



April 15, 2020

Consumer Financial Protection Bureau
Federal Trade Commission

Attention: Derek Standarowski
 Susan Stocks
 Jonah Kaplan
 Pavneet Singh
 Tiffany George
 Amanda Koulousias

RE: Consumer Reporting Agency COVID-19 Concerns and Request for Emergency Interim Final Rule and Guidance

Dear CFPB and FTC Teams:

Thank you again for your consideration of PBSA member concerns in light of COVID-19. As we discussed, PBSA members are particularly concerned with the dispute procedure as defined in 15 U.S.C. § 1681i, which requires that a consumer reporting agency reinvestigate disputed items within 30 days (with a limited extension if follow up information is received from a consumer).

As described in our March 23, 2020 letter, due to the unavailability of information sources including and particularly courts, consumer reporting agencies are, in many instances, unable to go to the source of disputed information to conduct a complete reinvestigation in the statutorily required 30-day period. Because of this inability to reinvestigate pending disputes, and the negative impact that inaccuracies caused by the omission of relevant public records may cause, it is our belief that an emergency interim final rule is the only viable option to address this issue and facilitate compliance with statutory requirements.

The CFPB has the authority under the Fair Credit Reporting Act. ("FCRA"), specifically, 15 U.S.C. § 1681s(e) to "prescribe regulations as may be necessary or appropriate to administer and carry out the

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purposes and objectives” of the FCRA. One of those objectives is to ensure the accuracy of consumer reports. 15 U.S.C. § 602(a). Section 553(b)(3)(B) of the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)) authorizes a department or agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for “good cause,” finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. We believe that an emergency rule to address the unprecedented impact that COVID-19 has had on the dispute process is in the public interest.

To that end, we have prepared draft rule language for your consideration, which is designed to provide narrowly-focused relief for the unique impact that the unavailability of public records has on the dispute process and the effect on the FCRA’s prohibition against reinsertion. Under 15 U.S.C. § 1681i(a)(1)(A), a reinvestigation must be completed within 30 days of the consumer reporting agency receiving the dispute. If an item cannot be verified within the 30-day time period, the consumer reporting agency must promptly delete the item of information from the consumer’s file. The FCRA prohibits reinsertion of any information removed due to an incomplete reinvestigation in the consumer’s file *or in consumer reports on that consumer*, and the FCRA is silent on the process for reinsertion of information other than that which is supplied by a furnisher. The operation of these provisions could operate to exclude accurate, relevant information from future consumer reports simply because a consumer reporting agency was unable to access necessary court records.

The draft language addresses the requirements of the FCRA and current unavailability of certain public record items by providing for a narrow suspension of the reinvestigation period for those items of information that reasonably cannot be investigated due to the unavailability of public records through deferral of the commencement of the 30-day time period until such time as the relevant public record is available. The draft language is intended to provide necessary additional time for compliance with the FCRA. It is not in any way intended to excuse any consumer reporting agency from failure to comply with the FCRA. Further, the draft language sets out obligations for consumer reporting agencies to communicate with consumers and users about the delay of the reinvestigation period, and to provide relevant dispute information to any user that procured the report within the 60 days prior to the consumer initiating the dispute.

We note that in response to the ongoing national emergency resulting from the COVID-19 pandemic, the CFPB recently exercised its authority to issue an emergency rule without prior public comment to address unforeseen circumstances that have resulted from the pandemic. Specifically, the CFPB issued an interpretive rule to allow consumers to receive government payments authorized by the CARES Act through prepaid accounts. Other federal agencies have exercised similar authority in response to the changing needs of consumers and businesses as the COVID-19 situation has evolved. *See The Department of Health and Human Services (“HHS”)* (provides services to Medicare beneficiaries needed flexibilities to respond effectively to the serious public health threats posed by the spread of Coronavirus (COVID-19) available at <https://www.cms.gov/files/document/covid-final-ifc.pdf>); *The Small Business Administration (“SBA”)* (announces the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) available at <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>); *The Office of the Comptroller of the Currency (the “OCC”)*, *the Board of Governors of the Federal Reserve System (the “FRB”)*, and *the Federal Deposit Insurance Corporation (the “FDIC”)* (provides a five-year transition period for the impact of the current expected credit loss methodology (CECL) on regulatory capital and the temporary CECL relief provided by the Coronavirus Aid, Relief, and Economic Security Act available at <https://www.fdic.gov/news/news/financial/2020/fil20032.html>); *The Department of Labor*

("DOL")(revises how American workers and employers will benefit from the protections and relief offered by the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, both part of the Families First Coronavirus Response Act (FFCRA) available at <https://www.dol.gov/agencies/whd/ffcra>).

