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Russell Vought
Director, United States Office of Management and Budget
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552
Submitted Electronically

Re: Protecting Americans From Harmful Data Broker Practices (Regulation V)
Docket No. CFPB-2024-0044

Dear Director Vought,

The Greenlining Institute appreciates the opportunity to provide comments to the Consumer Financial Protection Bureau on the proposed ruling regarding Protecting Americans From Harmful Data Broker Practices - Regulation V. The Greenlining Institute is a research and advocacy organization committed to advancing economic opportunity for communities of color. We work towards a future where communities of color thrive and race is never a barrier to opportunity. Considering this, we are pleased to support the Bureau's willingness to take action to regulate the role of data brokers in the fintech and traditional lending market.

The Fair Credit Reporting Act is vital to maintaining transparency and preventing discriminatory practices in the lending industry. This ruling allows the FCRA to maintain its effectiveness in the 21st century's lending landscape. The Bureau's proposal will introduce clarifications to our definitions of "Consumer Reporting Agency" and "Consumer Report." These changes are a much needed update to FCRA's standards for fair lending. With these additions, Regulation V will be able to better protect consumers in the modern data collection and digital lending landscape. We commend the Bureau for continuing their commitment to our shared goal of protecting consumers from discriminatory lending, predatory marketing, and nontransparent credit systems.

We anticipate that enhanced transparency measures imposed upon data brokers in the credit and lending industry will minimize risks of biased inferencing and discriminatory lending practices. Furthermore, we see digital lending as an opportunity to support the responsible and regulated increase in access to credit for communities of color and credit-invisible populations. In order to access these benefits, however, it is imperative that the CFPB extends FCRA's regulations to oversee the data broker industry. If data brokers want to play in the game, they need to play by the rules. This letter offers comments in response to the Bureau's request and, additionally, offers Greenlining's broader approach to consumer data usage in the digital lending landscape.

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I. DATA BROKERS ARE CONSUMER REPORTING AGENCIES

The CFPB requests comment on whether it would be helpful to identify in Regulation V factors that may be relevant to determining if a person should expect that information will be used for a FCRA-covered purpose, and, if so, what those factors might be. The CFPB also requests comment on whether it would be helpful to provide further guidance defining the four types of information listed in proposed §1022.4(c)(2) which includes "financial tier" as a type of data that is expected to be used for a FCRA-covered purpose.[1] The Greenlining Institute urges the CFPB to provide guidance clarifying that many consumer *inferences,* which may not directly bear on income or credit, can still be indicators of financial tier due to their use in alternative credit scoring models. These inferences, therefore, can be expected to be used for FCRA purposes.

This entanglement between data brokers and lenders is fueled by the rapid rise of artificial intelligence and alternative credit scoring in the financial sector. Responses to the Department of Treasury's 2024 Request for Information on the Use of AI in Financial Institutions testified to how alternative data has become fundamental to their advanced algorithmic credit scoring models.[2] Block, Inc., a fintech company and leading alternative credit lender, wrote:

> AI enables entities to utilize non-traditional factors to predict creditworthiness, ability to pay, potential for default and the like, without using attributes that are known to carry inherent bias. Block uses a consumer's real-time financial data based on their daily activity through our financial services, such as payment processing, peer-to-peer transactions, debit card purchases, banking activity, etc.[3]

The adoption of advanced alternative credit scoring algorithms has made lenders voracious for more and more data. Data brokers are key to supplying the personal consumer information used to train these models and inform their decisions. This information expands far beyond the scope of what the Bureau outlines as "Credit Header" information. Data brokers sell dossiers that include:

- Zip Codes and Geospatial Location Data
- Home ownership, length of time at an address
- Psychometric Measures (e.g. optimism, self-esteem, integrity, mental state)
- Payment History (e.g. e-commerce, rent, credit card purchases, frequented locations, utilities)
- Social Media (e.g. likes, profiles of friends, networks, social graph)
- Search and Web History
- Financial Tendencies (e.g. conscientiousness, automated payments, spending habits)
- Education

[1] CFPB Proposed Rules, 89 Fed. Reg. 101410 (Dec.13, 2024).
[2] CFPB Proposed Rules, 89 Fed. Reg. 50048 (Dec.13, 2024).
[3] Moses Kim, *Comment from Block Inc. on the Department of Treasury's Request for Information on the Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector,* (Aug 12, 2024), https://www.regulations.gov/comment/TREAS-DO-2024-0011-0082.

