

March 3, 2023

[Via petitions@cfpb.gov](mailto:petitions@cfpb.gov)

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

Re: Requests for FCRA Rulemaking: Debt Collector Furnishing, Language Access, Credit Reporting Ombudsperson Office

Dear Director Chopra:

The National Consumer Law Center (on behalf of its low-income clients) writes to you regarding the forthcoming rulemaking under the Fair Credit Reporting Act (FCRA) announced in the Fall 2022 regulatory agenda. This letter constitutes our petition for the Consumer Financial Protection Bureau (CFPB) to address the following issues in the FCRA rulemaking:

- I. The CFPB should establish strict requirements to regulate the furnishing of information regarding a debt in collections by third-party debt collectors and debt buyers.
- II. The CFPB should require translation of consumer reports by the national consumer reporting agencies (CRAs) into the eight languages most frequently used by limited English proficient consumers.
- III. The CFPB should establish an Office of Ombudsperson to assist consumers who have been unable to fix errors in their consumer reports from the nationwide CRAs and other CRAs within the CFPB's supervisory authority.

The CFPB has ample rulemaking authority to adopt these provisions. As you know, the CFPB “may prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this subchapter, and to prevent evasions thereof or to facilitate compliance therewith.” 15 U.S.C. § 1681s(e). Each of our recommendations would carry out the objectives of the FCRA to ensure that the credit reporting system is “fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of [credit reporting] information” *id.* at 1681(b). Specific arguments for rulemaking authority are discussed in the discussions below regarding each recommendation.

In addition, we want to thank you for putting the FCRA rulemaking on the CFPB's regulatory agenda. Tens of millions of consumers have suffered from the dysfunction and abuses by CRAs for far too long. We hope that an FCRA rulemaking will include strong protections for consumers to mitigate these harms.

I. Regulating Debt Collectors in the Consumer Reporting Ecosystem

A. Debt Collection and Credit Reporting: a Toxic Mixture

For the past half century, consumer advocates have documented the myriad ways in which the nationwide CRAs have abused and mistreated consumers.¹ We have similarly documented how third-party debt collection agencies and debt buyers do the same.² The furnishing of collection items by debt collectors and the reporting of those items by the nationwide CRAs is an especially toxic mixture for consumers, causing harm to tens of millions of consumers, with a likely disparate impact on communities of color.³

Over 10 years ago, the CFPB itself documented how debt collectors play an outsized role in the millions of disputes that consumers submit regarding credit reporting errors. The CFPB's landmark *Key Dimensions* report found that debt collection items represented almost forty percent of credit reporting disputes,⁴ even though debt collectors only supply about thirteen percent of the accounts or “tradelines” to the nationwide CRAs.⁵

¹ See, e.g., Chi Chi Wu, et al., NCLC, Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors (Feb. 25, 2019); Chi Chi Wu et al., National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports (2009).

² See, e.g., April Kuehnhoff, et al., National Consumer Law Center, Unfair Debts With No Way Out: Consumers Share Their Experiences With Rental Debt Collectors (Oct. 2022), www.nclc.org/resources/unfair-debts-with-no-way-out/; April Kuehnhoff and Ana Girón Vives, National Consumer Law Center, Consumer Complaints about Debt Collection: Analysis of Unpublished Data from the FTC (Feb. 2019), www.nclc.org/resources/consumer-complaints-about-debt-collection-analysis-of-unpublished-data-from-the-ftc/; Rick Jurgens and Robert J. Hobbs, National Consumer Law Center, The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts (July 2010), www.nclc.org/resources/the-debt-machine-how-the-collection-industry-hounds-consumers-and-overwhelms-the-courts/.

³ We know that Black and Hispanic consumers have lower credit scores as a group. See Chi Chi Wu, NCLC, Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination, May 2016, <https://www.nclc.org/resources/past-imperfect-how-credit-scores-and-other-analytics-bake-in-and-perpetuate-past-discrimination/>. Racial and ethnic disparities exist with respect to who is in debt and throughout the lifecycle of a debt in collection. National Consumer Law Center, Fair Debt Collection § 1.3.1.5 (10th ed. 2022) (collecting research), updated at www.nclc.org/library. Research from the Urban Institute highlights racial disparities with respect to who has a debt in collections listed on a credit report. Urban Institute, Debt in America: An Interactive Map (Last Updated June 23, 2022), apps.urban.org/features/debt-interactive-map.

