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February 21, 2021

The Honorable Dereck Davis, Chair
House Economic Matters Committee
Annapolis, MD 21401

Dear Chair Davis,

I write on behalf of the Consumer Data Industry Association ("CDIA")[1] to respectfully request the removal of Sec. 7-608 in H.B. 1009.[2] This subsection would demand the suppression of accurate, adverse mortgage information in ways that are harmful to consumers, especially under-served consumers. The provision could lead to an unsafe and unsound Maryland credit economy. The provision is covered by existing law and existing practices, and it is preempted by federal law.

1. Summary of suppression and why it is harmful

Suppression of credit reporting is not a helpful solution to consumers in financial distress. As discussed below, there are already existing guidelines in place to report consumers' financial distress to the credit bureaus that are far better for consumers and the overall credit system. Suppression of credit reporting will likely cause greater risk to a consumer's credit history, will increase risk to lenders and creditors, and could result in less availability to credit and/or higher interest rates to consumers. Current reporting methods effectively protect and benefit consumers. Suppression will do more harm than good.

2. Suppression of credit reporting is harmful to <u>consumers</u>

Suppression of credit reporting is harmful to <u>consumers</u> for several reasons:

- Suppressing an account from being reported will mean that a consumer's account will not be updated to include information that the consumer has in fact been impacted by a natural disaster or national emergency.

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[1] CDIA is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

[2] "a servicer may not furnish negative mortgage payment information to a consumer reporting agency regarding mortgage payments subject to forbearance under this Subtitle until at least 1 year after the date on which the state of emergency is terminated and the catastrophic health emergency is rescinded."

- Suppression will prevent positive information from being included on a consumer report. A consumer making partial payments will not receive the benefit of having a declining balance being consistently reported, even when a consumer is behind, but still performing under a temporary agreement or following a natural disaster or national emergency.

- For consumers who are delinquent, suppression of reporting means that accounts will not be updated if a consumer becomes current during the suppression period.

- If a consumer files a dispute with a lender or creditor challenging the accuracy of the account ("tradeline") during the period of suppression, the creditor will be required by law to update the account. This required update could result in potentially negative information being included on the consumer's credit report.

- Suppression means less accurate credit reports and less reliable scoring models. This, in turn, could mean less credit available for consumers, or at a higher interest rate.

- During the COVID-19 pandemic, despite rising credit scores,[3] lenders may respond to the heightened market uncertainty by applying more conservative decisioning criteria, which could have an even greater negative impact on those consumers with more limited credit histories.

- By hiding accurate, adverse information, consumers may be approved for loans that they are likely to default on, which in turn will have long-term negative impacts on their financial health.

- "Credit invisible" consumers face significant financial difficulties, including the difficulty in getting approval for a credit card, car loan or other loan at a favorable rate. These consumers may also be required to pay a deposit before being connected to utilities, like gas and water, or obtaining a cell phone. "A limited credit history can also impair consumers' abilities to withstand financial shocks and achieve financial stability. When they encounter emergency situations that require them to borrow money, and traditional credit products are not available to them, they may find it necessary to use higher cost alternatives to bridge the financial gap."[4]

- Consumers may have a harder time shopping for better credit rates, adding to their cost of borrowing. With suppression, financial institutions will rely more heavily on their experiential information about consumers and lean less heavily on credit reports that have become less reliable because of such data suppression. The reduced utility of credit

[3] Report, *The Early Effects of the COVID-19 Pandemic on Consumer Credit, Office of Research Special Issue Brief, Consumer Fin. Protection Bureau*, Consumer Fin. Protection Bureau, Aug. 2020 ("*Early Effects on Credit*").
[4] *Who are the credit invisibles? How to help people with limited credit histories*, Consumer Fin. Protection Bureau, Dec. 20016.

reports, and the increased captivity of consumers, may make it harder for consumers to shop for better rates or various credit products.

3. Suppression of credit reporting is harmful to lenders

Suppression of credit reporting is harmful to lenders for several reasons:

- Suppression of credit reporting leads to more inaccurate credit files, reduces the predictiveness of credit scores, and adds greater risk and uncertainty into the lending process. In a slowing economy where government agencies are encouraging increased lending, suppression could have the opposite effect.

- For consumers who were delinquent at the time of a national emergency, suppressing credit reporting may cause the consumer to appear less delinquent and, therefore, able to take on additional debt when, in fact, the consumer does not have the ability to pay such debt. When a lender or creditor is blind to a consumer's financial risk, that blindness can lead to increased losses that have to be paid for by all the customers of the lender or creditor.