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- Ethnic and Gender Identity
- Mobile Phone Data (e.g. call history, battery life, texts sent)
- Monthly Income vs. Expenses
- Career Experience (e.g. job title, job tenure, career field)

Data brokers collect and assemble this raw data to develop predictive inferences about the consumer: How often do they charge their phones? Are they a single parent? Does this person get their groceries from the liquor store? Do they have a propensity for gambling? Do they read the fine print when they open up a new credit card? The answers to these questions inform a consumers' determination of creditworthiness. This is the data that is put directly into alternative credit scoring models to determine the consumers' risk level.

The Bureau is requesting additional examples of "personal identifier" information that should be included in the final rule, should the Bureau adopt the alternative approach to 1022.4(d).[4] We recommend that the Bureau explicitly include *inferences* as a category of "personal identifier" information in the final ruling. Practically, these inferences already function as pre-prepared Consumer Reports for the lenders purchasing them; the raw data is only as powerful as the predictive inferences that can be drawn from it. The language proposed in §1022.4(c)(1) supports this: one can reasonably expect that when a lender purchases a dossier from a data broker with inferences that read "Financially Challenged," "Modest Wages," "Working-Class Mom," or "Middle-Aged Man with Clinical Depression," the lender will use this information to establish a consumer's eligibility for credit, employment, insurance, or some other FCRA purpose.[5] A statistical inference like "Single Mother of Two with Propensity for Gambling" is an indicator of a financial tier that can impose major, life-impacting judgements upon a consumer—from the interest rates she is offered or the advertisements she sees online. By adopting the Bureau's interpretation of, "is used or expected to be used," which includes the "expectations of the person communicating the information," Regulation V no longer allows data brokers to feign ignorance.[6] They are aware that their inferences relating to consumers' financial tiers are used to determine creditworthiness. By including inferences as "personal identifiers," consumers will be able to correct any inaccurate information inferred about them and data brokers will be subject to enhanced transparency mechanisms that will bring to light any potentially discriminatory practices taking place.

II. ALTERNATIVE DATA & ALGORITHMIC BIAS

Facially neutral data inputs, however, reinforce algorithmic bias and systemically racist outcomes.[7] A history of discriminatory redlining in communities of color means that data inputs like zip code,

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[4] CFPB Proposed Rules, 89 Fed. Reg. 101420 (Dec.13, 2024).

[5] Kim, J. (2023). Data Brokers and the Sale of Americans' Mental Health Data. *Duke Sanford Cyber Policy.* https://techpolicy.sanford.duke.edu/wp-content/uploads/sites/4/2023/02/Kim-2023-Data-Brokers-and-the-Sale-of-Americans-Mental-Health-Data.pdf

[6] CFPB Proposed Rules, 89 Fed. Reg. 101408 (Dec.13, 2024).

[7] Le, V. (2021). Algorithmic Bias Explained: How Automated Decision Making Becomes Automated Discrimination. *The Greenlining Institute.* https://greenlining.org/publications/algorithmic-bias-explained/

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education, peer-to-peer interactions, shopping history, membership club records, and more can operate as proxies for race in algorithmic decision-making.[8] A bank's alternative credit scoring model that accounts for transaction history may consistently label Black borrowers living in a formerly redlined zip code as high-risk because they are frequently shopping at the local liquor store instead of Whole Foods.[9] Nontransparent algorithmic mortgage approval models are 80% more likely to reject Black applicants than similar White applicants for home loans.[10] FCRA's guarantee to private right of action minimizes these types of risks by encouraging data transparency and error correction. A consumer ought to know if a piece of inaccurate information that a data broker extracts from their social media profile is a factor in their loan rejection. FCRA is the first step for consumers to establish control over their data.