⁴ CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureaus Manage Consumer Data 27, 29 (Dec. 2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf. See also CFPB, Consumer Credit Trends: Disputes on Consumer Credit Reports, Oct. 2021, at 5, n. 8 (five percent of collection tradelines in sample were flagged as disputed, versus 0.75 percent of auto loans, 0.81 percent of student loans, 2.1 percent of general-purpose credit cards and 0.5 percent of retail cards).

⁵ *Key Dimensions* at 14.

Debt collection items not only trigger disputes more frequently, they often involve egregious errors. The following examples illustrate the shoddiness of furnishing practices and dispute investigation by some debt collectors.

Wrong consumer: Perez Ramones v. Experian/AR Resources⁶

Debt collection agency AR Resources (ARR) reported 19 medical bills belonging to 83-year old Francisco Perez Gonzalez on the credit report of his 35-year old son, Francisco J. Perez Ramones. ARR refused to correct this error despite the son sending around 30 disputes, which noted that the son and father had different full names and dates of birth. Despite clear evidence that the debt collector had tagged the wrong consumer, both ARR and the nationwide CRAs refused to remove the debts from the son's credit report. Furthermore, this collector appears to have had questionable dispute investigation policies – one of its investigators stated she would not delete an account because of a different last name because it was against ARR's policies and that ARR does not review the “consumer messages” it received from the nationwide CRAs.

Debts already paid: Carlisle v. National Commercial Services, Inc.⁷

Roland Carlisle rented a car from Thrifty and paid a \$350.00 deposit. Law enforcement stopped Carlisle while he was driving the car, and impounded it. As a result, Thrifty kept Carlisle's \$350 deposit, and provided him with a summary document indicating a zero balance on the rental. Despite this written documentation that he owed no money, Thrifty subsequently billed Carlisle several times for varying amounts (\$882.50, \$1,017.41, and \$1,782.61) and referred the debt to National Commercial Services, Inc (NCS), a debt collector. Carlisle informed NCS that he disputed the debt and NCS made representations about looking into the dispute, but then reported to all three of the nationwide CRAs that Carlisle owed \$1,892.00, and did not inform them of Carlisle's dispute.

Collection of rental debt

The following is an example of abuses in the collection of rental debt. Additional examples can be found in the NCLC report *Unfair Debts With No Way Out: Consumers Share Their Experiences With Rental Debt Collectors*.⁸

“XXXX notified me that everything was left in satisfactory condition and that I would only have to pay for replacement of blinds, new paint and carpet replacement. . . . 2 days later XXXX called me back and said good news you don't have to pay for carpet and paint because you were there 2 years and after that it's considered normal wear and tear and the company is responsible for that. . . . Time went on and in XX/XX/XXXX we receive an alert from all 3 major credit Bureaus that [debt collector] had placed a collections for {\$1300.00} on our credit reports. . . . I contacted [debt

⁶ Perez Ramones v. Experian Info. Sols., LLC, 537 F. Supp. 3d 1314, 1319 (S.D. Fla. 2021).

⁷ 2015 WL 4092817 (N.D. Ga. July 7, 2015), *aff'd*, 722 F. App'x 864 (11th Cir. 2018).

⁸ April Kuehnhoff, et al., NCLC, *Unfair Debts With No Way Out: Consumers Share Their Experiences With Rental Debt Collectors*, Oct. 7, 2022, www.nclc.org/resources/unfair-debts-with-no-way-out.

collector] and explained what happened The representative was rude and wasn't helpful at all and continued to ask when and how I plan to take care of this debt.”

Source: Excerpted from CFPB Consumer Complaint 3735671, filed July 8, 2020.

