

April 2, 2025

The Honorable Scott Bessent
Acting Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Protecting Americans from Harmful Data Broker Practices (Regulation V), Dkt. No. CFPB-2024-004

Dear Acting Director Bessent:

On behalf of the Network Advertising Initiative (“NAI”), thank you for the opportunity to provide comments to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) on the December 2024 proposals to amend Regulation V (“Proposed Rule”), which implements the Fair Credit Reporting Act (“FCRA”). The NAI understands the unique sensitivity of consumer credit information regulated by FCRA, and we appreciate this opportunity to provide comments on the important role data-driven business plays in the 21st century economy, as well as the potential impact of this proposed regulation.

In summary, the Proposed Rule significantly expands established practices and regulations under FCRA, with many unintended consequences for consumers, the economy, and for businesses that were not intended to be regulated as consumer reporting agencies. The NAI urges the Bureau not to publish regulations that would expand the FCRA, a law created for specific purposes related to specific consumer credit information and eligibility determinations, for the objectives of creating broad privacy regulations across all consumer data or seek to erect new national security protections around consumer data that are not contemplated by the FCRA.

As a self-regulatory body, the NAI has spent the past 25 years developing heightened standards and practices for digital advertisers, advancing privacy-protective policies that work for businesses and can be operationalized and adopted throughout the industry. In our 2020 Code of Conduct, we specifically prohibited our member companies from using data collected for advertising purposes for certain eligibility determinations, such as employment, credit, or health care.¹ Preventing the misuse of advertising data for eligibility purposes is a key value across the digital advertising industry, initially established in the NAI Code, and this has also been adopted by the Digital Advertising Alliance’s Self-Regulatory Principles for Multi-Site Data.² The use of advertising data for eligibility purposes is already enforceable under the CFPB and the Federal Trade Commission (FTC) current authority governing unfair and deceptive practices.

These comments provide an overview of the traditional, established understanding of FCRA, particularly FCRA’s definitions of *consumer report* and *consumer reporting agency*, and discusses how the proposed

¹ See NETWORK ADVERTISING INITIATIVE, 2020 NAI CODE OF CONDUCT (2020), https://www.networkadvertising.org/sites/default/files/nai_code2020.pdf, § II.D.2. The full list of prohibited eligibility purposes includes: employment eligibility; credit eligibility; health care eligibility; insurance eligibility and underwriting and pricing; tenancy eligibility; and education admissions.

² See Digital Advertising Alliance, *Self-Regulatory Principles for Multi-Site Data* § II, https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/Multi-Site-Data-Principles.pdf.

expansion of those terms in the Proposed Rule will have an adverse effect on responsible uses of data for data-driven digital advertising and will undermine the benefits derived from responsible uses for consumers, for businesses, and for civil society, which are highlighted in these comments.

I. FCRA Has a Purposefully Narrow Scope

The Fair Credit Reporting Act is a core element of the U.S. sectoral privacy legal framework, but it was narrowly crafted to apply to determinations of eligibility for things like insurance, credit, or employment. FCRA's statutory definition of *consumer reporting agency* is narrowly focused on the processing consumer data specifically for those eligibility purposes:

"The term consumer reporting agency means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating, and maintaining consumer credit information or other information on consumers *for the purpose of furnishing consumer reports* to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." (emphasis added)³

Likewise, FCRA's definition of *consumer report* includes specific use limitations for the information collected:

"The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part **for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; or any other purpose authorized under [15 U.S.C. § 1681b].**"⁴

Under the Proposed Rule, this focus on the purposes for processing personal information – which is central to the statutory framework of FCRA – would be essentially eliminated and severely restrict businesses from receiving and using consumer data for non-eligibility purposes such as tailored advertising. Digital advertisers do not "furnish" consumer information *for the purpose* of determining a consumer's creditworthiness, but rather to serve relevant advertisements online. Unlike consumer reporting agencies as contemplated by the text of FCRA, digital advertisers do not collect and sell personal information for the purposes enumerated in Section 1681b. This purpose limitation necessarily excludes digital advertisers acting in their capacity as advertising technology providers. If digital advertisers were to cross the line of using advertising data for eligibility purposes, they would then be regulated by FCRA under the plain meaning of the statute as consumer reporting agency.

³ 15 U.S.C. § 1681a(f) (2025).

