



American Association of Consumer Credit Professionals

Redacted

June 1, 2020

Sent Via E-Mail at: 2020-RFI-Taskforce@cfpb.gov

Comment Intake (CFPB-2020-0013)
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Ladies and Gentlemen of the Taskforce:

RE: Bureau of Consumer Financial Protection (CFPB) Notice titled "Request for Information to Assist the Taskforce on Federal Consumer Financial Law," Docket No. CFPB-2020-0013, 85 Fed. Reg. 18214 (April 1, 2020)

The American Association of Consumer Credit Professionals is pleased to submit our comment in response to the CFPB's notice titled "Request for Information to Assist the Taskforce on Federal Consumer Financial Law" in their mission to develop recommendations on harmonizing, modernizing, and updating the federal consumer financial laws. Our comment responds to **C. "The Regulations" Questions 12 & 13** by focusing on:

1. Why Consumers Need Credit Repair Organizations (CROs)
 - a. Credit Data Inaccuracies
 - b. Complex and Burdensome Dispute Process
2. How CROs Advocate for Consumers
3. Historical Regulatory Landscape for CROs: The Credit Repair Organizations Act (CROA)
4. Dueling Mandates of CROA and the CFPB's novel interpretation and aggressive application of the Telemarketing Sales Rule's advance fee prohibition (TSR AFP)
 - a. Historical context of the TSR AFP
 - b. Conflict between CROA and CFPB's misapplication of the TSR's AFP
5. Recommendations for Harmonizing CROA and TSR enforcement

Who is the AACCP?

The American Association of Consumer Credit Professionals (AACCP) represents dedicated consumer advocates from across the full consumer credit system. AACCP members serve as a trusted resource that consumers use to understand and navigate the complex credit reporting ecosystem. By using our collective voice and engaging with policymakers, AACCP seeks regulatory certainty for American

consumers and the industry, works to protect the integrity of the consumer reporting system, and facilitates innovation within our industry.

While AACCP members provide traditional, accuracy-focused credit repair services directed at individual trade lines, the services that modern credit repair companies offer go beyond that. Taking a holistic approach to credit report advocacy, AACCP member companies are experienced, reputable credit repair companies that:

- Know the industry and the laws designed to protect consumers;
- Understand the circumstances of individual consumers to help them raise relevant questions with creditors and other furnishers of credit report information;
- Operate with integrity and maintain a strong focus on compliance with applicable statutes;
- Help consumers review, analyze and understand their credit reports in order to identify items that may need to be challenged and, if possible, changed;
- Advocate on behalf of consumers to resolve potential issues on their credit report with creditors/furnishers and the Consumer Reporting Agencies (CRAs a/k/a credit bureaus); and
- Educate consumers on their credit reports, how to build positive credit, and encourage them to use credit responsibly.

AACCP is proud to represent these advocates who work with American consumers to ensure that the credit reporting system is impartial, that the information is accurate, and that it is based on accessible and verifiable records.

Why Consumers Need Credit Repair Organizations

Credit Data Equity and Accuracy

Credit repair organizations would not exist if consumer credit reports and the data they contain were always an accurate reflection of each consumer's credit risk and the system were more responsive to consumer questions. Despite decades of technological advancement in our credit markets, however, the credit ecosystem often fails to consider a consumer's circumstances, does not implement fully compliant recordkeeping or reporting processes, and lacks the resources needed to be responsive to consumers. Those shortcomings can have a tremendous negative impact on individual American consumers.

For example, Congress passed the Fair Credit Reporting Act in 1970, to govern what Congress recognized as a "vital role in assembling and evaluating consumer credit and other information on consumers."¹ The law required that, "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."² Half a century later, it is clear from numerous studies by government agencies, think tanks, and the private sector, that the CRAs and the data furnishers are not meeting the "maximum possible accuracy" standard.

¹ Pub.L. 91-508; Section 602(a)3; available at: <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1114-2.pdf>.

² 15 U.S.C. Section 1681(e)b; available at: <https://www.law.cornell.edu/uscode/text/15/1681e>.

A 2012 report to Congress from the Federal Trade Commission (FTC), mandated by the Fair Credit Reporting Act, found that “21% of consumers encountered a confirmed material error on one or more of their credit reports.”³ For 5.2% of consumers, successfully disputing a material error resulted in “a change in score that their credit risk tier decreased,” meaning that the error would have either denied them access to credit or they would have had to pay more for it.⁴ Credit reporting errors saddle consumers with the consequences of low credit scores which subsequently deny them access to affordable mortgage, automobile and other consumer credit markets. Because the system processes information for hundreds of millions of consumers, an error rate of even a few percent impacts millions of people across the U.S.