Furthermore, like the nationwide CRAs,⁹ many debt collectors conduct perfunctory, cursory, unreasonable investigations in response to disputes. For example:

- In *AD Astra Recovery Servs., Inc. v. John Clifford Heath, Esq.*,¹⁰ the uncontested facts on summary judgment revealed that debt collector Ad Astra spends approximately five to ten minutes, on average, to investigate a dispute.
- The debt collector in the Ramones case above spent even less time in investigating disputes. That court noted that “it appears the Defendant prioritizes speed and efficiency over accuracy with respect to its investigations....ARR's investigators spend about one minute processing each dispute.”¹¹
- The CFPB's complaint in federal District Court against Fair Collections & Outsourcing, Inc. (FCO), a debt collector that received 10,000 disputes per month, alleged that FCO had only four employees assigned to handle those disputes.¹² These employees processed disputes at an estimated rate of seventeen or more disputes per hour, or 3.5 minutes per dispute. They also conducted perfunctory and inadequate investigations; for example, these employees were instructed to verify information as accurate if the consumer's SSN and name matched the information in FCO's database, even when the dispute alleged identity theft.

Another common problem with furnishing by debt collectors is re-aging, which occurs when collectors supply an incorrect Date of First Delinquency (DOFD).¹³ The DOFD serves as the trigger for the seven-year period after which a defaulted debt or other negative information is obsolete, *i.e.* is too old to remain on a consumer report under 1681c(a).¹⁴ Debt collectors have been known to supply a DOFD that is later than when a debt actually became delinquent, or fail to supply one at all.¹⁵

⁹ See Chi Chi Wu, et al., NCLC, *Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors* (Feb. 25, 2019); Chi Chi Wu et al., National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* (2009).

¹⁰ 2021 WL 764565, at *4 (D. Kan. Feb. 26, 2021).

¹¹ *Perez Ramones v. Experian Info. Sols., LLC*, 537 F. Supp. 3d 1314, 1322 (S.D. Fla. 2021).

¹² CFPB v. Fair Collections & Outsourcing, Inc., *Fair Collections & Outsourcing of New England, Inc. FCO Worldwide, Inc., FCO Holding, Inc., Michael Sobota*, No. 19-02817 (D. Md. Sept. 29, 2019) (complaint), available at <https://www.consumerfinance.gov>.

¹³ National Consumer Law Center, *Fair Credit Reporting*, § 5.2.3.5 (10th ed. 2022), updated at www.nclc.org/library (discussing re-aging by debt collectors)

¹⁴ *Id.* at § 5.2.3.2.

¹⁵ *Id.* at § 5.2.3.5. See, e.g., *In re AFNI, Inc.*, No. 2020-BCFP-0021 (C.F.P.B. Nov. 9, 2020) (consent order), available at www.consumerfinance.gov (debt collector for telecommunications company failed to provide CRAs with correct DOFD for numerous accounts).

Finally, debt collectors are part of the problem with respect to another systemic, thorny problem in credit reporting, *i.e.*, duplicate tradelines, where a single debt is reported two or more times, making the consumer seem less creditworthy than they actually are.¹⁶ The credit reporting system relies upon furnishers such as debt collectors to prevent duplicate accounts. Furnishers must properly report in the K and L segments, including the name of the original creditor, in the Metro 2 Reporting format to avoid reporting duplicate tradelines.¹⁷ Failure to do so, or any change in account number, identification number, portfolio type, or date opened may cause a duplicate tradeline.¹⁸ Unfortunately, there are numerous instances of debt collectors that have failed to comply with these guidelines and cause duplicate tradelines.¹⁹

B. The CFPB Should Require that Debt Collection Activity Be Included in the Original Creditor Tradeline

To address these problems with debt collector furnishing, the CFPB should require that debt collection activity, if it is reported at all, must be reported by the original creditor in the original credit tradeline. This requirement should apply whether the collection activity is taken by a third-party collection agency, a debt buyer, a third-party servicer or receivables management company, or the creditor itself.

Requiring reporting of debt collection activity in the original tradeline will prevent many of the abuses discussed above, because it will:

- Prevent misleading duplicate tradelines.
- Help ensure that the debt collection information is reported in the file of the correct consumer.
- Prevent re-aging because the original creditor will have already reported the correct DOFD.
- When there is a dispute, ensure that the original creditor participates in the dispute investigation. In fact, the CFPB should state that a dispute investigation of debt collection reporting is unreasonable if the original creditor is not involved in substantiating the reporting.
- Ensure that reporting is accurate, because the original creditor will have more documentation to substantiate the debt.

