CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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VICE PRESIDENT

Redacted

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Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Request for Information to Assist the Taskforce on Federal Consumer Financial Law

To Whom it May Concern:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the request for information issued by the Consumer Financial Protection Bureau's ("Bureau") Taskforce on Federal Consumer Financial Law ("Taskforce").

The independent Taskforce has the important responsibility to develop "recommendations on harmonizing, modernizing, and updating the Federal consumer financial laws, as well as identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations or guidance."[1] We welcome the Taskforce's solicitation of input from stakeholders as it undertakes this responsibility.

We write to emphasize four points that we would ask the Taskforce to consider as it formulates its recommendations to the Bureau:[2]

[1] *See* Request for Information to Assist Taskforce on Federal Consumer Financial Law, 85 Fed. Reg. 18214, 18214 (Apr. 1, 2020).
[2] For a fuller set of recommendations, please see the comments we submitted in response to the Bureau's 2018 requests for information. *See, e.g.*, Letter from Tom Quaadman to Thomas Devlin and Kristin McPartland re. Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, Docket No. 2018-CFPB-0012 (June 25, 2018); Letter from Tom Quaadman to Thomas Devlin and Kristin McPartland re. Request for

- The Bureau should update rules to reflect current technologies and market practices.

- The Bureau should reduce regulatory uncertainty.

- The Bureau should ensure that regulatory regimes align with statutory objectives.

- The Bureau should make appropriate legislative recommendations where it cannot accomplish its statutory objectives through regulation or guidance.

Analysis

1. The Bureau should update rules to reflect current technologies and market practices.

Many of the regulations administered by the Bureau have been in place for years or even decades. These regulations now often reflect outdated assumptions about the technologies consumers will use, as well as industry practices. Digital interactions are now the standard. We encourage the Taskforce to recommend that the Bureau modernize its regulations in a way that encourages safe use of modern technologies. In particular, the Bureau should support the use of the technologies that consumers prefer, instead of forcing them to interact with consumer financial services companies through in-person or paper-based transactions. To that end, the Taskforce should urge the Bureau to:

- *Establish a consistent, principles-based approach to electronic disclosures:* Across regulatory contexts, the current approach to disclosures was implemented at a time when paper was the primary means of delivering information to consumers. As technology has changed, even the positive steps toward disclosure modernization embodied in current regulations have become dated. In order to encourage innovation and enable companies to service consumers as technology and consumer preferences evolve, the Bureau should move to a consistent and principles-based approach to disclosures across regulatory contexts. Under that approach, general disclosure requirements should be framed as principles wherever possible under statute, with examples provided that allow companies to receive the

Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, Docket No. 2018-CFPB-0011 (June 19, 2018).

benefits of safe harbors that can evolve as market and technological circumstances change. Likewise, disclosure form and format requirements should be stated as principles to the extent possible, leaving companies flexibility to implement those requirements appropriately across different display technologies and methodologies—with a particular emphasis on allowing disclosures in electronic format, rather than in writing.

- *Provide practical guidance*: The Bureau should support ever-increasing digital engagement by providing practical guidance to companies. For example, the Bureau should develop model digital forms or guidance to companies that demonstrate or explain how they engage effectively and safely with consumers in digital contexts.

- *Stop the E-Sign Act from frustrating consumer preferences to communicate electronically with financial services companies*: The requirements of the E-SIGN Act should not prevent consumers from communicating electronically with financial services companies when they would prefer to do so. Instead, the Bureau should enable customers to use their preferred channels to communicate safely and effectively with financial services companies. For example, in the context of Regulation E – the rule implementing the Electronic Funds Transfer Act – the Bureau should not require the 10-day notice of varying preauthorized electronic funds transfers to be in writing (thus permitting electronic delivery).[3]

- *Eliminate or amend requirements that are unworkable in digital contexts.* The Bureau also should go beyond guidance and make appropriate regulatory changes where requirements are unworkable in digital contexts. For example, the Bureau should revisit formatting and font size requirements that are simply unworkable when a consumer chooses to access an application, solicitation, or periodic statement on their phone.[4]

- *Eliminate or amend requirements tied to obsolete technologies*. The Bureau should also make appropriate changes to regulations that favor delivery channels and technologies no longer used by consumers or overtaken by superior technology. For example, Regulation Z permits banks to charge previously undisclosed balance transfer fees without being

[3] *See generally* 12 C.F.R. § 1005.10(d)(1).
[4] *See, e.g.*, Official Interpretation to 12 C.F.R. § 1026.5(a)(1).

subject to a change-in-terms waiting period only if they provide disclosures on a paper access check.[5] A preference for increasingly obsolete checks no longer makes sense in a world where consumers are likely to use online or mobile apps and frequently receive disclosures through those channels. The Bureau should amend Regulation Z to permit any clear and conspicuous disclosure of previously undisclosed balance transfer fees, either on an access check, electronically, or otherwise.