Complex and Burdensome Dispute Process

When a consumer identifies and attempts to address a credit report question, often discovered when applying for credit or housing or perhaps a job, the consumer is met with an unresponsive and opaque resolution process.

A primary flaw in the broken dispute system is that far too often, the deciding factor in determining the propriety of a negative trade line comes from the same data furnishers who originally provided the information. As stated by the PPI, “the credit bureau is only legally required to check with the creditor or debt collector and asked them whether they stand by their claim. In other words, if the creditor says you owe money,” the information is considered accurate. Additionally, the CFPB noted in a 2012 report “that the NCRAs have a systemic bias that defers to furnishers’ records in determining whether or not disputed information is accurate.”⁵

AACCP members frequently see that when a consumer submits a request to verify the accuracy of a trade line, the furnisher may ignore or discount the supporting documentation submitted by the consumer. In its Supervisory Highlights bulletin, issued in March 2017, the CFPB also found that even though the CRA “is required to review and consider all relevant information submitted by the consumer... one or more [CRAs] did not comply with this obligation.”⁶ In the same bulletin, the CFPB noted that the Fair Credit Reporting Act requires that following a dispute investigation, the CRA “must provide prompt notice of any modification or deletion to the furnisher.”⁷ Yet, the CFPB “found that one or more [CRAs] failed in certain circumstances to provide this required notice.”⁸

Further demonstrating an inherent bias against the consumer, the FTC tracked the progress made by those consumers in the 2012 report with material errors on their report through three years in the dispute process. The FTC’s 2015 report found that of those consumers participating in the follow-up

³ Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (“FTC 2012 Report”), December 2012, at p. iv; available at: <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>.

⁴ *Ibid*, at p. v.

⁵ Consumer Financial Protection Bureau, *Key Dimension and Processes in the U.S. Credit Reporting System: A review of how the nation’s largest credit bureaus manage consumer data* (“CFPB Key Dimensions”), December 2012, at p. 35, available at: https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

⁶ Consumer Financial Protection Bureau, *Supervisory Highlights Consumer Reporting Special Edition*, Issue 14, Winter 2017, at p. 10; available at: https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

⁷ *Ibid*, at p. 11.

⁸ *Ibid*, at p. 11.

study, almost 70% “still believe that at least one piece of previously disputed information is inaccurate.”⁹ Sadly, however, half of those consumers “plan to abandon their disputes,” before they are resolved¹⁰ and endure the financial hardship as a consequence.

How CROs Advocate for Consumers:

Consumers face a number of complex challenges when interacting with the credit reporting system. While their efforts are laudable, state and federal regulatory agencies have attempted to assist consumers by engaging in consumer education efforts regarding “repairing credit” that have been relatively limited, focusing primarily on mitigating identity theft and mixed file errors. A substantial gap exists between these efforts and the many problems consumers face on a regular basis. Credit repair organizations fill that gap.

Modern credit repair organizations meet a need for consumers who:

- a) lack the time or ability to correct inaccurate information on their credit reports or choose to hire someone to do so on their behalf;
- b) lack understanding or expertise in exerting their rights under FCRA and other laws and seek experts to assist them; and/or
- c) need non-repair services such as fraud monitoring, identity theft protection, credit monitoring and credit education

AACCP members take a holistic approach to helping their clients with credit-related services. Their aim is to ensure CRAs receive and then report consumer data that follows equitable reporting processes, is accurate and can be substantiated by furnisher records at the time it is reported.

Credit repair organizations help consumers identify and correct improper credit reporting. After a complete credit report analysis with a new client during the intake process, the CRO develops a correspondence strategy to probe a furnisher’s compliance with applicable credit reporting standards. This may involve asking furnishers to demonstrate how they meet a variety of obligations designed to prevent consumers from having improperly vetted information “about them” disclosed to third parties—such as, credit reporting obligations arising from:

- Fair Credit Billing Act
- Fair Debt Collection Practices Act
- Student lending protections
- Servicemember protections
- Medical debt protections
- Identity theft protections
- Obligation to pay following a divorce
- Substantiation (recordkeeping) and accuracy mandates of the FCRA

⁹ Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2015, at p. iii; available at <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>.

¹⁰ *Ibid*, at p. iii.