⁴ 15 U.S.C. § 1681a(d). 1681b authorized purposes include court orders, written consumer instructions, to a person the credit reporting agency has reason to believe intends to use the information in connection with a credit transaction, employment purposes, underwriting insurance, license or other government benefit eligibility, as a potential investor or servicer (or current insurer) in connection with a valuation of the credit or prepayment risk associated with an existing credit obligation, otherwise has a legitimate business need for the information in connection with a business transaction initiated by the consumer or to review the account to determine whether the consumer continues to meet the terms of the account, executive departments and agencies in connection with issuing government-sponsored travel charge cards; or for child support purposes, or to the Federal Deposit Insurance Corporation or the National Credit Union Administration in preparation for acting as a conservator, receiver, or liquidating agent. See 15 U.S.C. § 1681b(a).

This limitation has been consistently supported by United States Circuit Courts. In 2019, the Ninth Circuit held that “[b]y its plain meaning, FCRA applies to an entity that assembles or evaluates consumer information with the intent to provide a consumer report to third parties.”⁵ Likewise, the Second Circuit held in 2019 that “[t]he meaning of ‘for the purpose of’ in § 1681a(f) is therefore plain: A ‘consumer reporting agency’ is an entity that intends the information it furnishes to constitute a ‘consumer report.’”⁶ With the Supreme Court’s recent decision in *Loper Bright Enterprises v. Raimondo*, these interpretations from the circuit courts carry even more weight, indicating any expansion of the meaning of the terms *consumer report* or *consumer reporting agency* that departs from the plain meaning of the text could face extensive challenges in court, costing the CFPB extensive resources to defend.⁷

The Bureau should make clear in any potential Final Rule that the statutorily-required purpose limitation for the creation of consumer reports applies regardless of any amendments to the definitions of *consumer report* and *consumer reporting agency*.

II. The Proposed Rule Expands the Narrow Scope of FCRA

The Proposed Rule expands the narrow scope of FCRA to include *any* communication that includes a consumer’s personal identifier, even if the communication *only* includes the consumer’s personal identifier.⁸ Because the definition of *consumer reporting agency* depends on whether or not an organization assembles *consumer reports*, the Bureau would create hundreds of new consumer reporting agencies by expanding the scope of what is considered a consumer report for FCRA purposes. This would create liabilities for commonplace data transfers that do not implicate typical FCRA-regulated purposes—particularly with the downstream liability standards imposed in Section 1022.4(a) and the Proposed Rule’s definition of what type of consumer data is expected to be used for the purposes of consumer reports.⁹ It also runs counter to other legal requirements around consumer data; for example, under the Children’s Online Privacy Protection Act (and state privacy laws), some websites collect the age of visitors to ensure they are above the age of majority, but passing that information along to partners could constitute a consumer report under the Proposed Rule.

A. The Proposed Rule’s Treatment of De-Identification Strays from Commonly Accepted Definitions and is impractically Broad

The Proposed Rule proposes three separate approaches for the treatment of de-identified data for FCRA purposes. We are concerned that all three proposed treatments depart from widespread legal use of de-identification and render almost every instance of data transfer a “consumer report” under FCRA. Consumer privacy laws in the U.S. recognize de-identification as a way to break the link between data and a particular consumer, and acknowledge that properly de-identified data is not “personal data” regulated by the law. This enables businesses to conduct analysis and generate valuable insights from de-identified data without posing any privacy risk to consumers because, simply put, de-identified data

⁵ *Zabriskie v. Federal Nat’l Mortg. Assn.*, 940 F.3d 1022, 1027 (9th Cir. 2019).

⁶ *Kidd v. Thomson Reuters Corp.*, 925 F.3d 99, 104 (2nd Cir. 2019) (citation omitted).

⁷ “The [Administrative Procedure Act], in short, incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024).

⁸ Fair Credit Reporting Act (Regulation V); Identity Theft and Coerced Debt, 89 Fed. Reg. 100922, 1009 (proposed Dec. 13, 2024) (to be codified at 12 C.F.R. pt. 1022) [hereinafter “Proposed Rule”] § 1022.4(d)

⁹ *Id.* § 1044.4(c).

is no longer “about” any particular identified consumer.¹⁰ At the federal level, the concept of de-identification is also a cornerstone of HIPAA, which has long promoted the use of de-identified data to generate important insights about health treatments and outcomes without identifying particular individuals related to covered patient records.¹¹ This recognition of de-identified data in privacy laws allows businesses to work with consumer data in a format that is still privacy-preserving while retaining utility for the business. The Proposed Rule, however, eliminates these exceptions for de-identified data and makes compliance more complicated—particularly if passing along personal identifiers (as defined by the Proposed Rule) would now constitute a consumer report.