- *Allow appropriate use of alternative data in determining credit worthiness.* The Bureau has previously studied opportunities to serve "credit invisibles" whose access to credit is limited by their lack of credit history. Use of alternative data such as rental payments, utility and telecom payments to determine credit worthiness will expand access to credit and bolster financial inclusion efforts. The Bureau consequently should allow the appropriate use of alternative data in determining credit worthiness.

2. The Bureau should reduce regulatory uncertainty.

Robust competition on a level playing field ensures that consumers can access the innovative products they want at appropriate prices. Competition thrives when companies can chart a clear path forward, but is stifled when they are faced with uncertain rules-of-the-road. Regulatory uncertainty creates confusion in the marketplace, and consumers ultimately lose out because responsible, compliance-minded companies hesitate to invest in new products and services when they are unsure of the potential legal ramifications. We ask the Taskforce to urge the Bureau to continue to work to eliminate regulatory uncertainty in the rules implementing the federal consumer financial laws.

a. Clarify regulatory definitions where possible.

Clear regulatory definitions and expectations are critical for compliance with regulatory requirements. Lack of clarity in definitions can create foundational problems for companies as they work to achieve compliance and invest in growth and business opportunities. Similarly, inconsistent definitions of the same terms across different regulations can cause unnecessary confusion and compliance challenges. This is particularly true with respect to threshold definitional terms that set the scope of various consumer finance laws and regulations.

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[5] *See* 12 C.F.R. § 1026.9(c)(2), Comment 4.

The term "application," for example, is defined differently across multiple regulations. Regulation B and Regulation C define "application" in a generally consistent manner, as reflected in the Official Interpretation to Regulation C, although each definition uses different language.[6] However, Regulation Z and Regulation X contain a different definition of the term "application" that contemplates a significantly narrower scope.[7] Likewise, various regulatory frameworks use different definitions of "days," "business days," and "calendar days" that differ in how they count weekdays, weekend days, and holidays. This creates unnecessary confusion about regulatory timelines.

Such inconsistencies create confusion at institutions that are simply trying to meet regulatory expectations and complete successful examinations. Accordingly, the Bureau should undertake a holistic, cross-regulation review of the use of common terms such as "application" and common concepts such as the manner of counting days for purposes of regulatory timelines in order to determine if there are ways to bring greater definitional harmony across regulations. Bringing greater consistency across common definitions would ultimately benefit consumers by facilitating compliance with applicable regulations.

b. Encourage service of customers with limited English proficiency.

Financial services companies work hard to serve every consumer based on his or her unique circumstances, including whether that includes financial or language needs. Varying regulatory regimes create confusion for companies in these circumstances, however. A company can engage with the customer in their preferred language and be subjected to increased regulatory risk and obligations if the translation is not perfect or certain products or services are not offered in a specific language. Current law might even lead companies to refrain from serving the customer entirely for fear of not being able to serve the customer throughout the entire life of the product or service. These concerns are the end result of regulatory uncertainty causing risk from fair lending and unfair, deceptive, and abusive acts and practices ("UDAAP")—all when institutions are simply trying to serve their customers the best way they can. Regulatory regimes should not put consumer financial services companies in this false choice, which inevitably would discourage them from attempting to support foreign languages in many circumstances.

We share the Bureau's interest in protecting all consumers, regardless of their language of choice. To that end, we believe that the Bureau should provide additional

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[6] 12 C.F.R. § 202.2(f); 12 C.F.R. § 1003.2(b); Official Interpretation to 12 C.F.R. § 1003.2(b).
[7] *See* 12 C.F.R. § 1024.2(b); 12 C.F.R. § 1026.2(a)(3).

guidance on these topics in order to allow companies to serve their customers without unnecessary confusion over rules governing engagement with consumers with limited English proficiency. Likewise, we believe that the Bureau should provide more leadership on the development of approved translations of required disclosures or model forms. We believe that this is a very important and appropriate role for the Bureau to fill as it would both benefit consumers and allow for far greater efficiency than requiring countless different companies to undertake the same translations.