We appreciate the CFPB's policy statement issued on April 1, 2010 ("Policy Statement"), which recognizes the operational challenges for consumer reporting agencies, including their ability to comply with statutory and regulatory consumer reporting obligations. Although the Policy Statement provides that the CFPB will offer a flexible approach to supervision and enforcement regarding compliance with the FCRA and Regulation V, more intervention is needed. First, the Policy Statement is a non-binding general statement meaning that the Policy Statement does not foreclose the possibility of enforcement actions against consumer reporting agencies. Additionally, the Policy Statement in no way limits private rights of actions against consumer reporting agencies. An interim final rule, as we have proposed, is needed to ensure that consumer reporting agencies can perform complete reinvestigations and reinsert accurate, relevant information once public record sources are available without facing enforcement or litigation risk for circumstances beyond their control.

Thank you for your time. We welcome the opportunity to discuss the enclosed draft rule language.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa L. Sorenson', written in a cursive style.

Melissa L. Sorenson
PBSA Executive Director

EMERGENCY SUSPENSION OF REINVESTIGATION OF PUBLIC RECORD ITEMS

(a) *Purpose.* The purpose of this part is to suspend the time for reinvestigation of certain public records that are unavailable due to limited, restricted, or prohibited public access to or the closure of public record information sources, such as courts and other public agencies, for indefinite periods of time related to the coronavirus disease 2019 (COVID-19) pandemic.

(b) *Coverage.* This part applies to any consumer reporting agency in receipt of a dispute of completeness or accuracy (as provided in 15 U.S.C. § 1681i) that cannot reasonably conduct the required reinvestigation due to unavailable public records, as defined herein.

(c) *Unavailable Public Records.*

For the purpose of this part, a public record is deemed “unavailable” when:

1. A courthouse or other public facility is closed or has limited, restricted, or prohibited public access that materially affects the ability of a consumer reporting agency to access public records from such courts or other public agency; and
2. The information necessary to conduct a reinvestigation of a dispute regarding a public record cannot be located by a diligent search of public record access available online, through other remote database access, or by phone.

(d) *Delay of Reinvestigation Period.* If a consumer notifies a consumer reporting agency of a dispute of completeness or accuracy (as provided in 15 U.S.C. § 1681i) and the consumer reporting agency reasonably determines that it cannot conduct a reinvestigation because public records relevant to the reinvestigation are unavailable, the consumer reporting agency shall not be deemed to have received the dispute for purposes of the 30-day period in 15 U.S.C. § 1681i(a)(1)(A) during the time such public records are unavailable. Instead, for the purposes of the 30-day period in 15 U.S.C. § 1681i(a)(1)(A), the consumer reporting agency shall be deemed to have received such dispute on the date the relevant public records are no longer unavailable. For purposes of the 15-day extension provided by 15 U.S.C. § 1681i(a)(1)(B), such extension shall be triggered if the consumer reporting agency receives additional information from the consumer at any time prior to the end the 30-day period after the consumer reporting agency’s deemed receipt of the dispute pursuant to the foregoing sentence.

(e) *Consumer Reporting Agency Obligations Regarding Delay of Reinvestigation Period.*

(i) Notification to consumers: A consumer reporting agency who determines under subsection (d) that it cannot conduct a reinvestigation due to an unavailable public record shall provide written or electronic disclosure to the consumer of the delay of the reinvestigation period and the reasons therefor within five (5) days of such determination, but in any event, no later than five (5) business days after the expiration of the deadline for completion of the reinvestigation that would apply under 15 U.S.C. § 1681i(a)(1)(A) (and 15 U.S.C. § 1681i(a)(1)(B), if applicable) but for the operation of paragraph (d) above.

(ii) Notification to users: A consumer reporting agency who determines under subsection (d) that it cannot conduct a reinvestigation due to unavailable relevant public record information shall provide notice in writing or electronically to any person who received a consumer report within sixty days prior to the notice of the dispute of the fact of the dispute and the delay in the reinvestigation period, and, at the consumer's request, shall forward to such person all relevant information regarding the dispute that is received by the agency from the consumer. Such notice shall be provided on or before the deadline for providing notice to the consumer under paragraph (e)(i) above, and, if requested by the consumer, relevant dispute information shall be forwarded as soon as practicable following the request.