UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CORNERSTONE CREDIT UNION LEAGUE and CONSUMER DATA INDUSTRY ASSOCIATION,

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION BUREAU and ROHIT CHOPRA in his official capacity as Director of the CFPB,

Defendants.

Civil Action No. 4:25-cv-00016-SDJ

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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Plaintiffs Cornerstone Credit Union League ("Cornerstone") and Consumer Data Industry Association ("CDIA"), on behalf of their members, respectfully request the Court enter an order against Defendants Consumer Financial Protection Bureau ("CFPB" or "Bureau") and Rohit Chopra in his official capacity as Director of the CFPB ("Defendants"), enjoining the Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) of January 7, 2025 ("Final Rule") in its entirety for the duration of this suit and extending the Final Rule's compliance deadline for the length of the injunction, pending resolution on the merits.

I. INTRODUCTION

On January 7, 2025, just weeks before the change in presidential administrations, the CFPB promulgated a sweeping new rule that prohibits consumer reporting agencies ("CRAs") from informing creditors about a prospective borrower's unpaid medical debts—one of the most common categories of consumer debt. It also bars, with certain narrow exceptions, creditors from considering medical debt when making credit determinations, even if that information is—consistent with the governing statute—coded to hide any identifying health information. The fatal flaw with the Final Rule is straightforward and clear: what the Final Rule prohibits, the Fair Credit Reporting Act ("FCRA") unambiguously permits. Because the Final Rule brazenly exceeds the Bureau's statutory authority and inflicts irreparable harm on Plaintiffs' members, the Court must preliminarily enjoin it.

For decades, FCRA has regulated what can and cannot be included on consumer reports (also known as credit reports). CRAs provide these reports to creditors to help them assess a consumer's creditworthiness. The statute affirmatively allows CRAs to include medical debt information on consumer reports if it "is restricted or reported using codes that do not identify" the medical provider or the nature of the services. 15 U.S.C. § 1681b(g)(1)(C). The statute also

expressly authorizes creditors to use this coded medical debt information to make credit decisions. *Id.* § 1681b(g)(2). Through these two provisions, Congress struck an important balance between allowing lenders to assess accurately a borrower's financial profile while preventing sensitive medical information from being used against a consumer.

Although the statute allows creditors to use coded medical debt information in making credit determinations, the CFPB may "prescribe regulations" that "permit" creditors to use *additional* types of medical information. *See id.* § 1681b(g)(5)(A). The agencies initially entrusted with this regulatory authority used it to promulgate a "financial information exception" that was broader than the statute—it allowed creditors to use even non-coded medical information if, among other things, a consumer's medical condition was not factored into any credit decisions. *See* Fair Credit Reporting Medical Information Regulations, 70 Fed. Reg. 70,664, 70,667–68 (Nov. 22, 2005). After regulatory authority under the statute was transferred to the CFPB in 2011, the Bureau reissued the 2005 rule without change. *See* 12 C.F.R. § 1022.30(d). For twenty years, CRAs have relied on the statute to report coded medical debt information, and creditors have relied on the statute and regulatory exception to use medical debt information when making credit determinations.

Now the CFPB tears down the statutory and regulatory structure. The result—indeed, the entire purpose—of the Final Rule is to flatly prohibit CRAs from reporting medical debt information to creditors, even coded data, and to prohibit creditors from using such data to make credit decisions. That is unlawful for at least three reasons. *First*, the ban on CRAs' reporting coded medical debt information contradicts 15 U.S.C. § 1681b(g)(1), which plainly permits the practice. The CFPB cannot rely on its general rulemaking authority to prohibit what § 1681b(g)(1) unambiguously allows. *Second*, the prohibition on creditors using medical debt information

contradicts § 1681b(g)(2), which allows creditors to use coded medical debt information in their credit decisions. The CFPB claims it can repeal the 2005 financial information exception for creditors, but the authority to rescind prior rules is not the authority to overwrite clear statutory provisions. And *third*, the Final Rule makes it unlawful for CRAs to furnish a report to creditors including medical debt information if creditors may not consider that information under state law. But the CFPB lacks any statutory authority for that limitation and flouts FCRA's preemption provision, which voids any state laws that would prohibit creditors from considering coded medical debt information in credit decisions. *See* 15 U.S.C. § 1681t(a).