3. The Bureau should ensure that regulatory regimes align with statutory objectives.

The Bureau has been given broad statutory authorities in order to accomplish its sweeping mission. There remain, however, a number of areas in which governing regulatory regimes (often inherited by the Bureau) can more effectively accomplish the underlying statutory objectives. We urge the Taskforce to recommend that the Bureau undertake appropriate rulemakings to close these gaps.

a. Regulation B (Equal Credit Opportunity Act)

i. Clarify rules governing adverse actions.

Regulation B's adverse action requirements are intended to help consumers understand the factors upon which credit decisions are based. However, as currently crafted, some of these requirements burden creditors without providing any consumer benefit or, at worst, prevent consumers from understanding the reason behind credit denials. The Bureau should reconsider these requirements.

For example, the Bureau should reconsider how Regulation B's requirements relating to adverse action notices interact with prohibitions on sharing credit scores, since they are out of step with contemporary realities:

- Regulation B requires creditors to provide at least one adverse action notice, which must be delivered to a primary applicant if one is readily apparent.[8] While many lenders provide adverse action notices to all co-applicants, only the co-applicant whose credit score led to the denial may receive that score in his or her adverse action notice. This imposes hefty compliance costs on creditors without any countervailing benefit

[8] 12 C.F.R. § 1002.9(f).

to consumers, who already are likely to know each other's credit information.

- Many lenders utilize online portals that allow all applicants access to all documents associated with a loan application. In these instances, applicants have access to other co-applicants' credit information. As a result, the prohibition on providing the credit score of a co-applicant to another co-applicant does not actually prevent applicants from assessing the true cause for an application's denial.

The Bureau also should reconsider other unworkable requirements within Regulation B related to adverse action notices:

- Under Regulation B, creditors effectively may only list four reasons for the denial of an applicant's application for credit on the theory that listing more "is not likely to be helpful to the applicant."[9] However, many lenders use a broader range of factors to determine whether to grant an applicant's request for credit. Such underwriting analyses often allow for increased access to credit because they determine underserved portions of the consumer market to be creditworthy. However, they also often base credit decisions on a wide variety of factors such that it is often difficult to determine the four primary reasons for an ineligible applicant's denial. In these cases, disclosing more than four reasons for the adverse action would help the consumer better understand why they were denied credit.

- Creditors often struggle to determine when exceptions do not require providing an adverse action notice. For example, no such notice is required if a creditor refuses to extend credit because doing so would be prohibited by applicable law.[10] The term "applicable law" is not defined in Regulation B, however. Therefore, creditors often do not know whether a particular denial of consumer credit is exempt from adverse action notice requirements under this exemption. The Bureau thus should review the exemptions within Regulation B and provide industry participants with additional clarity regarding when such exemptions apply.

[9] Official Interpretation to 12 C.F.R. § 1002.9(b)(2).
[10] 12 C.F.R. § 1002.2(c)(2)(iv).

Finally, Regulation B imposes certain unnecessary requirements that largely duplicate requirements in Regulation X. Regulation B requires, for example, that lenders make free copies of all appraisals and other written valuations developed in connection with applicable credit applications.[11] These generally include loss mitigation applications. Regulation X requires creditors or their servicers to provide consumers who have applied for and been denied loss mitigation with a decision letter indicating the reasons for such denial.[12] These reasons would alert consumers as to whether the value of the property was a factor in the loss mitigation denial.

Regulation B also requires creditors to provide an adverse action notice where a borrower's application for loss mitigation is denied.[13] However, under Regulation X, creditors or their servicers are already required to provide a variety of notices to borrowers regarding loss mitigation applications that effectively contain much of the information required within an adverse action notice.[14] The Bureau should review and eliminate, where appropriate, duplicative requirements that provide no incremental benefit to consumers.

ii. Clarify "discouragement" under Regulation B.