We recommend that the Bureau follow the spirit of other U.S. state and federal privacy frameworks by recognizing that properly de-identified data, which cannot reasonably be linked to a particular consumer, should not be regulated as a form of covered information under FCRA.

B. The Proposed Rule Expands the Definition of *Consumer Report* Contrary to the Intentionally Narrow Statutory Definition

Through this treatment of de-identification, the Proposed Rule seeks to regulate routine data transfers under FCRA regardless of the statute’s purpose limitation discussed in Section I.

The Proposed Rule would define consumer reporting agencies as any person that “assembl[es] or evaluat[es]” consumer credit information “or other information about consumers for the purpose of furnishing consumer reports.”¹² Assembling or evaluating information includes verifying or validating the accuracy of the information.¹³ This could potentially create liability for companies attempting to comply with state privacy laws. Any entity complying with state legal requirements for deletion, correction, or access is at risk of being a consumer reporting agency under the Proposed Rule. For example, in California, a consumer may request a business delete personal information, but the business is permitted to use “commercially reasonable means” to verify that the consumer is who they say they are.¹⁴ These verification methods are important, particularly with requests to access personal information, to prevent fraud and identity theft. None of this is done “for the purpose” of determining a consumer’s creditworthiness, but the Proposed Rule creates a risk that a business merely taking these actions would be considered a consumer reporting agency.

C. The Proposed Rule Does Not Provide Guidance on What Constitutes a Consumer Report

The Proposed Rule could create a strict liability standard for determining what constitutes a consumer report, significantly expanding the scope of what the original statute contemplated. That is, creating a standard that would apply regardless of what reasonable safeguards advertising and marketing companies use to limit the risks around downstream use of consumer data. Under the Proposed Rule, information that “is expected to be used” for eligibility purposes is used to determine when a

¹⁰ See, e.g., Cal. Civ. Code § 1798.140(v)(3) (“‘Personal information’ does not include consumer information that is deidentified or aggregate consumer information.”)

¹¹ See 45 C.F.R. § 164.514 (“Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.”).

¹² Proposed Rule § 1022.5(a)(1).

¹³ Id. § 1022.5(b).

¹⁴ Cal. Civ. Code § 1798.105(a); Cal. Civ. Code § 1798.105(ak).

communication constitutes a consumer report.¹⁵ The Proposed Rule includes certain types of information that are *per se* “expected” to be used for eligibility purposes, including information about a consumer’s credit history or score, debt payments, or income or financial tier.¹⁶ However, the Proposed Rule provides little clear guidance for what it means for information to be “about” income or financial tier, and when that type of information is covered by FCRA. For example, advertising segments are created with various names and purposes, often based on inferred rather than actual knowledge about a consumer. A consumer could be placed in a “cost conscious consumer” advertising segment for lower-cost goods or coupons based on browsing history rather than information about a consumer’s actual income—but the Proposed Rule does not make clear that a use case like this would *not* be covered under FCRA. So long as this type of information is used only for advertising, and not for eligibility purposes, it should not be at risk of being considered a consumer report.

III. The Proposed Rule Would Limit Beneficial Uses of Consumer Data

Instead of adopting the Proposed Rule as written, the Bureau should carefully consider the types of harms FCRA was enacted to prevent and ensure that regulations promulgated under this law serve that important – but limited – purpose. Casting too wide a net runs the risk of curtailing legitimate business practices, such as tailored advertising, that serve important functions for consumers, the economy, and civil society. Below is a summary of research findings that demonstrates the benefits of tailored advertising. We urge the Bureau to achieve a better balance between preserving these beneficial uses, while protecting consumers from tangible harms related to eligibility determinations.

A. Tailored Advertising Benefits Small Businesses

For many companies, tailored advertising is the most cost-effective method to enter the market as it helps companies of all sizes reach customers that are most likely to interact with their ads and be interested in their products. Tailored advertising is particularly beneficial for small business advertisers—those without a dedicated ad-sales team, working with limited marketing and ad budgets—in competition with dominant, vertically integrated sellers. Those smaller businesses would be negatively affected if they could not use tailored advertising. Direct-to-consumer companies, and other small, newly formed businesses serving specific customer bases are particularly dependent on tailored advertising due to the nature of their business models and dependence on reaching niche audiences via the Internet. Using only contextual advertising, these companies would suffer, unable to reach their target consumer base efficiently.