Financial institutions force consumers to absorb the purported cost of risk of alternative credit scoring by offering them loans at subprime interest rates. In the state of California, 9 of the top 15 home purchase lenders are unregulated non-bank lenders, including Rocket Mortgage, United Shore Financial Services, and LoanDepot.com.[11] These non-bank digital lenders, which are more likely to use some form of algorithmic alternative credit scoring, are more likely to lend to Black, Asian and Latino low-income households.[12] In a fintech landscape where Black applicants are offered loans with interest rates up to 5.3% higher on average than white applicants, the discriminatory effects of these algorithmic decision-making tools compound.[13] We anticipate that the price tag of these high interest rates fall disproportionately onto communities of color. In order to prevent the potentially adverse effects of discriminatory lending practices, the Bureau has an obligation to regulate fintech companies and their sources of data.

III. DE-IDENTIFIED DATA AND TARGETED MARKETING

The Bureau also requests comment on three proposed alternatives for the use of de-identified information in §1022.4(e).[14] Targeted marketing reinforces digital redlining and predatory lending.[15] Recognizing the harms that targeted marketing practices can impart upon on communities of color, the Greenlining Institute recommends that the Bureau adopts the third alternative:

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[8] Fair Isaac Credit Services, Inc. (2009). FICO Expansion Score. https://brblog.typepad.com/files/fico_expansion_score_1709ps_en.pdf

[9] Lieber, R. (2009). American Express Kept a (Very) Watchful Eye on Your Money. *The New York Times*. https://www.nytimes.com/2009/01/31/your-money/credit-and-debit-cards/31money.html

[10] Martinez, E. & Kirchner, L. (2021). The Secret Bias Hidden in Mortgage-Approval Algorithms. *The Markup*. https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms

[11] Ibrahim, R. (2024). Why does it Cost More to be a Homeowner of Color? Unpacking 2022-2023 Home-Lending Data in California. *The Greenlining Institute*. https://greenlining.org/publications/unpacking-2022-2023-california-home-lending-data/

[12] Elhalaby, R. (2020). Home Lending to Communities of Color in California. *The Greenlining Institute*. https://greenlining.org/wp-content/uploads/2020/11/Greenlining_Home_Lending_California_Report_2020.pdf

[13] Bartlett, R. et al. (2019). Consumer-Lending Discrimination in the Fintech Era. *Journal of Financial Economics* 143(1). https://doi.org/10.1016/j.jfineco.2021.05.047

[14] CFPB Proposed Rules, 89 Fed. Reg. 101420 (Dec.13, 2024).

[15] Morris, L. & Akselrod, O. (2022). Holding Facebook Accountable for Digital Redlining. *The American Civil Liberties Union*. https://www.aclu.org/news/privacy-technology/holding-facebook-accountable-for-digital-redlining#:~:text=In%20today%27s%20digital%20world%2C%20people,in%20our%20still%2Dsegregated%20country.

(1) In general. De-identification of information is not relevant to a determination of whether the definition of consumer report in paragraph (a) of this section is met if:

(i) The information is still linked or reasonably linkable to a consumer;

(ii) The information is used to inform a business decision about a particular consumer, such as a decision whether to target marketing to that consumer; or

(iii) A person that directly or indirectly receives the communication, or any information from the communication, identifies the consumer to whom information from the communication pertains.

By combining de-identified data with indirect identifiers, data granularity, and auxiliary information, these financial institutions can still reasonably link de-identified data to the individual consumer with remarkable accuracy.[16] While the first and second proposed alternatives both address the fallacy of anonymity that de-identified data presents, the third alternative is the only proposal which explicitly addresses the connection between marketing and FCRA-covered decisions.