Simply because consumers can attempt to resolve questions on their own does not mean they always should or want to go it alone. It is sensible in many cases, and for many reasons, for consumers to choose to engage credit repair services to help them assert their rights. As the PPI states “in essence, paying for credit repair assistance is no different than paying an accountant or purchasing software to do your taxes – something that 90% of Americans do.” In short, CROs serve as a reliable advocate for consumers in this frustrating and opaque process.

An area of extreme value that AACCP members provide their clients is combating faulty reporting and abusive actions from certain third-party debt collection entities. Far too often, our members identify multiple reporting of negative collection trade lines that originate from a single delinquency.

High-profile horror stories of abusive collection companies are rampant¹¹. From attempting to collect debt not owed by a consumer (zombie debt), harassing phone calls at all times of the day, to threats of arrest, the intimidation tactics collection companies use are endless. Furthermore, it is often impossible for a consumer to recognize the validity or origination of a certain collection company as they have no first-party relationship with the reporting entity.

Additionally, scoring algorithms treat paid and unpaid debt equally. A single negative collections trade line on a credit report can be disastrous to a consumer’s credit score, costing the consumer \$1,000s for years. Inaccurate or multiple reporting unfairly amplifies this cost to consumers. For example, an improperly reported debt in collection can lower a consumer’s score by as many as 100 points¹², roughly correlating to a 0.5% higher mortgage interest rate. For a loan of \$200,000 on a 30-year mortgage, paying 0.5% higher interest rate would cost the consumer ~\$20,000 over the life of the loan¹³.

How are CROs Regulated

Congress passed the Credit Repair Organizations Act (CROA) in 1997 to set the “ground rules” for the industry and protect the public from unfair and deceptive practices by companies claiming to offer credit repair services, but in reality those companies provided no real benefit to consumers. CROA protects both the integrity of the credit reporting system and consumers by:

1. Prohibiting making any statement, or counseling a consumer to make any statement, which is untrue or misleading to a CRA or furnisher with respect to a consumer’s credit worthiness, credit standing, or credit capacity
2. Prohibiting altering a consumer’s identity for the purpose of concealing adverse information that is accurate and not obsolete
3. Prohibiting any untrue or misleading representation of the services of the credit repair organization
4. Prohibiting payment in advance – “No credit repair organization may charge or receive any money or other valuable consideration **for the performance of any**

¹¹ <https://www.wsj.com/articles/cfpb-announces-60-million-fine-against-debt-collectors-11564097004>

¹² <https://www.credit.com/credit-scores/how-medical-debt-can-impact-your-credit-score/>

¹³ <https://www.nerdwallet.com/article/mortgages/credit-score-affects-mortgage-rate>

service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.”¹⁴

5. Mandating certain disclosures and written contract with the consumer
6. Establishing a private right of action for consumers

After 20+ years of enforcement of the CROA by the Federal Trade Commission and state attorneys general, consumer complaints against the credit repair industry have significantly diminished since the mid-1990s and are relatively few compared to other financial sectors. In the 2019 “Consumer Response Annual Report,” the CFPB recorded 154,500 credit reporting related complaints (44% of total) and 75,000 debt collection related complaints (21% of total). In contrast, the CFPB only received 1,100 credit repair related complaints (0.3% of total) in 2019. Further diluting these credit repair complaint statistics, the report states:

“Consumers do not readily distinguish between credit repair services, credit monitoring services, and new products that are marketed towards improving consumers’ credit scores (e.g. Experian Boost or UltraFICO). Consequently, consumers sometimes submit complaints about credit monitoring services and score increasing products, such as those offered by the NCRAs, as credit repair complaints.”¹⁵ “

As in most economic sectors, there are some bad actors in the credit repair industry. The AACCP supports continued enforcement actions by state AGs and federal regulators with CROA and other UDAAP authority statutes to rid the industry of these malign businesses.¹⁶ In addition to publishing industry best practices, we encourage consumers to avoid credit repair companies that:

- Demand an upfront payment
- Don’t provide a written contract that includes a right to cancel
- Guarantee an increase in a consumer’s credit score or other result
- Have demonstrated a pattern of bad behavior
- Promise they can remove negative information
- Encourage consumers to make false representations
- Offer to create a new credit profile
- Are not licensed, bonded, and insured, where required by law
- Don’t have an attorney on staff

¹⁴ <https://www.law.cornell.edu/uscode/text/15/1679b>

¹⁵ https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf

¹⁶ See, e.g., *FTC v. Strategic Student Solutions LLC*, No. 17 Civ. 80619 (S.D. Fla. May 15, 2017), *FTC v. One or More Unknown Parties Doing Business As American Bill Pay Organization and American Benefits Foundation*, FTC (Aug. 22, 2014); ECF No. 7-19; *FTC v. DebtPro 123 LLC*, FTC (June 3, 2014); and, *FTC v. RMCN Credit Services, Inc.*, FTC (Oct. 13, 2011).

