



The State of South Carolina
Department of Consumer Affairs

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May 19, 2017

Monica Jackson
 Office of the Executive Secretary
 Bureau of Consumer Financial Protection
 1700 G Street
 Washington, DC 20552

RE: Docket No. CFPB-2017-0005

Dear Ms. Jackson:

The South Carolina Department of Consumer Affairs (“SCDCA”) is pleased to offer comments in response to the Consumer Financial Protection Bureau’s (“CFPB”/“Bureau”) Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process. SCDCA is the state’s consumer protection agency. Established in 1974, SCDCA is the administrator and enforcer of Title 37 of the South Carolina Code of Laws, the law governing consumer credit transactions. SCDCA helps formulate and modify consumer laws, policies, and regulations; resolves complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers.

In 2012, the South Carolina General Assembly funded the Identity Theft Unit (“Unit”), SCDCA’s newest division. The Unit focuses on assisting victims of identity theft, persons affected by security breaches, as well as consumer education related to credit reports. Additionally, the Unit handles consumer complaints pertaining to credit reports filed against credit reporting agencies, creditors, debt collection agencies, and other furnishers of information. The following comments are based upon SCDCA’s research and experience as a regulator, responding to consumer inquiries and processing consumer complaints.

I. General Alternative Data Discussion

A credit profile, or lack thereof, impacts nearly every consumer seeking a loan or credit product in the marketplace, affecting not only a consumer’s ability to purchase items such as a home or vehicle, but also the interest rates consumers will pay for such products. It can also affect a consumer seeking employment, rental housing, or utilities. Because credit scoring has such an impact in the marketplace, the information used to “score” consumers should be accurate,

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transparent, and relevant to predicting creditworthiness. For purposes of these comments, alternative data in determining creditworthiness will be discussed at the subset level, distinguishing between credit-like alternative data and big data.

Credit-like alternative data includes products which are similar to traditional credit or loan products, in that they involve an advancement, typically services, in exchange for recurring payments. Utility payments and cell phone payments are excellent examples of credit-like alternative data. The use of credit-like alternative data could allow certain consumers the opportunity to obtain credit from traditional banks and lenders rather than high-cost or fringe lenders. This is especially important in South Carolina, as generally, loans for more than \$600.00 have no interest rate cap.¹ Thus, consumers who turn to high-cost or fringe lenders often find themselves paying interest rates exceeding the principal amount of the loan. For example, in 2016, the most frequently filed maximum rate schedule for supervised lenders² was between 50% and 99.99%, with interest rates ranging overall from 15.99% to 600%.³ SCDCA supports the use of credit-like alternative data because (1) it would largely help consumers who are considered “credit-thin” or “credit invisible,” and (2) the use of such data would operate largely in the same manner as traditional credit history information. We still, however, have some concerns needing to be addressed prior to wide scale introduction of this data into credit reports.

Big data is entirely different from credit-like alternative data in that it can involve complex, algorithmic-based models used to capture thousands of data points about a consumer, both related and unrelated to credit or payment history. Such data can include information on a consumer’s social media accounts, their zip codes, and the amount of time spent on a website. SCDCA believes the use of big data in credit scoring bears far riskier implications than credit-like alternative data, with the potential to create new issues for consumers. Such concerns, and those stemming from the potential use of credit-like alternative data, are summarized herein.

II. Concerns for Use of Alternative Data

A. Consumer Interaction & Expectations

Consumers generally understand the basics of credit scoring.⁴ While the specifics of building credit are not as well understood, consumers overwhelmingly acknowledge that missed

¹ Creditors charging more than 18% must first file that rate with SCDCA and post it in its place of business. *S.C. Code Ann.* § 37-2-201(2) (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>; § 37-3-201(2) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>. If a lender fails to file and post a rate exceeding 18% APR when required, the company can be required to roll back the interest rate to 18% APR. *S.C. Code Ann.* § 37-3-201(6) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

² Traditional, non-depository installment lenders and title lenders are two examples of these types of lenders.

³ See SCDCA’s 2017 STATE OF CREDIT REPORT, beginning at p.8, available at <http://www.consumer.sc.gov/Pages/AgencyReports.aspx>.