Preliminary injunctive relief is the only way to prevent the irreparable harm the Final Rule inflicts on Plaintiffs' members. CDIA represents CRAs—including the nationwide CRAs Equifax, Experian, and TransUnion—while Cornerstone represents credit unions in several states, including Texas. The Final Rule goes into effect 60 days after publication in the Federal Register. To comply by then, CDIA's member CRAs will incur unrecoverable compliance costs as they adjust their systems, procedures, and training to remove medical debt from their consumer reports. Creditors must also adjust their models and systems to exclude medical debt information from credit determinations, and the costs of compliance are unrecoverable. Finally, vacating unlawful agency action is necessarily in the public interest. This Court should therefore enjoin the Final Rule and halt the CFPB's abuse of agency power.

II. BACKGROUND

A. Consumer Reporting Agencies and the Fair Credit Reporting Act.

The modern economy is fueled by credit transactions. *See* Compl. ¶ 70. From simple credit card purchases to financed cars and homes, readily accessible and affordable credit has transformed Americans' access to goods and services. CRAs play a vital role in the national

economy by providing reports detailing a consumer's credit history. Compl. ¶ 38. Likewise, creditors rely on consumer reports when deciding whether to extend or continue credit. By providing an accurate picture of a consumer's financial profile, consumer reports help creditors manage risk and help qualified consumers access financial products on favorable terms. *Id.*

Since 1970, FCRA has regulated the content and use of consumer reports. Through FCRA, Congress sought to strike a careful balance between protecting the privacy of consumers and ensuring that consumer reports contained accurate and useful information. *Id.* ¶¶ 27, 31. FCRA's medical debt provisions reflect that compromise. Congress first addressed medical debt through 1996 amendments to FCRA, barring CRAs from reporting a consumer's medical information without their consent. *See* 15 U.S.C. § 1681b(g) (2000). Then in 2003, Congress passed the Fair and Accurate Credit Transactions Act ("FACT Act"), which included the statutory language that exists today. *See* Pub. L. No. 108-159, 117 Stat. 1952.

As amended by the FACT Act, FCRA takes a more balanced approach to medical debt. It still generally prohibits CRAs from reporting to creditors—and creditors from considering—private medical information. However, CRAs are permitted to include medical debt information in a consumer report if it is "reported using codes that do not identify . . . the specific provider or the nature of [medical] services, products, or devices." 15 U.S.C. § 1681b(g)(1)(C). Similarly, creditors may use medical debt information for credit determinations if the information is "treated in the manner required under section 1681c(a)(6)"—that is, "using codes that do not identify . . . the specific provider or the nature of [medical] services, products, or devices to a person other than the consumer." *Id.* §§ 1681b(g)(2), 1681c(a)(6)(A).

The statute also gives the CFPB authority to "prescribe regulations that permit [creditor] transactions" that it determines are "necessary and appropriate to protect legitimate operational,

transactional, risk, consumer, and other needs." *Id.* § 1681b(g)(5)(A). But while the CFPB can permit creditors to use *more* medical information than the statute allows, it cannot constrict the universe of permissible uses defined by the statute.

B. Regulatory History.

Consistent with that rulemaking authority, federal regulators published a "financial information exception" in 2005. While the statute allows creditors to use coded medical debt information for credit determinations, the 2005 rule went further, allowing creditors to use both coded and non-coded medical debt information if: (1) it was "the type of information routinely used in making credit eligibility determinations," (2) it was used "in a manner and to an extent no less favorable than [the creditor] would use comparable information," and (3) the creditor did "not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account." 70 Fed. Reg. at 70,667–68. In 2011, Congress transferred rulemaking authority under paragraph (g)(5)(A) to the CFPB, but the Bureau retained and reissued the financial information exception without change. *See* 12 C.F.R. § 1022.30(d).

For twenty years, CRAs have relied on the statute to report coded medical debt information and creditors have relied on the statute and regulations to use that information when making credit decisions. Compl. ¶¶ 13, 38–40. For instance, if a consumer has an outstanding $1,000 debt to a regional hospital that is furnished to a CRA, a report from the CRA about that consumer will disclose the existence of the debt, but the tradeline will be listed using codes and generic descriptors (such as "medical payment data") so that the provider and nature of the services cannot be ascertained by anyone but the consumer. *Id.* ¶ 40.

The three nationwide CRAs have also made some voluntary changes to their reporting of medical debt over the last few years. *Id.* ¶ 41. They no longer report paid medical collections or

medical collections less than $500, increasing the focus on substantial unpaid debts. They also wait one year before reporting medical collections to account for delays in insurance reimbursement. *Id.* These changes have reduced the incidence of medical debt on consumer reports. *Id.* ¶ 105. Still, unpaid medical debt remains an important category of consumer financial obligations: In 2023, 15 million Americans had medical debt totaling $49 billion. Final Rule at 16. As discussed above, CRAs report these unpaid debts using industry standard codes and creditors regularly consider them when making credit determinations.