¹⁶ National Consumer Law Center, Fair Credit Reporting, § 4.3.8 (10th ed. 2022), updated at www.nclc.org/library (10th ed. 2022),

¹⁷ *Id.* at § 6.3.3.9, (proper use of K and L segments in Metro 2 to track transfers of ownership).

¹⁸ Consumer Data Industry Association, Credit Reporting Resource Guide, a.k.a. Metro 2 Manual (2022), at 6–14.

¹⁹ See, e.g., *Reyes v. IC Sys., Inc.*, 470 F. Supp. 3d 190, 191 (D. Conn. 2020) (two different collectors furnished information on the same \$254 debt for cable services but used different account numbers, leading at least one CRA to report plaintiff as having two entirely different debts, lowering his credit score); *Gustafson v. Experian Info. Sols.*, 2015 WL 3477071 (C.D. Cal. June 2, 2015) (duplicate reporting caused by sale of debt); *Lewis v. Trans Union, L.L.C.*, 2013 WL 1680639 (E.D. Cal. Apr. 17, 2013). See *generally*, Robert Avery, Paul Calem, Glenn Canner, & Raphael Bostic, An Overview of Consumer Data and Credit Reporting 71 (Federal Reserve Bulletin Feb. 2003) (40% of collection agency tradelines have multiple record items, many of which appeared to refer to the same episode).

For accounts that were not previously reported by the original creditor, Regulation V should explicitly state that a debt in collections cannot be reported if there is not a complete tradeline with prior account activity. We recognize that the CFPB's recent Market Snapshot report reveals that debts not previously reported to the nationwide CRAs constitute the majority of debt collection items on credit reports.²⁰ However, the CFPB has suggested that the majority of debts in collection are not furnished to CRAs.²¹ Thus, it appears that debt collectors can function perfectly well in their role without furnishing information to the nationwide CRAs.

Given the level of errors, problems, and abuses by debt collectors in furnishing and resolving disputes, requiring an original creditor tradeline is a reasonable quality control mechanism. Alternatively, if the CFPB continues to permit the furnishing of debt collection information without a pre-existing tradeline by the original creditor, the Bureau should require that the furnisher of debt collection activity (whether a debt collector, debt buyer, servicer or other) provide a complete account history in the tradeline, including positive payments. Most importantly, such reporting must require adequate substantiation, as discussed in the next section.

C. The CFPB Should Require Adequate Substantiation of a Debt Furnished by a Third-Party Debt Collector

As the CFPB noted in the recent Market Snapshot report, one reason for high dispute rates for debt collection tradelines may be the lack of documentation for these accounts that are accessible to collectors.²² The scale of this problem is significant; in 2017, the Bureau's research found that over half of survey respondents who had been contacted about a debt in collection reported either that they didn't owe the debt, the amount was incorrect, or the debt was owed by a family member²³ - all problems that can stem from a lack of adequate documentation. In the CFPB's most recent FDCA Annual Report, 48% of debt collection complaints cited "attempts to collect debt not owed" as the issue.²⁴

²⁰ CFPB, Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting, Feb. 2023, at 16, https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-third-party-debt-collections-tradelines-reporting_2023-02.pdf. (showing that medical, telecom, utility, and rental debt - which are typically not reported until placed with debt collectors - constitute nearly 75% of collection tradelines).

²¹ *Id.* at 5, n. 6 ("[N]early 80 percent of consumers who reported having been contacted about a single debt in collection in the past year did not have a new collection tradeline reported between January 2014 and March 2015.").

²² *Id.* at 5 ("Third-party debt collectors may have limited access to the original creditor's system of record, which may contribute to higher dispute rates for collections tradelines as compared to other components of consumer credit reports.").

²³ See Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt (Jan. 2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

²⁴ Consumer Financial Protection Bureau, Fair Debt Collection Practices Act: CFPB Annual Report 2022 15-16 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_04-2022.pdf.