⁴ See http://consumerfed.org/press_release/sixth-annual-credit-score-knowledge-survey-reveals-large-majority-know-credit-score-basics-yet-many-not-understand-important-details/.



payments, bankruptcy, and high credit card balances negatively affect their credit ratings.⁵ This understanding of negative incentives reflects consumers' understanding of strategies to improve their credit rating. As Bureau studies have shown, if the average consumer can be expected to identify missed payments as negatively affecting their rating it is logical to assume that consumers facing a difficult financial month may forego certain regular expenses or payments to at least make some, but not full, payments towards outstanding obligations to avoid larger negative credit effects.⁶ Or a consumer may adjust other spending behavior out of concern for their future credit needs. The consumer's knowledge of the traditional data uses allows their direction of resources to interact with the credit rating process in a personally beneficial way.⁷ As stated previously, SCDCA believes credit-like alternative data to be similar to data currently utilized in credit reporting, thus limiting the risk of confusion for consumers.

Alternatively, the introduction of big data can skew the relationship between knowledge and the ability to change behavior or information in a credit report. Big data is nebulous. It can range from zip code and educational histories⁸ to hundreds of data points reflecting the individual's online activities and the surrounding geographic area.⁹ This amount of data frustrates consumer education efforts and hinders transparency, limiting consumer input as to the value, validity and impact of items in their credit reports.

B. Accuracy

The Fair Credit Reporting Act (FCRA) was enacted in 1971 to regulate the activities of consumer reporting agencies (CRAs), users of those reports, and entities who furnish information to CRAs (furnishers).¹⁰ The three most important aspects of the FCRA involve accuracy, disclosure, and the right to dispute items contained in the report.¹¹ While CRAs are required to establish reasonable procedures to ensure the proper information is disseminated, accuracy has

⁵ See Consumerfed.org (Id). Of consumers surveyed 85% or greater identified these categories as having negative effects on credit scores (91%, 86%, and 85% respectively).

⁶ Consumer Financial Protection Bureau, Act Fast If You Can't Pay Your Credit Cards (2012), available at <https://pueblo.gpo.gov/CFPBpubs/CFPBpubs.php?PubID=13011>.

⁷ Id.

⁸ National Consumer Law Center, Big Data A Big Disappointment for Scoring Consumer Credit Risk, 27-28 (2014) [hereinafter NCLC BIG DATA REPORT].

⁹ Id. At 4-5; 12-15.

¹⁰ 15 U.S.C. §1681, et seq.

¹¹ The CFPB, jointly administers the FCRA with the FTC, outlines how consumers are protected in the publication, *Summary of Your Rights under the FCRA*. The 11 points are as follows, note that "you" refers to consumers: "You must be told if information in your [credit] file has been used against you." 2. "You have the right to know what is in your [credit] file." 3. "You have the right to ask for a credit score." 4. "You have the right to dispute incomplete or inaccurate information." 5. "Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information." 6. "Consumer reporting agencies may not report outdated negative information" 7. "In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old." 8. "Access to your file is limited." Must show valid need to agency. 9. "You must give your consent for reports to be provided to employers." 10. "You may limit 'prescreened' offers of credit and insurance you get based on information in your credit report." 11. "You may seek damages from violators [in State or federal court]."



long been an issue in traditional credit reporting, which includes a fairly limited set of data points.¹² The introduction of new data points, especially big-data, into assessment models would likely exacerbate this problem.

The Fair and Accurate Credit Transactions Act (FACTA) was enacted in an effort to afford greater protections from identity theft and improve the use of credit information, consumer access to that information, and the accuracy of credit data.¹³ Between 2004 and 2012, the FTC conducted a study of credit report accuracy, with a final report in 2014.¹⁴ Among other things, the study found that five percent of consumers had errors on at least one of their three major credit reports that could result in paying more for products such as auto loans and insurance.¹⁵ Translated, those numbers would amount to millions of consumers potentially paying more for such products because of errors in their credit reports.¹⁶ Recognizing the prevalence of inaccuracies in credit reports and the impact on consumers, the South Carolina Legislature passed the 2008 Financial Identity Fraud and Identity Theft Protection Act, provisions of which attempt to give consumers greater protections in disputing credit report inaccuracies than those afforded by FCRA.¹⁷

Accuracy issues for credit-like alternative data would be similar to those currently in traditional credit reports. However, the addition of big data to credit reporting presents a much broader potential for inaccuracies in credit reports. In traditional credit reporting practices, the number of variables used to determine creditworthiness of an individual are somewhat limited,¹⁸ and the addition of credit-like alternative data would slightly change the number of variables. Big data, however, would present thousands of variables for an individual consumer, generating a potentially exponential increase in the number of inaccuracies. Furthermore, if the data is harvested from dozens of sources or more, the inaccuracies, as well as the source of any inaccuracies, would be harder to detect and identify.