C. Final Rule.

The Final Rule upends this settled practice. The CFPB now prohibits CRAs from reporting medical debt information to creditors for credit determinations, and with limited exceptions it bars creditors from using medical debt information for that purpose. Final Rule at 341–45. Yet the Bureau cannot reconcile the Final Rule with the text of FCRA, which expressly authorizes CRAs to report—and creditors to consider—coded medical debt information. Although the CFPB claims it is just rescinding the 2005 regulatory exception, it actually goes much further. The old exception permitted creditors to consider all medical debt information if three criteria were met, but the Final Rule bans the use of non-coded *and* coded medical debt information, even though FCRA permits creditors to use the latter. Moreover, the Final Rule threatens to unleash huge economic consequences. Because lenders will no longer have access to a substantial category of consumer debt, delinquency rates are likely to rise and the increased cost of credit will be passed on to all consumers. Compl. ¶ 107.

On the day the Final Rule was published, Plaintiffs filed this suit to challenge the CFPB's unlawful and unjustified action. Plaintiffs now move for a preliminary injunction to preserve the status quo until this Court can reach a judgment on the merits.

III. LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish" four things: "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). The most important factor is the first: likelihood of success on the merits. *United States v. Abbott*, 110 F.4th 700, 706 (5th Cir. 2024) (en banc). Plaintiffs have amply demonstrated each of these elements.

IV. ARGUMENT

This Court should enjoin the Final Rule and "postpone the effective date . . . to preserve" Plaintiffs' "status [and] rights pending conclusion of the review proceedings." 5 U.S.C. § 705. Plaintiffs are likely to succeed on their statutory authority arguments because the Final Rule is contrary to the plain language of FCRA. Plaintiffs' members will suffer unrecoverable compliance costs and irreversible damage to their businesses if the Final Rule is permitted to go into effect. And the public interest necessarily favors enjoining agency action that so openly defies the statute and the requirements of the Administrative Procedure Act ("APA").

A. Plaintiffs are Likely to Succeed on the Merits.

The Final Rule directly conflicts with the plain language of FCRA. "The APA . . . specifies that courts . . . set aside any [agency] action inconsistent with the law . . . ." *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). Although the Final Rule is unlawful for many reasons, *see* Compl. ¶¶ 60–112, three are the subject of this motion.

1. The Final Rule Contradicts FCRA by Prohibiting CRAs From Reporting Coded Medical Debt Information.

First, the Final Rule prohibits CRAs from reporting coded medical debt information to creditors for purposes of a credit determination even though FCRA authorizes CRAs to do exactly

that. "To determine whether a statute granted an agency the authority it claims, the Court looks to the statute's text." *Texas v. U.S. Dep't of Lab.*, 2024 WL 3240618, at *7 (E.D. Tex. June 28, 2024). Here, FCRA states that "[a] consumer reporting agency shall not furnish . . . medical information . . . about a consumer, *unless* . . . the information to be furnished pertains solely to . . . debts arising from the receipt of medical services" and "such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services." 15 U.S.C. § 1681b(g)(1)(C) (emphasis added). In other words, although FCRA bans certain private medical information from consumer reports, it expressly permits CRAs to report the financial aspects of medical debt information if the data is coded to obscure the underlying health information.

The Final Rule says the opposite. It prohibits CRAs from reporting medical debt information to a creditor unless they have "reason to believe the creditor intends to use the medical debt information in a manner not prohibited by § 1022.30," which—thanks to the changes made by the Final Rule—prohibits creditors from considering medical debt in credit decisions. Final Rule at 345 (to be codified at 12 C.F.R. § 1022.38(b)(1)). That effectively prohibits CRAs from reporting coded medical debt information to creditors, even though FCRA unambiguously permits them to do so. *See* 15 U.S.C. § 1681b(g)(1)(C).

FCRA's purpose, statutory context, and drafting history reinforce the conclusion that Congress intended to permit CRAs to report coded medical debt information. Both FCRA and its amendments were aimed at balancing the privacy rights of consumers against the need for accurate consumer reports. Compl. ¶¶ 27, 31. Section 1681b(g)(1) aligns with that purpose by permitting CRAs to furnish a major category of (medical) debt while hiding any identifying medical information from creditors. Indeed, Congress was clearly capable of prohibiting CRAs from

reporting all medical debt information if it wanted to do so. From 1996 to 2003, FCRA flatly prohibited CRAs from providing medical information to creditors without consumer consent. 15 U.S.C. § 1681b(g) (2000). But the FACT Act revised subsection (g) to take a more nuanced approach. 117 Stat. at 2000. In committee hearings, FACT Act co-sponsor Sue Kelly explained that the goal was to ensure that "the financial end of [medical debt] could be presented" on consumer reports, "but the entity providing that service is not listed." Fair and Accurate Credit Transactions Act of 2003: Hearings on H.R. 2622 Before the Comm. on Fin. Servs. 16 (2003). The finalized language of paragraph (g)(1) accomplished precisely that aim.