Dueling Mandates of CROA and the CFPB's novel interpretation and aggressive application of the TSR AFP

Historical context of the TSR AFP

Prior to CROA, Congress passed the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101, et seq., in 1995 to strengthen the authority of the FTC to prescribe rules prohibiting "deceptive telemarketing acts or practices and other abusive telemarketing acts or practices" across a broad range of industries with no mention of the credit repair industry made in legislative history. In the absence of a federal framework to regulate the credit repair industry, the FTC subsequently promulgated the six-month advance fee prohibition (AFP) rule to eliminate an emerging trend of illusory "quick fix" credit repair schemes that explicitly promised the removal of negative information by exploiting the limitations in the dispute process:

"Typically, these services promise consumers that, for a fee paid in advance, they will improve the consumer's credit record by removing negative information from that record. Once the fee is paid, however, the seller fails to deliver the promised services or achieve the promised results, and the consumer's credit record does not improve."¹⁷

To understand why the rule was implemented, and consequently why an aggressive interpretation and novel application of the rule to the modern credit repair industry is now outdated and misguided, it is important to identify the harm to consumers and the integrity of the credit reporting system that AFP was intended to target.

At the time of the rule's implementation, the FCRA obligated CRAs to remove negative trade lines 30 days after a dispute was submitted if the investigation was still ongoing. However, unscrupulous companies submitted CRAs with disputes knowing that due to limitations in communications technology it was often technically difficult for disputes to be resolved within 30 days, resulting in high rates of "reinsertion," or the reappearance of negative information previously removed in response to a consumer dispute. In a 1996 amicus curiae, the FTC captures the original intent of the TSR's AFP in these market conditions:

"credit repair service may take advantage of this situation by disputing every unfavorable item in a consumer's report. Many such disputes, regardless of their merit, are unlikely to be resolved within 30 days. As a result, the disputed items will be removed temporarily from the consumer's report. By this means, a credit repair service may be able to produce a report that appears to have been "repaired." Such "repairs" will, however, be short-lived because unfavorable items will be restored to the consumer's credit report once investigations have been completed. The six-month delay prevents credit repair services from using such interim reports as evidence of having improved a consumer's credit."¹⁸

Over the past 24 years, technological improvements in the dispute process, innovation in the credit repair industry, and routine enforcement of CROA by the FTC and state attorneys general have eliminated the problems the TSR AFP was intended to prevent, rendering the 6-month waiting period outdated and obsolete.

¹⁷ See Final Rule, Statement of Basis and Purpose, 60 Fed. Reg. 43,842 (Aug. 23, 1995)

¹⁸ Mem. P. & A. Amicus Curiae FTC, at 6 n.7, Illinois v. Nat'l Credit Mgmt Grp, No. 96-C-2073, 1996 WL 351196 (N.D. Ill. June 24, 1996) (emphasis added)

For example, technological enhancements to e-OSCAR, the automated system that enables data furnishers and CRAs to create and respond to the disputes system, has resulted in the “[completion of disputes] within 10-14 business days and quite often within two to three days,” according to a national CRA¹⁹. Additionally, the FTC reported in 2015 that “reinsertion” rates have fallen to 1% of all consumer disputes²⁰, hardly a systemic threat to the integrity of the credit reporting system. Thus, applying a six-month wait period prior billing fails to reflect the realities of the current system and is overly burdensome to reputable credit repair organizations.

Furthermore, as previously mentioned, decades of CROA enforcement actions by the FTC and state AGs, such as “Operation Credit Despair”²¹ and “Operation Clean Sweep,”²² have eliminated these “quick fix” schemes explicitly promising the removal of negative information.

Conflict between CROA and CFPB’s misapplication of the TSR’s AFP

The AACCP has significant concerns regarding the impact to consumers and credit repair organizations that a new regulatory approach the CFPB has taken with regard to credit repair organizations’ billing practices with an enforcement action in May 2019²³. Departing from over 20 years of CROA enforcement precedence and with little guidance to industry, the CFPB has deployed a new, aggressive interpretation of the TSR AFP to mean that CROs cannot bill consumers until six months after promised results have been achieved, even when the CRO makes no promise of a result or the removal of information.