In order to prevent inaccurate information from being furnished due to the lack of documentation,²⁵ the CFPB should require that debt collectors obtain and review certain documents before they can furnish a debt to a CRA, unless the debt collection activity is only included in the original creditor tradeline. and not as a separate debt collection item.

Indeed, there already is a concept of requiring documentation to substantiate the accuracy of information in the Furnisher Accuracy and Integrity Guidelines. Section III(c) of the Guidelines states that furnishers should have policies for “[m]aintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.”²⁶ Furthermore, the definition of “integrity” in Regulation V is defined in part to mean that information furnished to a CRA “ (1) Is substantiated by the furnisher's records at the time it is furnished.”²⁷

The CFPB should expand upon these substantiation requirements for debt collectors, given the entrenched problems with the industry as furnishers to the nationwide CRAs. The CFPB should specify that for debt collectors, substantiation requires the debt collector to have access to and review certain documents before it furnishes a debt to a CRA if such furnishing is not in the original creditor tradeline. These documents should include either physical or electronic copies of the following:

- To prove the proper balance owed:
 - A charge-off statement, billing statement, periodic statement, or other document generated by the creditor that reflects the balance at default;
 - Copies of any settlement or repayment agreements; and
 - A post-default itemization of the amount owed, distinguishing between principal, interest, and fees.

- To prove that the consumer has agreed to be responsible for the debt:
 - A signed (physical or e-signed) account application and contract or promissory note proving the consumer's agreement to the debt, or if no such document exists, documentation showing that the consumer has agreed to be responsible for this debt; and
 - Documentation that a consumer is a co-signer or has otherwise

²⁵ As someone familiar with the industry noted, “As a former debt collector, I found clients that wanted me to furnish negative credit information particularly concerning. How could I ever be assured of furnishing accurate information into the nationwide credit reporting system if I did not have real time access to their systems of record? John McNamara, LinkedIn post, Feb. 14, 2023, https://www.linkedin.com/posts/john-mcnamara-75a2982_debt-collectors-re-evaluate-medical-debt-activity-7033457384601657345-rBSz?utm_source=share&utm_medium=member_desktop.

²⁶ Appendix E to Regulation V, Furnisher Accuracy and Integrity Guidelines, § III(f).

²⁷ Regulation V, 12 C.F.R. § 1022.41(d).

agreed to be responsible for the debt (if attempting to collect from someone other than the primary obligor). Information that the consumer is a spouse or is an authorized user of a credit card would not be sufficient to show that the consumer is responsible for the debt.

- To prove that the collector has the right to charge interest or fees added after default and to establish choice of law:
 - A copy of the terms and conditions in effect during the term of the contract and/or at default to justify any interest or fees included in the claim (if attempting to collect contractual fees or interest post-default);
- To be able to respond to a dispute about the amount of the debt from the consumer:
 - The last 12 statements with account activity;
 - An accounting of the charges, fees, interest, and payments since the account last had a zero balance (for open end credit);
 - An itemization of the amount owed, distinguishing between principal, interest, and fees at the time of default (for closed end credit).
- To establish the collector's right to collect on the debt:
 - Documentation establishing that the collector has a right to collect the debt (e.g., the contract between the debt collector and the creditor or the debt buyer that owns the debt); and
 - Documentation of the chain of title, including proof that the original creditor sold the debt allegedly owed by the individual consumer to the first debt buyer and proof of each subsequent sale in the chain (for debts that have been sold).

Both of the above recommendations are necessary and appropriate to carry out one of the core purposes of the FCRA, namely that credit reporting information be accurate. For too long, consumers have been burdened by inaccurate information from debt collection agencies. The CFPB should put a stop to that by tightening the requirements for the reporting debt collection activity.

II. The CFPB Should Require Nationwide CRAs to Offer Translated, Free Annual File Disclosures to Consumers with Limited English Proficiency.

About 25.5 million individuals in the United States, roughly 8.2% of the U.S. population over the age of five, are limited English proficient ("LEP"), meaning they have a limited

ability to read, write, speak, or understand English.²⁸ This sizable portion of the U.S. population faces many unique challenges in participating in our financial system, including understanding and completing key financial documents, managing bank accounts, resolving problems with financial products and institutions, and accessing financial education and money management tools.²⁹

Providing credit reports solely in English leaves millions of LEP residents of the United States unable to do the simple task of reviewing their credit histories for accuracy. This puts LEP consumers in a difficult position: either rely on third parties to interpret their most intimate financial information, or risk serious misunderstanding. Both are unacceptable.