4. Suppression of credit reporting is harmful to the integrity of the credit reporting system

Suppression of credit reporting is harmful to the integrity of the credit reporting system for several reasons:

- A safe and sound credit economy needs a reliable credit reporting system. Predictability of risk following a crisis will be critical to the economic recovery of the country. When credit reports become less reliable, the safety and soundness of credit reporting becomes riskier.

- Under the law, consumer reporting agencies have an obligation to take reasonable measures to assure maximum possible accuracy of credit reports. Omitting relevant information from a credit report is inherently contrary to this requirement.

5. Federal law requires full reporting with codes, and not suppression

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[5] Section 4021 of the CARES Act amends the Fair Credit Reporting Act ("FCRA").[6] The FCRA amendments under CARES requires that if a lender or creditor (called a "furnisher" under the FCRA) makes a payment accommodation with a consumer, like forbearance or

[5] Pub. Law 116-136.
[6] 15 U.S.C. § 1681 *et seq.*

deferred payments, the furnisher must report to a CRA either the "credit obligation or account as current", or if the credit obligation or account was delinquent before the accommodation, than the furnisher must "maintain the delinquent status during the period in which the accommodation is in effect and if the consumer brings the credit obligation or account current during the [COVID-19] period report the credit obligation or account as current."

6. We know that the law and business operations are working

The United States continues to bend under a raging pandemic and enormous economic pain. Yet, consumer behavior, law, and industry processes are helping consumers' credit histories to weather the public health and economic storms. As reported by CNBC in January 2021, the average FICO Score reached a record high of 710 in 2020. Experian found that "[t]he national average FICO® Score© increased by seven points this year—the largest annual improvement in at least a decade." The study found that "[m]ajor credit score components, such as credit utilization and payment history, have also changed for the better on average, with utilization rates and late payments decreasing at a record pace. Credit utilization, the amount of available revolving credit in use compared with credit limits, is the second most important element in a FICO score, which represents 30% of the score.

In 2020, the Experian study found, "consumers reduced their credit card debt -- the most commonly held form of revolving debt -- by 14%. This in turn impacted average credit utilization, which dropped 3.5 percentage points, from 28.8% in 2019 to 25.3% in 2020. It's unclear what drove Americans' ability to pay down their credit card debt, but the impact has clearly been reflected in the improvement of the average credit score. Improvements of this kind add to consumers' overall credit health and can cause scores to rise in a short period of time." The report also found that in 2020, "69% of Americans had a 'good' credit score of 670 or above," three points higher than 2019. A FICO spokesperson said that for 2020, "[m]issed payments reported are down, consumer debt levels are decreasing and the significant steps taken by both the government [with] stimulus spending and private sector [with] lender payment accommodations to help consumers affected by COVID-19 are all contributing to this trend in average score."[7]

Other highlights of the study found that the states with the lowest average scores saw some of the biggest increases; all generations increased their average FICO® scores; and fewer consumers had subprime credit in 2020. In fact, "[s]ince 2019, the portion of consumers with a subprime score has decreased from 33.8% to 30.9%—a nearly 3 percentage point drop. This improvement is significant and is three times as large as the improvement between 2018 and 2019, when the ratio decreased by less than 1 percentage point."[8]

[7] Blog, Experian 2020 Consumer Credit Review, Experian, Jan. 4, 2021.
[8] *Id.*

In August 2020, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued a report showing no negative credit impact on consumers as a whole.[9] In a press release covering the report, it noted that the report:

> found that consumers have not experienced significant increases in delinquency or other negative credit outcomes as reported in credit record data following the onset of the COVID-19 pandemic in the United States. This is in spite of the sharp increases in unemployment resulting from the pandemic. The report focused on mortgage, student and auto loans and credit card accounts from March 2020 to June 2020, and notes that outcomes may reflect payment assistance provided to American consumers through the CARES Act.

