



April 2, 2025

The Honorable Russell Vought  
Acting Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Request for Withdrawal of Notice of Proposed Rulemaking on Protecting Americans from Harmful Data Broker Practices No. CFPB-2024-0044-0001

Dear Acting Director Vought:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this letter to request the withdrawal of the Consumer Financial Protection's (CFPB) proposed rule on Protecting Americans from Harmful Data Broker Practices (Regulation V).<sup>1</sup> The proposed rule would implement the Fair Credit Reporting Act's (FCRA) definitions of consumer report and consumer reporting agency as well as certain of the FCRA's provisions governing when consumer reporting agencies may furnish, and users may obtain, consumer reports. The proposed rule is designed to, among other things, ensure that the FCRA's protections are applied to consumer information, including information sold by data brokers. The proposed rule fails to consider fully the economic impact of the proposal on small entities as required by the Regulatory Flexibility Act (RFA).

## **I. Background**

### **A. The Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The

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<sup>1</sup> 89 Fed. Reg. 101402 (Dec. 13, 2024).

views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.<sup>4</sup> Additionally, section 609 of the RFA requires the Consumer Financial Protection Bureau, the Occupational Safety and Health Administration, and the Environmental Protection Agency to conduct special outreach efforts through a review panel.<sup>5</sup> The panel must carefully consider the views of the impacted small entities, assess the impact of the proposed rule on small entities, and consider less burdensome alternatives for small entities.<sup>6</sup> If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.<sup>7</sup>

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>8</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.<sup>9</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>10</sup>

In addition to the outreach required through the SBREFA panel process, the Office of Advocacy performs outreach through roundtables, conference calls, and other means to develop its position on important issues such as this one. Advocacy's comments reflect the feedback that it received from stakeholders about the potential impact of the proposal on small businesses.

## **B. The Small Business Regulatory Enforcement Fairness Act Panel**

Section 609 of the RFA requires the CFPB to conduct special outreach efforts to ensure that small entity views are carefully considered prior to issuing a proposed rule if the rule is expected

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<sup>2</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>3</sup> Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

<sup>4</sup> 5 U.S.C. § 603.

<sup>5</sup> *Id.* § 609.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* § 605(b).

<sup>8</sup> Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

<sup>9</sup> *Id.*

<sup>10</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

to have a significant economic impact on a substantial number of small entities.<sup>6</sup> The Bureau convened a SBREFA panel on creditors and consumer reporting agencies concerning medical information on October 16, 2023 and conducted virtual outreach meetings with small entity representatives (SERs) on October 18 and 19, 2023.<sup>11</sup> In advance of the panel outreach meeting, the CFPB, Advocacy, and the Office of Information and Regulatory Affairs held a series of telephone conferences with the SERs to describe the small business review process, obtain important background information about current business practices, and discuss selected portions of the proposals under consideration. The SBREFA panel issued its report on December 15, 2023.

### **C. The Proposed Rule**

On December 13, 2024, the CFPB published the proposed rule on Protecting Americans from Harmful Data Broker Practices (Regulation V) in the *Federal Register*.<sup>12</sup> The CFPB proposes to implement the FCRA's definitions of consumer report and consumer reporting agency to ensure that the FCRA applies to all data brokers that transmit consumer information. It states that data brokers that sell information about a consumer's credit history, credit score, debt payments (including on non-credit obligations), or income or financial tier are generally to be defined as consumer reporting agencies selling consumer reports, regardless of the purpose for which any specific communication of such information is used or expected to be used.<sup>13</sup>

Under the proposal, there are a number of changes in definitions that have widespread impacts. , Many of the changes alter how market actors and their actions are viewed and treated by the government. A communication by a consumer reporting agency of a portion of the consumer report that consists of personal identifiers, such as the consumer's name, address, or age, is considered a consumer report if the information was collected for the purpose of preparing a consumer report about the consumer. A consumer reporting agency providing information about a consumer is considered a consumer report if the information is used for a FCRA-covered purpose, regardless of whether there is evidence that the consumer reporting agency knew or expected that the information would be used for such a purpose. “An entity that otherwise meet the definition of consumer reporting agency is a consumer reporting agency if it assembles or evaluates information about consumers, including by collecting, gathering, or retaining; assessing, verifying, or validating; or contributing to or altering the content of such information.”<sup>14</sup>

The CFPB also proposes to address certain aspects of FCRA section 604(a) regarding permissible purposes to furnish and obtain consumer reports. The proposed rule states that a consumer reporting agency is considered to have furnished a consumer report to a person when the agency facilitates the person's use of the report for the person's financial gain, even if the

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<sup>11</sup> CONSUMER FIN. PROT. BUREAU, FINAL REPORT OF THE SMALL BUSINESS REVIEW PANEL ON THE CFPB'S PROPOSALS AND ALTERNATIVES UNDER CONSIDERATION FOR THE CONSUMER REPORTING RULEMAKING (Dec. 15, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_sbrefa-final-report\\_consumer-reporting-rulemaking\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_sbrefa-final-report_consumer-reporting-rulemaking_2024-01.pdf) [hereinafter Panel Report].

