a wider array of interested parties. A more detailed and iterative process, with time for thoughtful input, would create a more reasoned, balanced body of rules.

Third, the CFPB recently issued the Notice of Proposed Rulemaking for the Personal Financial Data Rights (Section 1033 Rule), the contours of which could impact the consumer reporting ecosystem. For example, aggregators that currently are not consumer reporting agencies (CRAs) may be defined as CRAs by Section 1033 Rule. This classification would require those that provide data to and receive it from CRAs to fully understand and provide input to the Bureau on the combined effects of the Section

¹ Small Business Advisory Review Panel for Consumer Reporting Rulemaking, Outline of Proposals and Alternatives Under Consideration, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbreffa_outline-of-proposals.pdf (Outline).

1033 Rule and Regulation V. T Given the significant interplay between these two rulemakings, it is important to obtain stakeholder input on the impact of and intersections between the Section 1033 rulemaking and the FCRA rulemaking.

Fourth, the CFPB has typically issued an ANPR when considering changes to other complex regulations that have a substantial effect on significant portions of the American economy. These include the Bureau's Section 1033 rulemaking, rulemaking involving debt collection, credit card late fees and late payments, home mortgage disclosure reporting requirements, property assessed clean energy (PACE) financing, prepaid accounts under the Electronic Fund Transfer Act (EFTA), and the Truth in Lending Act (TILA). Like the FCRA, these bodies of law and areas of regulation have substantial controls over significant portions of the American economy. Arguably, few rules would have more impact on the daily lives of consumers, nonprofits, government agencies, and businesses as the FCRA. Consistent with other ANPR proceedings for complex bodies of law with significant economic impact, the CFPB should seek additional stakeholder input in a detailed ANPR.

The FCRA rulemaking process requires care, thought, and deliberation. The CFPB should consider input from a broad array of stakeholders, many of whose voices have not yet been heard. An ANPR process could increase the Bureau's understanding of the impacts its rule would have on consumers, the American economy, and the businesses, nonprofits, and government agencies that use information to serve to consumers drive the American economy. We encourage you to submit the FCRA rulemaking to an ANPR process.

Respectfully submitted,

ACA International
American Bankers Association
American Financial Services Association
Consumer Bankers Association
Consumer Data Industry Association
Credit Union National Association
Electronic Transactions Association
Independent Community Bankers of America
Innovative Lending Platform Association
Mortgage Bankers Association
National Association of Federally-Insured Credit Unions
National Association of REALTORS®
Online Lenders Alliance
Professional Background Screening Association
US Chamber of Commerce