It is black letter law that an agency cannot rewrite a validly enacted statute by regulation. "Where the statutory text does not support [the agency's] proposed alterations, [the agency] cannot step into Congress's shoes and rewrite its words." *VanDerStok v. Garland*, 86 F.4th 179, 195 (5th Cir. 2023), *cert. granted*, 144 S. Ct. 1390 (2024). Indeed, the legal basis for the Final Rule is so weak—and the contrary language of § 1681b(g)(1) so fatal—that the Bureau hardly tries to explain how its rule squares with the text of FCRA. It first suggests that § 1681b(g)(1)(C) is only "necessary when creditors are lawfully permitted to obtain and use medical information." Final Rule at 103. But § 1681b(g)(1) in no way depends on what information creditors are lawfully permitted to use; independent of what creditors may consider in credit decisions, CRAs may include coded medical information on consumer reports.

With no plausible argument that the Final Rule is consistent with § 1681b(g)(1)(C), the CFPB claims that the provision is trumped by another section of FCRA and the Bureau's general rulemaking authority. In the Bureau's words, just because paragraph (g)(1)(C) "carves [out] certain anonymized information . . . does not immunize such anonymized information from restrictions contained in other provisions, such as [§ 1681b(a)'s] permissible purpose restrictions

or regulations issued under [§ 1681s(e)]." Final Rule at 104. But neither of those provisions override the express authorization in § 1681b(g)(1) for CRAs to furnish coded medical debt. Section 1681b(a) states that CRAs may only "furnish a consumer report" to individuals with one or more statutorily defined "permissible purposes," including "[t]o a person which it has reason to believe . . . intends to use the information in connection with a credit transaction involving the consumer." 15 U.S.C. § 1681b(a)(3)(A). It does not delegate authority to the Bureau to decide when furnishing a consumer report is "permissible"—the statute already does that—nor does it prohibit CRAs from reporting coded medical debt information.

Reliance on § 1681s(e) is even more specious. True, the CFPB may "prescribe such regulations as are necessary to carry out the purposes of" and FCRA and "prevent evasions thereof." *Id.* § 1681s(e)(1). But that is not license to rewrite the statute or eliminate statutory protections. To the contrary, even where an agency enjoys regulatory authority, it "cannot enact rules that replace" express statutory terms. *Texas v. U.S. Dep't of Lab.*, 2024 WL 4806268, at *16 (E.D. Tex. Nov. 15, 2024) (cleaned up). "[A]n administrative agency . . . may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) (cleaned up). And on an issue of economic significance such as this,[1] Congress must speak especially clearly before an agency may claim an unprecedented authority. *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022). The Bureau points to no specific authorization to eliminate coded medical debt from consumer reports because there is none.

[1] Even after the voluntary changes the nationwide CRAs made to medical debt reporting, 15 million Americans still have $49 billion in medical debt on their consumer reports. Final Rule at 16. Removing these significant obligations will decrease the accuracy of credit scoring, increase default rates on other loans, and increase the cost of credit for all consumers. Compl. ¶¶ 107–10.

2. The Final Rule Contradicts FCRA by Barring Creditors From Using Coded Medical Debt Information in Credit Decisions.

Second, the section of the Final Rule applicable to creditors is unlawful for similar reasons. 15 U.S.C. § 1681b(g)(2) explains that "a creditor shall not obtain or use medical information" for credit decisions "*other than* medical information [coded] in the manner required under section 1681c(a)(6) of this title" (emphasis added). The "manner required" by § 1681c(a)(6) is "using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer." In short, although FCRA generally prohibits creditors from considering medical information in credit determinations, it affirmatively authorizes creditors to take a consumer's medical debt information into account if the information is properly coded in the exact way CRAs are required to provide it.

The Bureau tries to justify the Final Rule by claiming it merely repeals the 2005 financial information exception, which was issued pursuant to its predecessor agencies' authority to add additional exceptions to paragraph (g)(2). *See id.* § 1681b(g)(5)(A). But the CFPB cannot eliminate an exception that FCRA itself provides. The prior regulation was consistent with the statutory carveout, as it allowed creditors to consider the financial aspects of medical debt. *See* 12 C.F.R. § 1022.30(d)(iii). It merely broadened the exception beyond just coded medical debt. But the Final Rule repeals § 1022.30(d) and reverts to a blanket prohibition on creditors' "use" of medical debt information in connection with a credit transaction. 12 C.F.R. § 1022.30(b). That effectively strikes the exception for coded medical debt from § 1681b(g)(2).