<sup>12</sup> 89 Fed. Reg. 101402.

<sup>13</sup> *Id.* at 101402-03.

<sup>14</sup> *Id.* at 101,403.

agency does not technically transfer the report to the person. It further provides that the FCRA provision that authorizes a consumer reporting agency to furnish a consumer report in accordance with the written instructions of the consumer can be used to obtain a consumer report for any reason specified by a consumer, but only if the consumer signs a separate authorization that is not hidden in fine print and discloses certain information to the consumer, including the specific reason for obtaining the report. Under the proposal, using information contained in consumer reports for marketing additional products is not considered to be a permissible purpose pursuant to a legitimate business need.<sup>15</sup>

While the proposed rule changes the permissibility of the above practices, according to the CFPB, the proposal would not interfere with consumer reporting agencies' ability to furnish consumer reports for identify verification and fraud prevention. This includes the permissible purposes of credit applications, government benefits, opening bank accounts, rental applications, and complying with the FCRA's other requirements.<sup>16</sup>

## **II. The Proposal Does Not Comply with the RFA**

Advocacy contends that the proposal is wide sweeping and could make small entities liable for things that are beyond their control. For example, a small entity can be a credit reporting agency without intending to assemble or evaluate consumer credit information for the purpose of furnishing it to third parties.<sup>17</sup> As noted above, the CFPB prepared an IRFA for the proposal. Section 603 of the RFA clearly states that an IRFA shall describe the impact of the proposed rulemaking on small entities. Without information about the economic impact of the rule, the public cannot provide meaningful comments. Information about the economic impact and consideration of less costly alternatives are crucial elements that are required by the RFA and are yet absent in the proposed rule and its associated IRFA.

The RFA requires agencies to analyze costs that a proposed rule will compel small entities to incur. CFPB's proposed rule clearly says there will be costs but does not attempt to quantify them. This is a violation of the RFA. The rule should be withdrawn until it complies with the RFA.

### **A. The Proposed Rule Will Be Costly for Small Entities**

The CFPB acknowledges that the proposed rule will have a significant economic impact on a substantial number of small entities and prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule. In terms of the number of small entities impacted, the CFPB estimates that the proposal will impact 80,130 small data brokers and other consumer reporting agencies. The CFPB further estimates that it may impact 34,448 current small furnishers and data providers.<sup>18</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> ACA Int'l et al., Comments on Proposed Rulemaking on Protecting Americans from Harmful Data Broker Practices, 3 (Apr. 2, 2025), <https://www.regulations.gov/comment/CFPB-2024-0044-0682>.

<sup>18</sup> *Id.* at 10150-53.

Although the IRFA provides information about the number and types of small entities that may be impacted, and acknowledges that entities will incur a significant amount of costs to comply with the rulemaking, there is no estimate of how much those costs may be.<sup>19</sup> Instead, the CFPB merely states that it does not have data allowing it to quantify the costs and requests comment on this issue. The SERs provided the CFPB with information about small entity impacts and alternatives during the SBREFA panel process.<sup>20</sup> That information is conspicuously absent from the proposed rule.

The proposed rule will be costly for small entities. In the cost benefit analysis, the CFPB states that some of the potential costs include finding alternative data for the data in the consumer report that the proposed rule would preclude consumer reporting agencies from using. They would use the alternative data to substitute into their business models, legal fees, technology fees, and other applications where they currently integrate information directly from the consumer reports. They will also face other costs associated with proving that they have obtained the consumer's written instructions as required to comply with the proposed rule, which will likely entail establishing new processes, forms, and systems.

During the SBREFA panel process, the SERs stated that small entities would need to update their computer systems, obtain legal advice, hire additional personnel, and incur other types of expenses to comply. The SERs stated that the proposals could result in thousands of dollars in costs and in small business closures.<sup>21</sup> The CFPB acknowledges that small entities will incur those types of costs but states that it does not have data about costs.<sup>22</sup>

Advocacy understands that the SERs' comments were based on an outline of proposals that was later published as two separate proposed rules by the CFPB. However, Advocacy believes that the estimates were still valid and that CFPB should have been able to estimate what some of those costs may be and included the information in the IRFA.