This August report presaged third quarter earnings reports from American banks. "Banks seem to have held credit losses in check in the third quarter," wrote the American Banker, in October 2020.[10] The Wall Street Journal reported in October that:

> while the coronavirus was pummeling the U.S. economy, Americans' credit scores—a metric used in nearly every consumer-lending decision—were rising. The average FICO credit score stood at 711 in July, up from 708 in April and 706 a year earlier, according to Fair Isaac Corp., the score's creator. Early estimates suggest the average score has held steady through mid-October at the July level, which is the highest since FICO began keeping track in 2005.
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> The increase is largely thanks to the unprecedented financial assistance the government and lenders rolled out to consumers after the pandemic took hold in the U.S. Stimulus payments and expanded unemployment benefits helped many borrowers keep up with their bills and, in some cases, even pay down their debt. Widespread payment holidays on mortgages, auto loans and student loans freed up funds and kept credit reports clean.[11]

7. Federal financial regulators encourage full reporting with codes, and not suppression

The Bureau also reiterated its prior guidance encouraging financial institutions to work constructively with borrowers and other customers affected by COVID-19 to meet their financial needs.

[9] *Early Effects on Credit.*
[10] Alix, Laura, *Charge-offs held in check…for now*, Am. Banker, Oct. 21, 2020.
[11] Andriotis, AnnaMaria, *Coronavirus Tanked the Economy. Then Credit Scores Went Up*, Wall Street J., Oct 18, 2020.

8. Fannie Mae, Freddie Mac, and FHA encourage full reporting with codes, and not suppression

Fannie Mae, Freddie Mac, and FHFA all tell mortgage services to follow the law, which includes the FCRA as amended by the CARES Act. Section 4021of the CARES Act requires lenders and creditors who place consumers in a forbearance or deferred payment situation to report those consumers as current.

In response to the CARES Act, Fannie Mae updated Lender Letter (LL-2020-02) on April 8, 2020. This guidance requires mortgage "servicer[s to] comply with the requirements of the [FCRA], as amended by the CARES Act for borrowers affected by the COVID-19 pandemic." The updated Lender Letter further says that "servicers are reminded that…they must comply with applicable law even where a provision of the Servicing Guide may conflict with applicable law." Also in response to the CARES Act, and also on April 8, 2020, Freddie Mac issued Bulletin 2020-10. This bulletin says that for "credit reporting requirements", servicers "must report activity to the credit bureaus in accordance with applicable law, including the Fair Credit Reporting Act and the CARES Act" for "any Borrower impacted by COVID-19…."

On April 1, 2020, the U.S. Department of Housing and Urban Development ("HUD") issued Mortgagee Letter 2020-06, under which the Federal Housing Administration ("FHA") "requires [mortgage] Servicers to comply with the credit reporting requirements of the Fair Credit Reporting Act (FCRA)", which, as amended by the CARES Act, requires lenders and creditors who place consumers in a forbearance or deferred payment situation to report those consumers as current."

9. Long-standing procedures for reporting on consumers in financial distress

Our association and our credit bureau members have guidance for the approximately 15,000 lenders and creditors who report data to the nationwide credit bureaus to handle a wide variety of data reporting scenarios. CDIA and our credit bureau members are doing our part to help consumers who have been impacted (directly or indirectly) by the coronavirus. To help lenders and creditors offer help consumers affected by COVID-19, CDIA has guidance for lenders and creditors who put an account either (a) into forbearance, or (b) into a deferred payment status as a result of a consumer's inability to make payments due to natural or declared disasters, or as the result of other national crises.

10. State legislation requiring suppression is prohibited by federal law

Any state limits on credit reporting – whether related to the *furnishing* or *reporting* of credit information – in the wake of the COVID-19 crisis will be preempted by the FCRA. The FCRA ensures a national credit reporting system through preemption provisions in FCRA § 625 (15

U.S.C. § 1681t). The FCRA provides for multiple forms of preemption of state credit reporting laws and bills, and any COVID-19 related credit report restrictions would be preempted by at least two of those provisions, § 1681t(a) (conflict preemption) and § 1681t(b) (subject matter preemption). Section 1681t(a) preempts any state law that is "inconsistent with any provision" of the FCRA. Section 1681t(b)(1) says that "no requirement or prohibition may be imposed by any state with respect to any subject matter" enumerated subsections of § 1681t(b)(1), including subject matter enumerated in § 1681s-2(F), COVID-19 credit reporting.

Conclusion

There are many strong reasons to support the removal of Sec. 7-608 in H.B. 1009. This provision is harmful to consumers, especially under-served consumers and the provision could create an unsafe and unsound Maryland credit system. The provision could lead to an unsafe and unsound Maryland credit economy. The provision is also covered by federal law and existing business practices, and it is preempted by federal law.

Sincerely,

Eric J. Ellman
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