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The Honorable Thomas J. Donovan, Jr. Attorney General of Vermont  
109 State Street  
Montpelier, VT 05609-1001

The Honorable Michael S. Pieciak, Commissioner Vermont Department of Financial  
Regulation  
89 Main Street  
Montpelier, VT 05620-3101

**RE: State of Vermont Data Broker Regulation Working Group**

Dear General Donovan and Commissioner Pieciak:

I write on behalf of the Consumer Data Industry Association (CDIA). CDIA is an international trade association, founded in 1906, of more than 130 corporate members. Our 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. This includes criminal background checks. Our members help ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

**Federal Credit Reporting Act**

CDIA members and the information our members provide to others are heavily regulated by federal and state laws including the Fair Credit Reporting Act (FCRA). The FCRA was enacted to promote the accuracy, fairness and privacy of consumer information contained in the files of consumer reporting agencies. It is intended to protect consumers from the willful and or negligent inclusion of inaccurate information

in their consumer reports. To that end, the FCRA regulates the collection, dissemination and use of consumer information. Originally passed in 1970, the FCRA has been amended several times by Congress to maintain regulatory standards. It establishes consumers' rights in relation to their consumer reports, as well as permissible uses of that information. It also imposes certain responsibilities on those who collect, furnish, and use the information contained in a consumer's credit report. Users must notify the consumer when an adverse action is taken on the basis of such reports; and users must identify the company that provided the report, so that the accuracy and completeness of the report may be verified or contested by the consumer.

Consumer Reporting Agencies (CRA) are entities that collect and disseminate information about consumers that can be used for credit evaluation, insurance, housing, banking services, utilities and employment. Under the FCRA, CRAs must maintain reasonable procedures to ensure the maximum possible accuracy of the information contained in a consumer's report.<sup>1</sup> Those that furnish data to consumer reporting agencies cannot furnish data that they know or have reasonable cause to believe is inaccurate, and they have a duty to correct and update that information.<sup>2</sup> Consumers have a right to dispute information on their credit reports with consumer reporting agencies or lenders and the law requires dispute resolution in not more than 30 days. If a dispute cannot be verified, the information subject to the dispute must be removed.<sup>3</sup> A consumer reporting agency that violates federal law is subject to private rights of action, enforcement by the Federal Trade Commission (FTC), enforcement by the Consumer Financial Protection Bureau (CFPB) and state attorneys general.<sup>4</sup>

### **Consumer Protections under FCRA**

In addition, employers using consumer reports to screen job applicants must follow specific procedures. The FCRA allows employers to review the credit histories of prospective and existing employees.<sup>5</sup> However, this legal privilege comes with certain obligations. An employer must certify to the consumer reporting agency that the employer has and will comply with the employment screening provisions of the FCRA, and that the information from the consumer report will not be used in violation of any applicable federal or state equal employment laws or regulations. In order to obtain a report for employment purposes, the consumer must be told by the prospective employer that a report may be obtained and the consumer must consent to the procurement of the report by the employer. If the employer intends to take adverse action based in whole or in part on the report, the consumer must be provided a copy of

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<sup>1</sup> 15 U.S.C. Sec. 1681 e(b).

<sup>2</sup> *Id.*, 1681s-2(a)(1)-(2).

<sup>3</sup> *Id.*, 1681i(a)(1), (5).

<sup>4</sup> *Id.*, 1681n, 1681o, 1681s.

<sup>5</sup> *Id.*, 1681b(a)(3)(b)

the report and a description of the rights afforded to the consumer under the FCRA. Consumer reports generally may not include items such as a consumer's race or ethnicity, gender, religious or political preference, medical history or marital status. Credit scores are not used for employment purposes.

The FCRA outlines the purposes for which a consumer report may be furnished to a requestor. In general, a CRA may furnish a copy of a consumer's report to a person that the CRA has reason to believe intends to use the information for the purpose of extending credit to the consumer or for reviewing or collecting the consumer's credit account. Consumer reports may also be issued where there is another legitimate business need for the information contained in the report in connection with a business transaction initiated by the consumer. For example, an insurer may receive a report in connection with the underwriting of an insurance policy involving the consumer for which the consumer has applied. Various other uses are permitted, including, among others, a response to a court order, a decision regarding a consumer's employment, and determination by a government agency of a consumer's ability to make child support payments.