A 2022 survey of small businesses found that 70 percent invest in tailored social media advertising, with 54 percent planning to increase their current spend citing a wide range of benefits.¹⁷ Empirical research from 2022 supports that there is fear among small businesses about the loss of tailored advertising; such businesses would see a 37 percent increase in the costs of acquiring new customers without offsite data.¹⁸ Compared to larger-scale advertisers, small business advertisers rely more heavily on tailored ads, and they would be disproportionately hurt by the loss of offsite data at every point in measurable

¹⁵ Proposed Rule, § 1022.4(b) and (c).

¹⁶ *Proposed Rule*, 89 Fed. Reg. at 101,112.

¹⁷ Anna Peck, *2022 Small Business Advertising Report*, Clutch (Mar. 16, 2022), <https://clutch.co/visualobjects/advertising/blog/small-business-advertising-2022>.

¹⁸ Nils Wernerfelt, et al., *Estimating the Value of Offsite Data to Advertisers on Meta 24* (Becker Friedman Inst., Working Paper No. 2022-114), https://bfi.uchicago.edu/wp-content/uploads/2022/08/BFI_WP_2022-114.pdf at 4.

ad distribution.¹⁹ As such, tailored advertising is essential for these small businesses to compete with large mainstream sellers with larger, more robust advertising budgets.²⁰

For publishers, providers of digital content and services, and other sites that offer ad space for purchase, tailored advertising is extremely important. By using data to provide ad placements that are more likely to reach a business' target audiences, publishers are able to sell these placements for a premium.²¹ This often means publishers can show fewer ads and decrease the need for paywalls to fund their content, thus improving user experience and reducing irrelevant ads. Not only is tailored advertising more relevant, more interesting, and more likely to produce engagement with consumers, it is also more valuable for funding publishers and digital service providers when compared to other types of advertising.²² Research has consistently reflected the increased value of tailored advertising over traditional digital ads for publishers and digital content providers. Data suggests that the inability to serve tailored advertising to consumers results in a decrease in revenue of 52 percent per consumer.²³

B. Tailored Advertising Benefits Society

Beyond the business case for tailored advertising, there are societal benefits to its use as well. For example, in May of 2023, the U.S. Department of Homeland Security (DHS) launched a digital advertising campaign geographically targeting South and Central American countries to spread awareness of U.S. immigration laws, to prevent people from putting their lives at risk by illegally crossing the border and encouraging them to instead use lawful pathways to immigration.²⁴ In 2022 the U.S. Customs and Border Protection (CBP) also launched a digital advertising campaign in the Northern Triangle countries of Honduras and Guatemala to warn potential migrants from smugglers who might exploit vulnerable parts of the population.²⁵ This campaign demonstrates an important and valuable use case for location-based ad tailoring for societally beneficial purposes.

By proactively identifying the right audiences for public messaging, tailored advertising can work to achieve important government aims. For example, in 2023, over 36 Million suspected child sexual exploitation cases were reported, more than twice the number reported in 2019.²⁶ Multiple campaigns have been put in place to prevent and educate the public about this issue. In 2024, the DHS launched the "Know2Protect" national public awareness campaign which aims to educate and empower children, teenagers, their parents/legal guardians, trusted adults and policymakers in partnership with public

¹⁹ *Id.*

²⁰ UK Competition & Markets Auth., *Online Platforms and Digital Advertising: Market Study Final Report* 61-62 (2020).

²¹ Veronica Marotta, et al., *The Welfare Impact of Targeted Advertising* 4 (Heinz Coll., Carnegie Mellon Univ., Working Paper, 2021).

²² Simone Aiolfi, et al., *Data-driven digital advertising: benefits and risks of online behavioral advertising*, 49 Int'l J. of Retail & Distrib. Mgmt. 1089, 1105 (2021).

²³ Garrett A. Johnson, et al., *Consumer Privacy Choice in Online Advertising: Who Opt's Out and at What Cost to Industry?*, 39 Mktg. Sci. 1, 25 (2020).