To attempt to salvage the Final Rule, the CFPB claims that § 1681b(g)(2) does not actually authorize creditors to use coded medical information. It claims that the parenthetical language is only a "cross-reference . . . acknowledg[ing]" that coded medical information "exists." Final Rule at 145. That is, it merely ensures that creditors can "obtain[] or use[] a consumer report" if it

contains the type of coded medical debt information identified in § 1681c(a)(6)—the contact information of a medical information furnisher—but does *not* permit creditors to in fact use that coded medical debt information in credit decisions. *Id.* Yet this makes a hash of the statutory language. For starters, § 1681b(g)(2) does not allow creditors to use just the specific information in § 1681c(a)(6); it allows them to use all "medical information" (defined broadly by the statute) that is treated "in the *manner*" prescribed by § 1681c(a)(6), i.e., coded to protect private health information. Furthermore, § 1681b(g)(2) does not preserve a creditor's ability to "use" a consumer report that contains some coded medical information, but rather expressly authorizes a creditor to make use of the coded medical information itself. By providing that a creditor may not use medical information in credit decisions "*other than*" coded information, § 1681b(g)(2) authorizes creditors to make use of that information. The Bureau would read "other than" to mean "including" and turn the carveout into no carveout at all.

The Bureau protests that if § 1681b(g)(2) allows creditors to use coded medical debt information it will "swallow" the general prohibition on the use of that information. Final Rule at 145. Far from it. Section 1681b(g)(2) still prohibits creditors from using all non-coded medical information and any coded medical information that implicitly reveals private health information. Only properly coded medical debt information may be used in credit decisions. Indeed, that was Congress's evident intent when drafting § 1681b(g). As mentioned, one of the goals of the FACT Act was to allow creditors to see "the financial end" of medical debt but not identifying information about a consumer's underlying health condition. Hearings on H.R. 2622, *supra*, at 15–16 (Statement of Rep. Kelly). Paragraphs (g)(1) and (g)(2) work together to accomplish that goal—CRAs may report coded medical debt information and creditors may consider it. The Bureau

instead razes the entire statutory scheme by declaring that creditors may not consider any coded medical debt and limiting the ability of CRAs to match.

3. Without Statutory Authority, the Final Rule Incorporates State Law That FCRA Preempts.

Third, the CFPB exceeds its statutory authority by giving effect to state laws which FCRA explicitly preempts. In addition to prohibiting CRAs from reporting medical debt information to creditors, the Final Rule bars CRAs from including medical debt information on consumer reports if they have "reason to believe the creditor is not otherwise legally prohibited from obtaining or using the medical debt information, *including by a State law* that prohibits a creditor from obtaining or using medical debt information." Final Rule at 345 (to be codified at 12 C.F.R. § 1022.38(b)(2)) (emphasis added). Put differently, if it is purportedly illegal under state law for a creditor to consider medical debt information, it is now also illegal under federal law for a CRA to furnish to a creditor a report with such information. But this new restriction—introduced for the first time in the Final Rule—has no basis in the statute.

First, the CFPB lacks the statutory authority to further limit the kind of information that CRAs can include on consumer reports. The Final Rule places great reliance on the fact that CRAs may only provide consumer reports to recipients for "permissible purposes." 15 U.S.C. § 1681b(a). The Bureau plays fast and loose with the "permissible purpose" language to suggest that if creditors are prohibited from considering medical debt information—either by the Final Rule or by state law—then it is not "permissible" for CRAs to include that information on a consumer report. But FCRA's "permissible purposes" provision does not go that far. It provides an exhaustive list of reasons for which a recipient may request a consumer report. *See id.* It does not limit CRAs based on either the content of the consumer report or laws applicable to the recipient.

The Bureau's expansive reading of § 1681b(a) has implications far beyond just medical debt. It would mean that CRAs have an obligation to ensure not just that the purpose is allowed under FCRA, but that creditors are legally able to consider the information inside that report. But FCRA does not turn CRAs into policemen for creditors. The Bureau's logic also has no limiting principle. If the lawfulness of furnishing a consumer report depends on whether a creditor will abide by the law, CRAs could be prohibited from furnishing if they had reason to believe a creditor was limited by any number of state and local lending regulations. Cleaving close to the actual text of § 1681b(a) avoids this shocking expansion of liability.[2]

Second, the Final Rule also unlawfully gives effect to preempted state law. FCRA expressly voids state laws "to the extent that those laws are inconsistent with any provision of" the statute. 15 U.S.C. § 1681t(a). Because FCRA permits creditors to consider coded medical debt information, *see id.* § 1681b(g)(2), any state law prohibiting creditors from doing so would be preempted. For example, a state could neither mimic the Final Rule nor go further, perhaps by eliminating the Final Rule's remaining exceptions for the use of medical debt information. Yet the Final Rule resurrects those laws by making it a federal regulatory offense for a CRA to furnish coded medical debt information to a creditor who could not receive it under state law.