Regulation B prohibits a creditor from making a statement to an applicant or prospective applicant that would discourage, on a prohibited basis, a reasonable person from making an application.[15] Industry participants have been given very limited insight into what type of advertising statements the Bureau considers to be discouragement. This lack of clarity results in lenders making educated guesses about whether, in the Bureau's mind, such marketing plans would discourage consumers from applying for loans in violation of Regulation B. The Bureau should provide additional clarity here so that companies can more readily comply with these legal requirements.

b. Regulation E (Electronic Funds Transfer Act)

The Bureau should make the following changes to Regulation E to promote regulatory clarity and efficiency in the electronic funds transfer context:

- Limit the liability of financial institutions for unauthorized electronic fund transfers that are listed on a consumer's periodic statement but

[11] *See* 12 C.F.R. § 1002.14.
[12] 12 C.F.R. § 1024.41(d).
[13] *See* 12 C.F.R. § 1002.2(c).
[14] 12 C.F.R. § 1024.41(c), (d).
[15] 12 C.F.R. § 1002.4(b).

are not reported by the consumer within 60 days of the statement date. Currently, Regulation E contemplates that banks remain liable for such unauthorized transfers regardless of when the consumer ultimately reports them.[16] But it is practically difficult for financial institutions to evaluate claims of unauthorized charges years after they allegedly occurred. Consumers instead should have responsibility for reporting unauthorized transfers within a reasonable time period.

- Facilitate compliance by providing further clarity regarding the scope of Regulation E's service provider rule, including whether and, if so, how it apples to online retailer user accounts and digital wallets.[17]

- Allow financial institutions to use statement and notice templates provided by the National Automated Clearing House Association. This would facilitate compliance by allowing financial institutions to leverage documentation they already use, while having no negative impact on consumers.

c. Regulation Z (Truth in Lending Act)

As we previously discussed, the Bureau must focus on providing clear and workable rules of the road. The need for such reform is particularly acute with respect to Regulation Z, which is unnecessarily opaque or impractical in various respects. We urge the Bureau to improve Regulation Z by addressing the following issues:

- Discounts offered to induce payments for a purchase are not considered finance charges under Regulation Z. However, the regulation and its commentary do not provide clarity regarding how to calculate such discounts.[18]

- Regulation Z requires that a creditor's penalty fees be either (1) reasonable in proportion to the costs incurred by the issuer due to the consumer's violation or (2) not exceed certain amounts spelled out in a safe harbor provision.[19] These safe harbor amounts are adjusted based on the consumer price index in effect on June 1st of each year.[20] This

[16] 12 C.F.R. § 1002.5.6(b)(3).
[17] *See* 12 C.F.R. § 1005.14
[18] 12 C.F.R. § 1026.4(c)(8).
[19] 12 C.F.R. § 1026.52(b)(1).
[20] Official Interpretation to 12 C.F.R. § 1026.52(b).

requires the Bureau to manually update the safe harbor thresholds. As a result, industry participants have to wait before increasing penalty fees to levels that reflect inflation in consumer prices. The Bureau could mitigate this delay by tying a static safe harbor rate to increases and decreases in a specific consumer price index and allowing industry participants to track those increases on their own.

- Regulation Z's penalty rate provisions effectively require entities to wait 105 days before imposing a penalty rate on consumers who are 60 days delinquent. It does so by requiring those entities to provide delinquent consumers with a notice regarding the imposition of a penalty rate 45 days prior to imposing that penalty rate.[21] The additional 45 days that entities have to wait before charging such a rate poses an unnecessary delay, as consumers are already provided information regarding penalty rates in the product agreements. The Bureau should amend Regulation Z to recognize that such inclusion of information regarding the imposition of a penalty rate and related cure rights within account statements is adequate for regulatory purposes.

- Regulation Z requires credit card issuers to submit currently active credit card agreements to the Bureau's website.[22] However, links to the issuer's website are not generally included as a part of this submission. It would be more efficient for the Bureau to allow issuers to post such links, as doing so would direct customers who navigate to the Bureau's website with an interest in particular card products to visit an issuer's website once they have found a card agreement that appears appropriate.

- Like Regulation E, there is currently no applicable time limit under Regulation Z within which a cardholder must assert an unauthorized charge dispute.[23] The Bureau should review this rule and impose a reasonable limitation on the period in which a cardholder can dispute an unauthorized charge.

- Regulation Z currently—and appropriately—excuses companies from sending further periodic statements to consumers after one such statement is returned as undeliverable.[24] However, similar exemptions are not found for other Regulation Z disclosures and notices. The

[21] 12 C.F.R. § 1026.9(g).
[22] 12 C.F.R. § 1026.58.
[23] *See* 12 C.F.R. § 1026.12(b).
[24] Official Interpretation to 12 C.F.R. § 1026.5(b)(2)(i).