²⁴ Dept. of Homeland Sec., *DHS Launches Digital Ad Campaign to Counter Smuggler Lies: U.S. Immigration Laws are Tougher, Impose Consequences for Illegal Entry* (May 10, 2023), <https://www.dhs.gov/archive/news/2023/05/10/dhs-launches-digital-ad-campaign-counter-smuggler-lies>.

²⁵ U.S. Customs & Border Prot., *CBP Launches Digital Ad Campaign "Say No to the Coyote" to Warn Migrants About Smuggler Lies* (May 11, 2022), <https://www.cbp.gov/newsroom/national-media-release/cbp-launches-digital-ad-campaign-say-no-coyote-warn-migrants-about>.

²⁶ Dept. of Homeland Sec., *DHS Launches Know2Protect Public Awareness Campaign to Combat Online Child Exploitation and Abuse With Many Public and Private Sector Partners, including Google, Meta, Snap, Roblox, NASCAR, U.S. Olympic & Paralympic Committee, Boy Scouts of America, National Police Athletic League, and More* (Apr. 17, 2024), <https://www.dhs.gov/know2protect/news/2024/04/17/dhs-launches-know2protecttm-public-awareness-campaign-combat-online-child>.

sector partners like the U.S. Olympic & Paralympic Committee, Boy Scouts of America as well as private sector organizations, including Google, Meta, Snap and Roblox.²⁷

C. Tailored Advertising Benefits Consumers

Tailored advertising also benefits consumers. Research suggests that 88 percent of consumers prefer seeing ads for products or services they are interested in shopping for, rather than unrelated ads. Additionally, 87 percent of consumers report being more likely to engage with ads that align with their interests. These findings highlight the value of ad relevance—consumers generally want to see ads that matter to them.²⁸ Additionally, consumers place a high value on their online content and services, estimating they would pay \$163.50 per month to keep using those services if they had to. Younger generations place higher value in online content and services (Millennials \$176.89, Gen Z \$229.14) while older generations would pay less to keep using these services (Gen X \$139.16, Boomers \$105.77).²⁹ Yet, despite this perceived value, most consumers reject the idea of directly paying for them, preferring the existing model where access remains free and supported by advertising.

For decades, the internet has operated on a simple, well-established model: consumers receive access to vast amounts of digital content and services at no cost, supported by advertising revenue. This connection is widely understood – 80 percent of consumers agree that websites are free because of advertising, and 95 percent would rather receive ads than pay a high fee for ad-free websites and apps.³⁰ In fact, 78 percent would prefer seeing additional ads rather than being required to pay for access.³¹ As a result, consumers have come to expect and depend on this arrangement, and they react strongly to any shift away from it. 91 percent of consumers would “react negatively, including being frustrated, disappointed, angry, confused, or sad” if they were required to pay for websites and apps they currently use for free.³²

Ultimately, consumers have expressed their preference: they value the free and open internet as it exists today and reject the idea of paying directly for content they have always received at no cost. The ad-supported internet, powered by tailored advertising, is not only what consumers are accustomed to — it is what they overwhelmingly prefer. Given strong consumer resistance to paid alternatives, tailored advertising remains the most viable and sustainable solution for maintaining free and equitable access to the digital economy.

IV. Conclusion

The NAI appreciates the opportunity to submit comments to the Bureau on this important topic. While the NAI recognizes that ordinary consumer data used for digital advertising can be misused by bad actors and lead to consumer harms, the appropriate way to address and mitigate these potential harms is through a national privacy law that bolsters consumers control over the use of their data and creates guardrails for all businesses processing this data to avoid unreasonable and harmful practices. The Proposed Rule’s attempt to expand a law created for specific purposes related to specific consumer credit information and eligibility determinations for the purpose of creating broad privacy regulations

²⁷ *Id.*

²⁸ IAB, *The Free and Open Ad-Supported Internet* 10 (2024), <https://www.iab.com/wp-content/uploads/2024/01/IAB-Consumer-Privacy-Report-January-2024.pdf>.

²⁹ *Id.* at 10.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 11.

across all consumer data, or to erect new national security protections around consumer data conflicts with the narrow statutory objectives and scope of the FCRA.

If we can provide any additional information, or otherwise assist your office as it continues to engage in the rulemaking process, please do not hesitate to contact me at leigh@networkadvertising.org, or David LeDuc, Vice President, Public Policy, at david@networkadvertising.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leigh Freund", is positioned above the typed name.

Leigh Freund
President & CEO
Network Advertising Initiative (NAI)