[2] The Bureau cites no caselaw or agency precedent for its novel reading of § 1681b(a). Perhaps that is because courts have roundly rejected similar arguments made by private litigants. *See, e.g.*, *Beckford v. Clarity Servs., Inc.*, 2021 WL 2980534, at *1–3 (M.D. Fla. July 13, 2021) (holding that a CRA did not have a duty under § 1681b(a) to determine whether a recipient of consumer report was in compliance with state usury laws); *Aleksic v. Clarity Servs., Inc.*, 2015 WL 4139711, at *10 (N.D. Ill. July 8, 2015) (holding that a lender had a "permissible purpose" for a consumer report even if it violated state lending regulations); *cf. Padgett v. Clarity Servs., Inc.*, 2018 WL 6628274, at *1 (M.D. Fla. Dec. 13, 2018) ("[T]he weight of authority holds that a CRA is not a tribunal charged with determining the underlying debt's legal validity.").

In sum, the Final Rule conflicts with the plain meaning of FCRA's provisions for CRAs, its requirements for creditors, and its preemption provisions. Plaintiffs are likely to succeed on the merits of those statutory claims.

B. Plaintiffs' Members Will be Irreparably Harmed Absent an Injunction.

Both CDIA's and Cornerstone's members will suffer irreparable injury if the Final Rule is not enjoined. "Where, as here, the likelihood of success on the merits is very high, a much smaller quantum of injury will sustain an application for preliminary injunction." *Fed'n of Ams. for Consumer Choice, Inc. v. U.S. Dep't of Lab.*, 2024 WL 3554879, at *15 (E.D. Tex. July 25, 2024) (quotation omitted). That threshold is easily cleared because "the nonrecoverable costs of complying with a putatively invalid regulation typically constitute irreparable harm." *Rest. L. Ctr. v. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023).

Harm to CRAs. As detailed in the declarations provided by CDIA and four of its members in support of this motion, the Final Rule will impose at least three types of compliance costs on CDIA's member CRAs. *First*, CRAs will be forced to spend substantial resources on updating their internal systems and information technology. Making changes to comply with the Final Rule is more complicated than merely hitting the "delete" button. The CRAs' systems contain billions of data points provided by thousands of furnishers. *See, e.g.*, Ex. 4 (Equifax Decl.) ¶ 6.a. The CRAs' systems currently treat coded medical debt information the same way they do all other information that appears in a consumer's file. But since the Final Rule prohibits CRAs from reporting medical debt information to creditors—and creditors alone—the systems will need to be revamped to treat medical debt differently. Ex. 6 (TransUnion Decl.) ¶ 5.a.i.

Because each CRA's system is uniquely designed, each CRA's modifications will differ in terms of time, cost, and complexity. But there are some similarities: Each CRA will need to

decide whether to keep reporting properly coded medical debt information to those who can receive it (i.e. insurers or employers) or whether to simply stop reporting medical debt information to all customers. If they choose the latter, a second question arises: Do they stop accepting medical debt information into their systems and delete what is already there? Or do they continue to store medical debt information but simply suppress the data from appearing on consumer reports and being used in related products? *See* Ex. 5 (Experian Decl.) ¶ 5.a.

The choice between those options may depend on a CRA's particular system. For instance, some CRA systems are not configured to identify whether a specific report is being requested for a credit determination or some other permissible purpose. Ex. 6 ¶ 5.a. It would be impossible for those CRAs to modify their systems to differentiate reports based on permissible purpose, at least within the Final Rule's 60-day implementation period. Ex. 4 ¶ 6.b. Thus, in the short run, the only option for those CRAs would be to suppress medical debt information from *all* consumer reports. *Id.*; Ex. 6 ¶ 5.a. That means suppressing up to 7 years of existing coded medical debt information from their systems and installing procedures to prevent additional medical debt information from being included. Even those CRAs that track permissible purpose at the transaction level would need to develop from scratch the ability to exclude medical debt information from reports going to creditors. Ex. 5 ¶ 5.c.i.