Under the FCRA, consumers have the right to access all information in their credit reports, including the sources of the information, and the right to disclosure of their credit scores. A consumer may request one free credit report, from each of the nationwide CRAs. Consumers have the right to dispute the completeness or accuracy of information contained in their files. Once a consumer notifies the CRA of the dispute the CRA must reinvestigate and record the current status of the disputed information, or delete it from the record. The CRA must also notify the furnisher of the disputed data of the consumer's dispute.

While consumers have the ability to monitor potential inaccuracies in their consumer reports, the Federal Trade Commission (FTC) published a congressionally mandated study on the accuracy of consumer credit reports in 2013 and found that:

- 97.8% of all credit reports were materially accurate, meaning that only 2.2 % of credit reports had an error that would increase the cost of credit or a loan in the credit market.

### **Identity Theft Protections**

In addition to providing consumers the ability to maintain accuracy of their consumer reports the FCRA includes a number of provisions aimed at preventing identity theft and assisting victims of identity theft. These provisions mirror laws passed by state legislatures and create a national standard for addressing consumer

concerns with regard to identity theft and other types of fraud. They impose responsibilities on CRAs, furnishers of information, and users of consumer credit reports, and provide consumers with rights for protecting the information in their files and insuring the information contained in them is accurate. Consumers who have been victims of identity theft, can have fraud alerts placed in their files. A consumer may request a fraud alert from one CRA and that CRA is required to notify the other nationwide CRAs of the alert. In general, fraud alerts are to be maintained for 90 days but a consumer may request an extended alert which is maintained for up to seven years. In addition to the fraud alert, victims of identity theft may have information resulting from the crime blocked from their consumer report.

### **Benefits of Collected Data**

Beyond providing information that allows individuals to access credit, insurance, screening for employment the information contained in consumer credit reporting databases aid in many other ways. Location services is one of the ways our members' databases assist law enforcement and state agencies. For example, when police are trying to locate a witness to a crime or to find a fugitive, they will often rely on one of our members' databases to find a more accurate address to locate the individual.

Organ donors, dead beat parents who owe child support can be located by checking for updated information from our members' databases. CDIA members work with the Red cross to help locate individual donors with rare blood types who have donated in the past. If a donor has moved and the Red Cross can no longer reach them our members' databases can often times help to locate those donors. Pension beneficiaries- there are times when a pension benefit company will reach out to one of our members in order to locate the individual they are trying to pay out a pension to but they cannot locate them.

Fraud Prevention is another way that CDIA members' data are beneficial to states. Prevention of unemployment fraud, workers' compensation fraud and tax fraud are a few areas where this data can be useful. For example, when an individual applies for unemployment benefits with a state, the state labor department can contract with one of our member companies and have the ability to do a search to see if that individual has W2 information reported elsewhere and is working. This can prevent fraud against the state. The same is true if someone has applied for workers' compensation benefits from the state, the individual's name can be searched by one of our members' databases to see if they are working elsewhere. Tax fraud, someone could have the ability to claim a tax exemption in one state but when compared with our members' records one could find if the individual was living elsewhere and claiming that as a primary residence.

The information that our members contain is also useful as individuals are applying for student loans, or for public benefits. Someone has to verify the individual's income and asset status in order to qualify for these benefits. It is often one of our members who can check that income and verify it to assist those individuals in getting access to those benefits. These are some of the many ways that CRAs assist individuals and society with the large amounts of data that they possess.

However, the data gathered and maintained in consumer reporting agencies is strictly governed by the FCRA and other federal legislation such as the Gramm-Leach-Bliley Act, which requires financial institutions and companies that offer consumers financial products or services, to explain their information-sharing practices to their customers and to safeguard sensitive data. All of these federal statutes exist to regulate business practices where personal information is collected and protects the consumer.

Our members take very seriously the concerns of privacy and data security and use data fairly, responsibly and thoughtfully. There is a long history of privacy regulations federally at the sectoral level that takes into account the unique needs of data used in each industry. As you consider drafting new legislation that attempts to be applied across all sectors, I would encourage you to distinguish between the unique uses of data, and whether or not new regulations are necessary as existing federal statutes govern most uses of data and how it is gathered, collected and disseminated.

Sincerely:



Sarah M. Lashford

Manager of Government Relations