Targeted marketing practices play a fundamental role in determining the types of loans that people gain access to. An applicant labeled as a 'frequent credit card user with low impulse control' may be steered towards Buy Now, Pay Later services that enable over-spending habits and short-term debt-accrual; a social media user whose inference is labeled as "Hispanic, Divorced Single Mother" may see advertisements for high-interest home loans as they scroll through their Facebook feed;[17] a Black loan applicant subject to an algorithm that concludes Black consumers are less likely to 'shop around' may be consistently shown higher-interest loan options on their digital banking app.[18] The order and frequency with which consumers are steered towards certain financial products can be the factors determining which financial product they end up taking on. If a consumer is never shown a low-interest refinancing opportunity on their digital banking app, they likely will never be able to take on that opportunity; marketing determines access. This leaves the door wide open for the threat of potentially discriminatory service offerings and predatory marketing—practices that reinforce the impacts of digital redlining.[19]

Even prior to the re-identification of consumer data, however, unlinked, de-identified data can still inform lenders' decisions about credit through model training. In order to train alternative credit scoring algorithms, lenders must train models using swathes of historical consumer data, including bank transaction data, employment history, social media activity.[20] Whenever a consumer receives a credit

[16] Lubarsky, B. (2017). Re-Identification of "Anonymized" Data. *Georgetown Law Technology Review.* https://georgetownlawtechreview.org/re-identification-of-anonymized-data/GLTR-04-2017/?utm_source=chatgpt.com

[17] Office of Public Affairs. (2023). Justice Department and Meta Platforms Inc. Reach Key Agreement as They Implement Groundbreaking Resolution to Address Discriminatory Delivery of Housing Advertisements. *U.S. Department of Justice.* https://www.justice.gov/opa/pr/justice-department-and-meta-platforms-inc-reach-key-agreement-they-implement-groundbreaking#:~:text=Specifically%2C%20the%20United%20States%20alleged,predict%20which%20advertisement%20is%20most

[18] Bartlett (n 14).

[19] Office of Fair Housing and Equal Opportunity. (2024). Guidance on Application of the Fair Housing Act to the Advertising of Housing, Credit, and Other Real Estate-RelatedTransactions through Digital Platforms. *U.S. Department of Housing and Urban Development.* *https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Advertising_through_Digital_Platforms.pdf*

[20] Stripe. (2024). Alternative credit data 101: What it is and what it's used for. https://stripe.com/resources/more/alternative-credit-data-101-what-it-is-and-what-its-used-for#introduction

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decision that was generated by an algorithmic model, they are receiving a decision that was informed by training data. The Greenlining Institute suggests that the Bureau considers including the use of *training data* in its interpretation of "is used or expected to be used." In this case, the person communicating personal consumer information (i.e. data brokers supplying dossiers with billions of de-identified data points on consumers' transactions and behaviors) can reasonably expect that the person receiving this information (i.e. lenders and developers that are training alternative credit scoring models) will use the data to determine a consumer's creditworthiness. Thus, when a data broker supplies training data, they are contributing to the determination of creditworthiness for every consumer subject to the algorithm's decision-making power.

IV. ANTICIPATED BENEFITS INCLUDE INCREASED ACCESS TO CREDIT

The Bureau also requests comment on the "anticipated benefits and costs of each proposed provision to consumers and to entities that would be covered if the proposed rule were adopted as proposed."[21] The Greenlining Institute recognizes that communities of color across the United States stand to benefit from the increased access afforded by alternative data, online lending, and non-bank fintech lenders. This ruling is a meaningful step to incorporating the data brokers into the regulated banking and lending industry.

Fintech companies have indeed expanded access to credit to communities of color. Credit deserts in the United States are more likely to be associated with lack of internet access than the physical presence of a bank branch.[22] Online banking platforms are the bridge between lenders and potential borrowers living in credit deserts. Disproportionately, the residents living in these credit deserts are Black, Hispanic, or living in low-income neighborhoods.[23] These online lending platforms, then, are well positioned to expand equity in loan lending. In 2022, fintech companies were responsible for servicing over 53.6% of the loans given to Black-owned businesses in the Payment Protection Program.[24] In fact, online loan lending minimizes the impacts of in-person discrimination that takes place in traditional banks by over 30%.[25] As the faces of consumers across the United States become more diverse, so follows the landscape of consumer lending.