Any of these changes to information technology and internal procedures will require the investment of substantial resources. Ex. 3 (CDIA Decl.) ¶ 7. CRAs will also need to: develop new processes to handle consumer disputes alleging that medical debt is improperly appearing on their consumer reports, Ex. 6 ¶ 5.b.ii; work closely with third-party credit scoring companies to evaluate the impact of the changes on how they use CRA data, Ex. 5 ¶ 5.g; train staff and monitor any revised systems to ensure that they are operating as intended, *id.* ¶ 5.d; ensure that new medical

debt information is not added to consumer files, such as by developing processes to identify medical debt information that is not reported as such in the standard Metro 2 reporting format, Ex. 4 ¶ 6.b.i.2; and educate furnishers and customers about the reforms, *id.* ¶ 6.b.ii. Smaller CRAs would need to make similar changes. Ex. 7 (Anonymous CRA Decl.) ¶ 6.

Second, complying with the Final Rule may also require some CRAs to make irreversible changes to their data. If CRAs choose to suppress medical debt information from all consumer reports, it will be extremely difficult to restore that data if the Final Rule is ultimately set aside. Ex. 5 ¶ 5.b.iv. CRAs do not necessarily track *why* a tradeline has been suppressed from a consumer report, just that it has. Ex. 4 ¶ 6.b.i.1. They would not be able to restore the data in bulk because they would not know which data to restore.[3] Indeed, if a CRA chooses to delete medical debt information from its systems, that information may never be restored if the creditor is no longer furnishing, or furnishes less data than they did previously. Ex. 5 ¶ 5.b.iv.

Third, the Final Rule will also negatively affect the CRAs' other commercial products. Many CRAs develop proprietary credit scores or other algorithms that they sell to customers in addition to traditional consumer reports. Ex. 4 ¶ 6.b.iii.1. CRAs would need to update these products to make sure that they no longer consider medical debt information, and re-weight the remaining data to maximize the predictiveness of the score provided. *Id.* ¶ 6.b.iii.1–2. Even those CRAs that choose not to re-engineer their products will need to run substantial analyses to fully understand how the lack of medical debt information affects the predictiveness of those products and communicate those conclusions to customers. Ex. 5 ¶ 5.f.

[3] TransUnion believes that its systems could be updated to track the reason for suppression, which would allow data to be restored if the Final Rule is set aside. But doing so would require TransUnion to incur substantial costs, and could jeopardize TransUnion's ability to comply with the requirements of the Final Rule within the 60-day implementation period. Ex. 6 ¶ 5.d.i.

No matter how an individual CRA chooses to comply with the Final Rule, it will have to expend significant time and resources. Moreover, excluding a major category of consumer debt from consumer reports and related products will make these products less predictive. Some of the CRAs' customers would no longer be willing to pay (or pay as much) for these products, leading to lost revenue. Ex. 4 ¶ 6.b.iii.3. Relatedly, complying with the Final Rule will impose unique competitive disadvantages on each CRA. If a CRA chooses to suppress medical debt from all consumer reports, for example, its products will be less valuable to non-creditors than products from companies that are able to selectively remove medical debt information. Ex. 6 ¶ 5.a.ii. If such suppression is irreversible, a CRA may never regain its market position.

Harm to Creditors. The Final Rule will also saddle creditors with unrecoverable compliance costs and economic losses, as detailed in declarations provided by Cornerstone and one of its members. *First*, creditors must develop new systems for information intake to ensure that they do not directly solicit medical debt information but still receive a complete financial picture of a borrower. *See* Ex. 2 (Anonymous Credit Union Decl.) ¶ 5.a. These changes will require extra training in addition to updating internal processes and information technology. *Id.*

Second, creditors must change their underwriting practices. Eliminating medical debt information from credit determinations will make current underwriting models less predictive. *Id.* ¶ 5.b; Ex. 1 (Cornerstone Decl.) ¶ 6. So creditors must change their underwriting methods to account for the fact that consumer reports no longer contain information about an important category of consumer debt. Ex. 1 ¶ 7. That includes tracking loans to analyze how borrowers perform compared to what their adjusted credit scores predicted. Ex. 2 ¶ 5.c.

Third, creditors must re-evaluate their risk management practices to ensure that the institution's financial health is not harmed by underwriting loans with less visibility into a

borrower's creditworthiness. For example, one credit union plans to adjust its credit eligibility standards by increasing threshold credit score requirements and decreasing maximum loan amounts to compensate for the additional risk that it will take on, and it may end up adjusting loan pricing as well. *Id.* ¶ 5.b. These updates will also require more training, monitoring, and compliance procedures, and the investment of substantial resources. *Id.* ¶ 5.d.