Between 2009 and 2016, SCDCA's own complaint data shows nearly 70% of complaints against CRAs were related to inaccuracies. Additionally, a number of enforcement actions by the Bureau highlights the fact that not only are there accuracy problems rooted in the structure of consumer reporting, but there are also a number of companies whose actions indicate specific

¹² FED TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 (Dec. 2012), *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>.

¹³ 108 P.L. 159, 117 Stat. 159 (2003).

¹⁴ FED TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 2 (2012) [hereinafter 2012 ACCURACY REPORT], *available at* <http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fifth-interim-federal-trade> (citing industry figures estimating over 200 million active files).

¹⁵ *Id.*

¹⁶ In addition to these consumers, the FTC report also found that approximately 1 in 5 consumers had errors on at least one of their credit reports.

¹⁷ S.C. Code Ann. § 37-20-110 et seq., specifically § 37-20-170 (2015), *available at* <http://www.scstatehouse.gov/code/t37c020.php>.

¹⁸ NCLC BIG DATA REPORT (2014).



problems in the practices of CRAs and data furnishers.¹⁹ Because of the issues in the existing credit reporting system, SCDCA encourages the Bureau to focus on correcting the problems and increasing consumer confidence in the existing structure before expanding the information used to encompass big data or credit-like alternative data.

C. Additional Concerns

In addition to the concerns above, SCDCA believes the following areas would be impacted by the use of alternative data, specifically big data, in determining consumer creditworthiness:

- **Lack of legal infrastructure establishing parameters for the use of big data in consumer credit:** The current legal infrastructure governing credit generally does not include a framework for the regulation of big data proprietary models used by creditors. As such, the legal framework should be updated to include parameters for the proper use of big data in the credit process;
- **Disparate or discriminatory impact:** The use of big data without proper guidelines might expand the number of factors used in determining creditworthiness to a degree that would, intentionally or unintentionally, perpetuate existing forms of discrimination or disparate impact by aggregating data that includes protected demographic data, selection bias, or other input problems;
- **True data representation of the individual consumer:** The introduction of big data into the credit process will rely, at least in part, on the aggregation of consumer behavior across certain sectors of the population, resulting in credit scoring based on the habits of an entire group rather than an individual; and
- **Unintended contamination of traditional data.**

Conclusion

SCDCA would support the use of credit-like alternative data to increase the credit profiles of consumers considered “credit-thin” or “credit invisible” if such use followed a robust consumer education campaign and addressing the issues with inaccuracies in the current credit reporting system. However, due to the potential for big data to increase issues with transparency, accuracy, consumer privacy, and relevance, as well as the existing issues with inaccuracy in traditional credit reports, SCDCA is not supportive of including big data in the process of assessing consumer creditworthiness at this time.

¹⁹ Experian Holdings, Inc., File No. 2017-CFPB-0012 (2017) (admin. consent order) (CFPB action against Experian and its subsidiaries for deceiving consumers about the use of credit scores it sold to consumers); *see* Equifax, Inc., and Equifax Consumer Services, LLC, File No. 2017-CFPB-0001 (2017) (CFPB action against Equifax and its subsidiary for deceiving consumers about the usefulness and actual cost of credit scores they sold to consumers); *see also* TransUnion, File No. 2017-CFPB-0002 (2017) (CFPB action against TransUnion and its subsidiaries for deceiving consumers about the usefulness and actual cost of credit scores they sold to consumers), *available at* <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>.



SCDCA appreciates the opportunity to comment on the Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process. We commend the Bureau for the work and effort put into this process and appreciate the task at hand. SCDCA hopes you find the information we provided beneficial as you continue to monitor these issues. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best Regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker". The signature is written in a cursive style with a large, looping "C" at the beginning.

Carri Grube Lybarker, Esq.