Consumers may, understandably, be reluctant to have their sensitive financial information in a credit report shared with a third party, especially if there is negative information on the report or the translation would be by a child or family member. A 2017 CFPB survey found that “[c]onsumers feel it is important that others not overhear a message about their debt from a creditor or debt collector.”³⁰ In addition, even the most well-meaning family members may make mistakes in offering to interpret complex financial documents. Placing the burden of interpreting technical, legal, or financial information on individuals who lack financial expertise compromises the consumer’s ability to make well-informed decisions.

LEP consumers that choose not to rely on others are still at the risk of misunderstanding English-only credit reports. In another study, even those respondents who could speak some English still preferred to have translated documents in order to double check their understanding, and reported feeling vulnerable when they could not review documents in their preferred language.³¹ Commercially available translation services also do not

²⁸ Census Bureau, American Community Survey 5-Year Estimates, Why We Ask about Language Spoken at Home, *available at* <https://www.census.gov/acs/www/about/why-we-ask-each-question/language/>.

²⁹ Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 4 (Jan. 2021), *available at* <https://www.nclc.org/wp-content/uploads/2023/02/Comments-WH-Financial-Access-Subcommittee-on-Language-Access.pdf>; Consumer Fin. Prot. Bureau, Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace (Nov. 2017), *available at* <https://www.consumerfinance.gov/data-research/research-reports/spotlight-serving-limited-english-proficient-consumers/>; Federal Deposit Insurance Corporation, 2013 FDIC National Survey of Banked and Underbanked Households, 16-17 (Oct. 2014), *available at* <https://www.fdic.gov/householdsurvey/2013report.pdf> (finding that 34.9 percent of households where Spanish is the only language spoken are “unbanked,” compared to just 7.1 percent of households where Spanish is not the only language spoken); U.S. Government Accountability Office, Factors Affecting the Financial Literacy of Individuals with Limited English Proficiency, GAO-10-518 (May 2010), *available at* <http://www.gao.gov/assets/310/304561.pdf>.

³⁰ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt 6 (2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

³¹ Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report, 8-9 (April 2017), *available at* <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf>.

adequately address this need, as automated translation can be inconsistent and cannot be relied on given the content and formatting of credit reports and disclosures.³²

Consumers in general risk significant harm from the dysfunction of the credit reporting system. These risks are compounded by other factors contributing to the LEP population's vulnerability in our financial system. Individuals with limited English proficiency are nearly twice as likely to live in a household with an annual income below the federal poverty line relative to English-proficient persons, and are overwhelmingly foreign-born.³³ These individuals often already live within the margins of our financial system, making it especially important for them to be able to verify their credit history and rectify errors quickly.

Providing translated credit reports to LEP consumers addresses the above issues. Yet, when consumer advocates called on the three nationwide CRAs to provide translated credit reports at the height of the COVID-19 pandemic,³⁴ two out of the three NCRAs flatly declined to do so.³⁵ To date, Equifax is the only credit Bureau which offers credit reports translated into Spanish.³⁶ While Equifax's voluntary action is commendable, this improvement alone is not sufficient to mitigate the risks discussed above.

Nationwide CRAs should be required to ask consumers about their language preference, record and maintain that information, and provide the consumer with a translated credit report whenever a consumer expresses a preference for a language with an available translation. We recommend that the CFPB amend Regulation V to require that all three nationwide CRAs offer translated reports for at least the eight most

³² Title VI Interagency Working Group, Limited English Proficiency Committee, Improving Access to Public Websites and Digital Services for Limited English Proficient (LEP) Persons 4 (Dec. 2021), https://www.lep.gov/sites/lep/files/media/document/2021-12/2021_12_07_Website_Language_Access_Guide_508.pdf; Laura Godfrey, Lost in Translation, Digital.gov (Oct. 1, 2012), available at <https://digital.gov/2012/10/01/automated-translation-good-solution-or-not/>.