Bureau should undertake a review of this exemption and other similar exemptions and develop standards that promote regulatory consistency.

- Regulation Z currently prevents lenders from increasing fees beyond 25% of the initial credit limit in effect when an account is opened during an account's first year of existence.[25] This provides minimal flexibility to customers who wish to switch from one product offered by a lender to another. For instance, customers may seek to keep their current account but transfer to a product that comes with both higher rewards and higher fees. The Bureau should create an exemption for such consumer-driven product trades that provides consumers with more flexibility to choose the products they want. For similar reasons, the Bureau should provide an exception to the 45-day change-in-terms waiting period for account combinations or upgrades where the consumer specifically requests the change and the new fees are clearly disclosed to the consumer.[26]

d. Regulation V (Fair Credit Reporting Act)

Regulation V contains a number of model notices and forms, including short and long form notices for firm offers of credit or insurance. Even though they substantially overlap,[27] industry participants are still sometimes required to provide consumers with both short and long form versions. This is unnecessary, as a long form disclosure alone would provide consumers with adequate information. Accordingly, the Bureau should revise disclosure requirements to eliminate this and other similar redundancies in inherited regulations.

There also are opportunities to clarify Regulation V. For example, industry participants often struggle to identify whether they have a permissible purpose to obtain a consumer's credit report given the broad language of the Fair Credit Reporting Act ("FCRA").[28] Providing greater regulatory clarity in this area would help industry participants understand, for example, whether they can obtain credit reports from consumer reporting agencies for the purpose of providing consumers with innovative products and services. Further regulatory clarity thus would enhance consumers' access to credit while ensuring that lenders remain in compliance.

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[25] *See* 12 C.F.R. § 1026.52.
[26] *See* 12 C.F.R. § 1026.9(c).
[27] *See* 12 C.F.R. § 1022, App. D.
[28] *See* 15 U.S.C. § 1681b

Regulation V also can be made more workable. For example, furnishers of information to consumer reporting agencies generally must conduct a reasonable investigation of a consumer's direct dispute of furnished information.[29] While there are various exceptions to this requirement,[30] they do not explicitly exempt entities from having to provide consumers with a notice of determination within five business days of determining that a dispute is frivolous or irrelevant.[31] Companies should not have to meet this stringent five business day requirement in such cases, but should be authorized to treat them as consumer complaints or customer service inquiries.

Finally, the Bureau should conduct an independent analysis of the accuracy of credit reports. The Bureau has looked at this issue previously and, given the dated nature of prior studies by other agencies and the advances in the industry, undertaking an analysis of this important question would be a valuable next step.

e. Regulation P (Gramm-Leach-Bliley Act)

Businesses would benefit from further clarity about Regulation P's requirements. For instance, Regulation P prevents entities from sharing a consumer's account number for marketing purposes but does not provide detail on what types of activities constitute marketing.[32] Furthermore, Regulation P exempts private label credit card programs from notice and opt-out requirements for processing and servicing transactions, but does not clarify whether co-branded credit cards are considered to be included in this exemption.[33] Such a lack of regulatory clarity makes regulatory compliance unduly difficult. The Bureau thus should review Regulation P and provide further clarity to facilitate compliance.

f. Regulation X (Real Estate Settlement Procedures Act)

The Bureau is well aware of industry concerns about its prior approach to the Real Estate Settlement Procedures Act ("RESPA") and its implementing regulation. As is now well-known, the Bureau reversed the Department of Housing and Urban Development's ("HUD") previous regulatory interpretation of captive reinsurance arrangements permitted under Section 8(c)(2) of RESPA. The U.S. Court of Appeals for the D.C. Circuit ultimately rejected the Bureau's interpretation and action overturning a long-standing HUD precedent. The Court not only concluded that the

[29] 12 C.F.R. § 1022.43(a).
[30] 12 C.F.R. § 1022.43(b).
[31] *See* 12 C.F.R. § 1022.43(f)(2).
[32] *See* 12 C.F.R. § 1016.12(a).
[33] 12 C.F.R. § 1016.14(a)(2).