Alternative data credit models allow consumers to prove creditworthiness through nontraditional means. This presents benefits for first-generation students, immigrant businesses, first-time homeowners, gig workers, survivors of domestic violence, and other credit-invisible borrowers. Alternative credit scoring models that factor gig economy income, for example, can significantly increase access to workers in the

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[21] CFPB Proposed Rules, 89 Fed. Reg. 101458 (Dec.13, 2024).
[22] The Bureau of Consumer Financial Protection Office of Research. (2018). Data point: The geography of credit invisibility. https://files.consumerfinance.gov/f/documents/bcfp_data-point_the-geography-of-credit-invisibility.pdf
[23] ibid.
[24] Howell, S., et al. (2021). Lender Automation and Racial Disparities in Credit Access. *National Bureau of Economic Research.* https://www.nber.org/papers/w29364
[25] Bartlett (n 14).

gig economy, which Hispanic and Black workers are more likely to participate in.[26] In fact, these fintech companies have found success in reaching the very consumers of color that are the recipients of Special Purpose Credit Programs, which work to address the impacts of racial disparities in loan lending. As evidenced by the success of these programs, it is clear that the lending industry is in dire need of more holistic, comprehensive, and equitable assessments for creditworthiness. Alternative data may be the key to this.

The Greenlining Institute supports these efforts to provide inclusive alternatives to the traditional credit system that has been dominated by three companies for the last 30 years. The Bureau has the opportunity to recognize and formalize the role that data brokers play in expanding access within the fintech loan lending industry. However, in order to ensure that the historical impacts of discriminatory redlining are not repeated, regulatory standards must be enforced. FCRA is vital to ensuring that consumer data is not abused, inaccurate, or discriminatory. This expansion of Regulation V will offer the regulatory oversight necessary for communities of color to responsibly access the benefits of alternative credit. In addition to adopting this ruling, the Bureau should consider expanding the obligations of the Community Reinvestment Act to nonbanks and fintech companies, which encourages financial institutions to expand credit access to low- and moderate-income neighborhoods.

V. OTHER CONSIDERATIONS

We invite the Bureau to consider further steps to minimize data asymmetry and empower consumers of color. In California State, for example, the DELETE Act creates a registry of data brokers and provides consumers with the ability to delete their information from the database at will.[27] This registry aligns with the obligations of the FCRA and would embolden consumers to view, correct, and delete any inaccurate information which may be adversely impacting their credit.

The Bureau should also consider, however, how this ruling may impact existing privacy laws pertaining to data brokers. The DELETE Act, for instance, provides exemptions for all data covered by the FCRA and GLBA.[28] Should this Regulation V ruling pass, data brokers involved in providing alternative consumer data to financial institutions would be exempt from this registry. This would render the positive impacts created from the DELETE Act null. The Bureau should consider imposing additional obligations to this ruling so that the obligations are similar, if not the same, as the obligations of the DELETE Act.

[26] Watnick, R., & Anderson, M. (2021). Racial and ethnic differences stand out in the U.S. gig workforce. *Pew Research Center.* https://www.pewresearch.org/short-reads/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/#:~:text=Hispanic%20adults%20are%20more%20likely,and%204%25%20of%20White%20adults.
[27] California Privacy Protection Agency. (2023). Data Broker Registry / DELETE Act. https://cppa.ca.gov/regulations/pdf/data_broker_reg_delete_act_statute.pdf
[28] Privacy Rights Clearinghouse. (2024). California Delete Act. https://privacyrights.org/resources/california-delete-act

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VI. CONCLUSION

In nearly all discussions surrounding proposed regulatory action regarding the use of artificial intelligence and emergent technologies, financial institutions respond with the same sentiment: there is no need to develop any new legislation or regulations—regulatory agencies ought to simply apply the existing regulations to this new technology. This ruling accomplishes exactly that. The Bureau's additions to Regulation V will allow the Fair Credit Reporting Act to meet the needs of this moment. The Greenlining Institute is grateful for the opportunity to voice support for this timely ruling. Regulating data brokers in the financial services industry is imperative to ensuring that economic opportunity and equal credit access is possible for communities of color. We look forward to standing alongside the Bureau in this effort to create a more equitable, inclusive, and responsible lending landscape.

Best regards,

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