In its recent approach, the CFPB’s interpretation of this provision not only departs from the rule’s objective and Congressional intent to regulate the industry with CROA, but also fails to reflect the realities of the modern-day credit reporting system and credit repair industry. Furthermore, as CROA’s advance fee standard is more recent and derived from a higher authority (Congress), CROs have structured their business operations to comply with the historical law-of-the-land: CROA.

As previously mentioned, Congress passed CROA in 1997, after implementation of the TSR AFP, to specifically prohibit illusory “quick fix” schemes and set the “ground rules” to protect consumers in their transactions with such companies.” In addition to prohibiting the promise of removing properly reported information, CROA states:

“No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed”

Accordingly, AACCP members and other reputable firms clearly market their services as performing a set amount of work to ensure that the client’s credit report is fair, accurate, and substantiated. CROs also

¹⁹ <https://www.experian.com/blogs/ask-experian/how-long-does-it-take-to-complete-the-dispute-process/>

²⁰ <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>

²¹ <https://www.ftc.gov/news-events/press-releases/2006/02/project-credit-despair-snares-20-credit-repair-scammers>

²² <https://www.ftc.gov/news-events/press-releases/2008/10/operation-clean-sweep-ftc-and-state-agencies-target-36-credit>

²³ <https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-lexington-law-pgx-holdings-and-related-entities/>

acknowledge that credit repair takes time, and structure their fees over specific timeframes (monthly) in order to ensure that consumers can access their services at an affordable rate with flexible terms (cancellation at any time/no long-term contracts).

After more than 20 years of CROA enforcement actions and regulatory guidance from the FTC, the courts have determined that credit repair companies can charge customers as the company performs the promised services:

In sum, the Court finds that section 1679b(b) means what it says: credit repair organizations may not charge clients for any service until such service has been done. By billing clients on a monthly basis for legal tasks that were indisputably performed during the previous month, Lexington does not run afoul of section 1679b(b)'s prohibition on advanced payments²⁴.

That is a fair and reasonable business model that enables the credit repair industry to function for the benefit of consumers. The CFPB's new approach through enforcement, relying on a statute that predates CROA, is a clear departure from this precedent and warrants further examination to ensure harmonization with CROA enforcement.

Equally concerning for industry, the Bureau's position presupposes that every service rendered by a credit repair organization must (or could) achieve a result demonstrable on a consumer's credit report. According to the CFPB's interpretation, a CROs would be prohibited from billing the consumer until:

"The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved."

While many consumers do seek help to remedy inaccurate information, they also utilize CROs for services such as credit score education, counseling or assistance with disputes and reinvestigations of reported information. Because of this wide offering of services and in compliance with CROA prohibitions, reputable CROs do not promise their customers specific results, such as a credit score increase or the removal of certain adverse information because they are not applicable to the entire service offered.

This aggressive, new interpretation of the TSR paints with too broad a brush. It is impossible for a credit repair organization to promise and deliver a specific credit score increase, let alone a credit score increase that may be reflected on a credit report--which is, again, why reputable CROs do not promise score increases or changes on a credit report.

Below are several examples of services provided by credit repair organizations that cannot be produced in a consumer's credit report:

- 1) Consumer financial education
- 2) Credit monitoring
- 3) Identify theft protection
- 4) Debt collection intervention services

²⁴ *DuCharme v. Heath*, No. C 10-02763 CRB, 2010 WL 5211502 (N.D. Cal. Dec. 16, 2010)

5) Fraud monitoring

Credit scores are also not typically shown on credit reports, including those traditionally provided by the three major CRAs (Equifax, Experian, and TransUnion). As such, even if a reputable CRO did promise improvements to credit scores—which they do not—it could not produce to a consumer a credit report demonstrating such results.

The CFPB's interpretation of the AFP also creates other practical problems for compliance, such as exactly when a CRO would be considered to have achieved the promised results, triggering the six-month waiting period to bill for services where the services would never appear on a credit report. Would the waiting period begin after a CRO properly challenged or otherwise dealt with all the applicable items on a consumer's credit history? Does the billing period restart if for example 3 months into the service the consumer has new matter appear on their report? If the CFPB interprets the rule to apply to anything other than an explicit, concrete promise that would be reflected on a credit report, it becomes impossible for a CRO to know when the six-month billing time period begins or ends.