Bureau's interpretation of RESPA was incorrect but that,[34] even if it were not, the Bureau "violated due process by retroactively applying that new interpretation to . . . conduct that occurred before the date of the CFPB's new interpretation."[35]

The Bureau should work with stakeholders to rebuild confidence in its approach to RESPA and its implementing rule, Regulation X. For example, the Bureau should consider taking steps to clarify how companies can achieve compliance with respect to:

- Relationships with marketers, builders, and other service providers (e.g. relocation vendors);
- Establishing the market value of services rendered and/or treat products or services that are provided at no additional consumer expense (or even reduce consumer expense);
- Clarifying that partnering with third-party integration services does not constitute a "thing of value" under Section 8 of RESPA.

g. Revise unworkable oral disclosures.

The greater the number of overlapping disclosures that a consumer must be provided, the more likely the consumer is to be confused, lose interest, or become frustrated at having their time wasted. Here we highlight one regulation with such unnecessary disclosure requirements – the Prepaid Rule – but believe that the Bureau should look more broadly for opportunities to eliminate duplicative or inconsistent regulatory requirements.

The Prepaid Rule imposes oral and written disclosure requirements based on the circumstances in which the card is acquired. In particular, the Bureau requires businesses to provide the short-form and the extensive long-form disclosures orally in some cases.[36] This approach is unworkable. Whatever slight benefits there may be for some consumers are greatly outweighed by the enormous costs that would be imposed on businesses, combined with the frustration that consumers would endure in having to listen to oral disclosures for upwards of seven to ten minutes at a time.

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[34] *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 43 (D.C. Cir. 2016), *reh'g en banc granted, order vacated* (Feb. 16, 2017), *on reh'g en banc*, 881 F.3d 75 (D.C. Cir. 2018). The cited portions of the panel decision were undisturbed by the subsequent opinion of the en banc Court. *See* 881 F.3d at 83 ("The panel opinion, insofar as it related to the interpretation of RESPA and its application to PHH and Atrium in this case, is accordingly reinstated as the decision of the three-judge panel on those questions.").

[35] *PHH Corp.*, 839 F.3d at 44.

[36] *See generally* 12 C.F.R. § 1005.18(b) (6)(i)(C).

The Bureau consequently should revisit its approach to oral disclosures for prepaid cards and build a new approach around more limited oral disclosures in conjunction with electronic disclosures.

4. The Bureau should make appropriate legislative recommendations where it cannot accomplish its statutory objectives through regulation or guidance.

As reflected above, we believe that the Bureau can make significant improvements to its implementation of the federal consumer financial laws through regulations or guidance. The Bureau also should make appropriate legislative recommendations, however, to the extent that it cannot accomplish its goals through those tools. This includes making legislative recommendations in circumstances in which companies are exposed to undue litigation risk.

For example, we would urge the Taskforce to recommend that the Bureau support a cap on class action damages under FCRA. While other federal consumer protection statutes impose such caps, FCRA imposes none, including when the consumer suffers no injury. This encourages frivolous litigation without remediating any underlying harm, imposing costs on businesses that make it harder to serve consumers. For many businesses, the risk of uncapped liability effectively forces them into settling even the most speculative claims. These lawsuits leave businesses with fewer resources to invest in jobs and growth, ultimately leading to higher costs for consumers. The Bureau cannot address this issue by rule, however, so should support a cap on class action damages in the FCRA context.

Likewise, the Bureau should support legislative amendment of the E-Sign Act to eliminate the required disclosure of hardware and software requirements needed to access and retain the electronic records. While this requirement may have been useful years ago, it is no longer helpful given the variety of platforms that suffice. The Bureau thus should encourage Congress to modernize the E-Sign Act – which was adopted 20 years ago when only 10 percent of consumers accessed financial information electronically – by providing flexibility for reasonably demonstrating the ability to access disclosures electronically and obtaining consumer consent orally.

The Bureau also should study additional areas that are possible candidates for regulatory or statutory clarification. For example, the Bureau should consider whether Congress should update or otherwise change the Credit Repair Organization Act ("CROA), and if and how it should use the CROA, or other statutory tools, against credit repair organizations that injure consumers. Likewise, the Bureau should consider whether congressional action is necessary to clarify the enforcement authorities of the Bureau and the Federal Trade Commission over data security, or whether a memorandum of understanding or other tool would more effectively clarify the respective roles of the agencies in this field.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

Julie Stitzel