Moreover, the SBREFA panel recommended that the CFPB analyze whether the economic impact of the rulemaking would cause some small entities to exit the market.<sup>23</sup> Exiting the market would present major costs implications for those small entities, yet there is no such analysis in the IRFA.

Advocacy questions why the CFPB has not gathered and assessed the required data or integrated the data they gathered from the SERs. The CFPB is aware of its RFA obligations and received valuable information from the SERs. Advocacy asserts that the CFPB should not have moved forward without identifying the necessary data and conducting the requisite analysis to ascertain the economic impact of this rulemaking on small entities.

## **B. The CFPB Failed to Consider Less Costly Alternatives for Small Entities**

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<sup>19</sup> *Id.* at 101442-43.

<sup>20</sup> Panel Report, *supra* note 11.

<sup>21</sup> *See id.* at app. A (written feedback submitted by small entity representatives).

<sup>22</sup> 89 Fed. Reg. at 101455.

<sup>23</sup> *Id.* at 14.

The RFA requires agencies to consider less costly alternatives for small entities. However, the proposed rule lacks a discussion of meaningful alternatives. In the IRFA, the CFPB provides two insufficient alternatives: additional time to comply and to clarify the rulemaking.<sup>24</sup>

In terms of additional compliance time, the CFPB states that it is considering an implementation date that would allow small entities six additional months to a year to comply. However, the CFPB does not provide any information or analysis of the economic impact of the additional timeframes that it considered, why it selected that timeframe, and what benefits the delay would deliver.<sup>25</sup> The SERs stated that implementation would be expensive and time-consuming. They recommended timeframes from 18 months to 5 years.<sup>26</sup> Advocacy asserts that the CFPB should have provided an economic analysis of each additional timeframe that it considered, from 6 months to 5 years, to ascertain the impact on small entities and the associated trade-off with the goals of the proposed rule.

Clarifying a rulemaking is not an alternative to reduce the economic impact on small entities. Agencies are already responsible for only issuing rulemakings that is clear and easily understood by small entities and the general public.<sup>27</sup> The CFPB did not even explain what type of clarification it considered. Such language could refer to the proposed rule's definitions, the scope of the proposal, or how clarification minimizes the impact on small entities. These are the types of issues that the CFPB's discussion of alternatives should have addressed but did not.

### **III. The Proposal Should Be Withdrawn**

Representatives of small financial institutions and consumer reporting agencies have already submitted comments requesting the proposed rule be withdrawn.<sup>28</sup> Advocacy also requests that this proposal be withdrawn.

Withdrawing the proposal would provide the CFPB with additional time to perform the necessary research and analysis and obtain additional information necessary to prepare an IRFA that complies with the RFA. It would also allow the CFPB an opportunity to fully review the information provided by the SERs during the SBREFA process. An IRFA that fully considers the economic impact of the rulemaking on small entities and considers real alternatives will assist small entities in providing meaningful feedback. Obtaining meaningful comments from small entities is beneficial both to small entities and to the CFPB in developing a strong, cost-effective, and RFA-compliant rule.

Advocacy recognizes that the notice of proposed rulemaking addresses an important issue. However, this particular proposed rule is incomplete. Because it is important, it should not be rushed or skip required steps. The public deserves a full consideration of the economic impact on small entities. The public also deserves a thoughtful consideration of less costly alternatives. The

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<sup>24</sup> 89 Fed. Reg. at 101456.

<sup>25</sup> *Id.*

<sup>26</sup> Panel Report, *supra* note 11, at 40-41.

<sup>27</sup> Plain Writing Act of 2010, Pub. L. 111-274

<sup>28</sup> ACA Int'l et al., Comment Letter on Proposed Rulemaking on Protecting Americans from Harmful Data Broker Practices (Feb. 3, 2025), <https://consumerbankers.com/wp-content/uploads/2025/02/2025.02.03-Joint-Trade-Letter-on-CFPB-Data-Broker-NPR-vFINAL.pdf>.

RFA was designed to ensure these important checks are executed in the rulemaking process; the CFPB should comply with Congressional direction. A thoughtful rulemaking not only benefits small entities, it also benefits public.

#### **IV. Conclusion**

Thank you for your consideration. If you have any questions regarding this request or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at [Jennifer.Smith@sba.gov](mailto:Jennifer.Smith@sba.gov).

Sincerely,

/s/

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/s/

Jennifer A. Smith  
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Copy to: Mr. Jeffrey Clark, Sr. Acting Administrator  
Office of Information and Regulatory Affairs  
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