³³ Jie Zong and Jeanne Batalova, The Limited English Proficient Population in the United States, Migration Policy Institute (July 8, 2015), available at www.migrationpolicy.org. Immigrants may also fall victim to mixed credit files at higher rates than non-immigrants, as individuals of certain ethnicities also have higher degrees of "name clustering," a term describing the degree of surname diversity in a given population. According to the 2010 census, only 26 surnames accounted for a quarter of the U.S. Hispanic population, and 16.3 percent of Hispanic respondents reported having one of the top 10 surnames. See Joshua Comenetz, Frequently Occurring Surnames in the 2010 Census, U. S. Census Bureau, Oct. 2016, at 7.

³⁴ Letter Requesting Translated Credit Reports During COVID-19, (Oct. 19, 2020), available at https://www.nclc.org/wp-content/uploads/2022/08/Translated_Credit_Reports_COVID-19_Letter.pdf

³⁵ Consumer Data Industry Association Response to Consumer Groups, (Oct. 29, 2020), available at https://www.nclc.org/wp-content/uploads/2022/08/Consumer_Groups_Letter_to_CRAs_LEP_Consumers_Response-1.pdf

³⁶ Equifax Response to Consumer Groups, (Oct. 30, 2020), available at https://www.nclc.org/wp-content/uploads/2022/08/Equifax_Response_to_NCLC-1.pdf; Equifax Offers Credit Reports in Spanish Online and By Mail, (Sept. 13, 2021), available at <https://www.equifax.com/newsroom/all-news/-/story/equifax-offers-credit-reports-in-spanish-online-and-by-mail-1/>.

commonly spoken languages in the United States, as the vast majority of the U.S. LEP population speaks one of these eight languages.³⁷

The CFPB has ample regulatory authority to impose these requirements. First, requiring language access promotes “the purposes and objectives of [the FCRA],” under Section 1681s(e). One of the objectives of the FCRA is that credit reporting “meet[] the needs of commerce ... in a manner which is fair and equitable to the consumer, with regard to the *confidentiality*, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.”³⁸ Providing English-only credit reports compromises the confidentiality of those reports, leads to an unfair likelihood that the information contained in the report will be misunderstood by the consumer, and likely leads to higher rates of long-term unresolved credit report errors among LEP consumers.

Second, the FCRA requires that every consumer reporting agency “clearly and accurately disclose to the consumer” the contents of that consumer’s file at the time they made the request. Credit reports, and any disclosure for that matter, cannot be considered “clear” if one in every twelve consumers will be categorically and predictably unable to understand the disclosures.

Third, the Dodd-Frank Act emphasizes the Bureau’s role in ensuring “fair, equitable, and nondiscriminatory access to credit.”³⁹ A central aspect of this mission is to ensure that large, nationwide institutions that affect credit availability operate in a manner that minimizes the chances of a disparate impact among a protected class of consumers. As the Supreme Court has observed, English proficiency is closely tied to national origin, and practices that disfavor LEP individuals can have a disparate impact based on national origin.⁴⁰ Requiring the nationwide CRAs to provide LEP consumers with translated credit reports is a simple step that will likely go a long way toward minimizing the risk of an unjustified disparate impact based on language proficiency.

Finally, the Fair and Accurate Transactions Act of 2003, as amended by the Dodd-Frank Act provided the CFPB with specific rulemaking authority over the process by which nationwide CRAs must offer the required annual file disclosures.⁴¹ The FCRA directs the CFPB to consider “the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such [annual file disclosures].”⁴² A requirement that nationwide CRAs ask consumers about their language preference, and provide translations whenever available, directly improves the ease with which a consumer may receive these disclosures.

³⁷ Jeanne Batalova and Jie Zong, “Language Diversity and English Proficiency in the United States,” Migration Policy Institute (Nov. 11, 2016), available at www.migrationpolicy.org.

³⁸ 15 U.S.C. 1681(b).

³⁹ 12 U.S.C. 5493(c)(2)(A)

⁴⁰ See *Lau v. Nichols*, 414 U.S. 563 (1974) (Supreme Court recognized abrogation on other grounds in *Alexander v. Sandoval*, 532 U.S. 275, 285 (2001)).