The CFPB's enforcement interpretation of the TSR also comes dangerously close to being in direct conflict with CROA's requirements. CROA requires that credit repair contracts be in writing and include a full, detailed description of the services to be performed.²⁵ Contracts also must include the terms of payment, including the total amount of all payments to be made by the consumer. The contract must also include an estimate of the completion date for the services performed by the credit repair organization, or the length of time necessary to perform the services. Importantly, any contracts that do not meet these requirements are deemed void.

The CFPB's enforcement position introduces significant confusion as to how a credit repair organization may comply with CROA's requirements for credit repair contracts. For example, how does CROA's requirement that the credit repair organization give the consumer an expectation for timing to complete services square with the TSR's six-month waiting period? CROA-compliant engagement agreements give clients a sense of predictability and transparency with its monthly billing arrangement. Further, this approach is consumer-friendly in the sense that it allows consumers to be in greater control of their finances and make decisions to continue or terminate representation based on their current financial circumstances.

In contrast, the CFPB's interpretation of the AFP could trigger a potentially terrible experience for consumers. By delaying billing for six months, consumers would be forced to incur a large surprise bill that will come due down the road at some undetermined time. Currently, under CROA, consumers have the opportunity to cancel services at any time and end their continuing payments due to additional financial obligations.

Recommendations for Harmonizing CROA and TSR Enforcement

The consumer demand for reputable credit repair organizations to promote their financial wellbeing and access to affordable credit is evident. Without reputable consumer credit professionals, millions of Americans will continue to experience financial harm due to inaccurate, unfair, and unsubstantiated credit reports as well as an unresponsive system for resolving consumer questions.

²⁵ . 15 U.S.C. § 1679d(b)

The AACCP views the CFPB's aggressive and novel interpretation and misapplication of the TSR's advance fee prohibition to the entire credit repair industry, regardless of whether explicit promises of results or removals are made, as a significant threat to CROA-compliant companies and the consumers that seek their assistance. At the very least, the dueling mandate of the CFPB's use of TSR and CROA leaves reputable CROs in an untenable position of regulatory ambiguity. Which statute should a CRO comply with if no promises of results are made? American businesses deserve guidance, due process, and clarity from federal and state regulatory agencies.

To be clear, the AACCP supports a strong federal and state regulatory regime that protects consumers and the integrity of the credit reporting system while facilitating consumer access to an innovative and robust credit repair industry. Given it is the most recent standard derived from a higher authority and historical precedent as the law of the land through federal and state enforcement actions, we encourage regulators to follow CROA's advance fee standard when regulating the credit repair industry.

As a short-term remedy, the absence of uniform federal regulation concerning the billing obligations for credit repair organization requires the CFPB to take a judicious approach with the TSR's AFP. The definition of a "credit repair organization" in CROA is broad and could arguably cover all credit education companies:

"any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of (i) improving any consumer's credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause"

The TSR need not automatically apply to all credit repair organizations and all services provided by them. Additionally, regulators should recognize that making statements of past results for customers for advertising purposes does not constitute an explicit promise of a result as defined by the TSR. As previously stated, reputable CROs do not promise explicit results. Due to each client's unique credit circumstances, it is impossible to extrapolate average past results to an individual experience with credit repair. Acknowledging these realities, CROA-compliant CROs clearly market their services as performing a set amount of work to ensure that the client's credit report is fair, accurate, and substantiated.

Thus, the AACCP encourages the CFPB to only apply the TSR's six-month advance fee prohibition in enforcement actions in a manner that comports with the rule's language, history and intent: targeting companies that make explicit promises of results and fail to deliver on those results. This requires a case-by-case determination in which the CFPB must evaluate the specific promises made to the consumer in marketing materials and written contracts. If advertising and business practices do not to meet this threshold, then the billing practices for the CRO should be held to CROA's advance fee standard.

Conclusion

The AACCP greatly appreciates the opportunity to provide comments in response to the RFI to assist the Taskforce in their mission to develop recommendations on harmonizing, modernizing, and updating the federal consumer financial laws. We look forward to working with the Bureau to bring clarity to the dueling mandates of the Credit Repair Organizations Act and CFPB's novel interpretation and aggressive

application of the TSR AFP and establish a consistent federal regulatory approach reflecting the value and services provided by modern CROs.

The AACCP is happy to answer any questions and provide additional information to the Taskforce.

Sincerely,

Eric M. Kamerath
Counsel
The American Associations of Consumer Credit Professionals