⁴¹ The Fair and Accurate Credit Transaction Act of 2003, Pub. L. 108–159, title II, § 211(d)(2), Dec. 4, 2003 as amended by the Dodd-Frank Act, Pub. L. 111–203, § 1088(b)(2), July 21, 2010.

⁴² *Id.*

III. Helping Consumers with Consumer Reporting Disputes: Setting Up an Office of Ombudsperson

Not only does the credit reporting system have unacceptably high error rates and a biased, dysfunctional system to resolve them, it's very difficult for consumers to even get to the point of composing and filing a credit reporting dispute. Credit reporting is complicated and technical, and many consumers lack the educational or executive functioning skills, or even just the time, to submit a dispute by themselves.

The Federal Trade Commission (FTC) documented this problem in its first pilot study that led to its landmark 2012 accuracy study. In the pilot study, there were sixteen consumers with errors in their credit reports, of which seven said they would send a dispute but only two did so.⁴³ One consumer with a material error explained that she did not file a dispute because “she was a single mother with twins and could not muster the time to file a dispute.”⁴⁴ As the researchers for the FTC study noted, “[w]e expected that participants would be motivated to have any errors in their credit reports corrected promptly. This did not generally occur.”⁴⁵

The FTC's solution to this issue in its second study was to have a contractor assist the consumers by preparing the disputes, which the FTC noted was very successful in getting them to submit the dispute.⁴⁶ But ordinary consumers with credit reporting errors do not have the benefit of a contractor supplied by the FTC to prepare their disputes. A few lucky ones find private attorneys, legal services offices, or nonprofit counselors to help them. But many more desperate consumers end up in the hands of credit repair organizations that charge them expensive fees and often prepare questionable or outright fraudulent disputes, or rely on form templates on the Internet. As the CFPB has documented, the nationwide CRAs then end up ignoring such disputes.⁴⁷

Put simply, many consumers need knowledgeable assistance when they are dealing with CRAs. This is especially true for consumers from vulnerable communities, such as domestic violence survivors, LEP consumers, older consumers, those with disabilities, or low- and moderate-income consumers generally.

⁴³ Fed. Trade Comm'n, Second Interim Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2006), at 16, https://www.ftc.gov/sites/default/files/documents/reports/second-interim-report-federal-trade-commission-congress-under-section-319-fair-and-accurate-credit/fact_act_report_2006_exhibits_1-12.pdf.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.*

⁴⁶ Fed. Trade Comm'n, Third Interim Report to Congress Under Section 319 of the Fair and Accurate Credit Transaction Act of 2003 (Dec. 2008), at 8, <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-third-interim-federal-trade-commission/p044804factarptcongress.pdf> (“The second study addressed this issue by securing more participants and by having the contractor prepare dispute letters, with self-addressed envelopes to the relevant CRAs and pre-paid postage, The new procedure proved very beneficial especially regarding material disputes: at least 12 of the 15 cases were filed.”).

⁴⁷ CFPB, Annual report of credit and consumer reporting complaints, January 2022, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf

Thus, we urge the CFPB to create an Office of Ombudsperson in the CFPB's Office of Consumer Response that can assist consumers with disputes with the nationwide CRAs and other CRAs under the CFPB's jurisdiction. Furthermore, the Ombudsperson should be empowered to conduct an independent review of credit reporting disputes where the consumer asserts that inaccurate information has not been corrected after a dispute has been disputed, *i.e.*, the Ombudsperson should serve as a post-dispute appeals or resolution function.

Conclusion

We urge the CFPB to use its clearly delineated rulemaking authority under 15 U.S.C. § 1681s(e) to protect consumers from the abuses of debt collectors in credit reporting, make credit reports accessible to LEP consumers, and provide sorely needed assistance to vulnerable consumers who need help in dealing with the nationwide CRAs. Please also consider this a petition for rulemaking under section 553(e) of the Administrative Procedure Act.

Thank you again for your strong and resolute efforts to protect consumers, including addressing abuses in credit and consumer reporting. If you have any questions about this letter, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

National Consumer Law Center
(on behalf of its low-income clients)