In sum, even if Plaintiffs are ultimately successful in this action, their members cannot recoup the financial losses they would suffer from complying with the Final Rule. Sovereign immunity precludes any relief for money damages. *See R.J. Reynolds Vapor Co. v. FDA*, 65 F.4th 182, 194 (5th Cir. 2023). Thus, "complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs." *Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022) (cleaned up).

C. The Balance of Harms and the Public Interest Favor Injunctive Relief.

The remaining equitable factors strongly favor granting a preliminary injunction to Plaintiffs. Under the final two factors, the court must balance the benefit a preliminary injunction would bring to the plaintiff against any harm to the government or public at large. But "when the Government opposes an injunction, the third and fourth factors 'merge.'" *SO Apartments, L.L.C. v. City of San Antonio*, 109 F.4th 343, 349 (5th Cir. 2024) (citation omitted).

Here, the public interest is in lawful agency action. "[T]here is generally no public interest in the perpetuation of unlawful agency action." *Texas v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021) (per curiam) (cleaned up). "[T]he public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve." *Fed'n of Ams. for Consumer Choice*, 2024 WL 3554879, at *16 (cleaned up). As demonstrated above, the Final Rule clashes with at least three different provisions of FCRA.

A preliminary injunction not only halts the implementation of an unlawful agency mandate, it also preserves the status quo ante. CRAs have been lawfully reporting—and creditors have been considering—coded medical debt information for twenty years. "Since the current regulations have been in effect for decades, there is little harm in maintaining the status quo through the pendency of this suit." *Oklahoma v. Cardona*, 2024 WL 3609109, at *12 (W.D. Okla. July 31, 2024).

This Court should therefore enjoin the implementation of the entire rule. The APA states that courts "shall . . . set aside" unlawful agency action. 5 U.S.C. § 706(2)(A). To "set aside" means to "invalidate[]," a remedy which "is not party-restricted." *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 225 (5th Cir. 2024) (quotation omitted). Indeed, "vacatur . . . [is] the default remedy for unlawful agency action" under the APA. *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 952 (5th Cir. 2024) (cleaned up). Moreover, the Final Rule restricts the nationwide activities of CDIA's member CRAs; and not only are Cornerstone's credit unions affected, but so are the thousands of other creditors to whom the nationwide CRAs furnish their reports. It does the CRAs no good to report coded medical debt if none of their customers can use it. "[I]t would be impractical, if not impossible, to fashion party-tailored relief here." *U.S. Dep't of Labor*, 2024 WL 4806268, at *26. Because Plaintiffs have adequately satisfied the requirements for a preliminary injunction, interim relief should match the scope of the final requested relief.

V. PRAYER FOR RELIEF

For the aforementioned reasons, Plaintiffs respectfully request that this Court enjoin the Final Rule in its entirety for the duration of this suit and extend the Final Rule's compliance deadline for the length of the injunction.

Dated: January 10, 2025

Respectfully Submitted,

By: /s/ *Alex More*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion was filed electronically through the Court's ECF system. I further certify that counsel for Plaintiffs conferred with counsel for Defendants to provide an electronic copy of the motion by email by consent pursuant to FED. R. CIV. P. 5(b)(2)(E).

/s/ Alex More

CERTIFICATE OF CONFERENCE

I certify that, on January 8, 2025, counsel for Plaintiffs conferred by videoconference with counsel for Defendants, Steven Y. Bressler, Kristin Bateman, Amanda J. Krause, and Andrea Matthews of the CFPB. Follow up discussion occurred on January 9 by email. Defendants opposed Plaintiffs' request to stay the Final Rule's effective date in exchange for not seeking a preliminary injunction.

/s/ Ryan Scarborough

Exhibit 1

DECLARATION OF CORNERSTONE CREDIT UNION LEAGUE

I, Suzanne Yashewski, Regulatory Compliance Counsel of the Cornerstone Credit Union League ("Cornerstone"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. Cornerstone is a regional trade association that represents approximately 600 state and federally chartered credit unions in Arkansas, Kansas, Missouri, Oklahoma, and Texas. Those 600 credit unions in turn represent nearly 12 million members/owners. Credit unions are not-for-profit member owned financial cooperatives committed to the financial success of the individuals, families, and communities they serve. Cornerstone's principal place of business is in Plano, Texas.
2. Cornerstone's credit union members, among other things, extend credit to their members. Many credit union members underwrite those credit transactions in part by relying on credit reports and credit scores that include medical debt information.
3. Anonymous Credit Union A is a Cornerstone member.
4. On June 11, 2024, the Consumer Financial Protection Bureau ("CFPB" of "Bureau") issued a Notice of Proposed Rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) ("Proposed Rule"). I have been personally involved in the Cornerstone's efforts to evaluate the Proposed Rule and the final rule posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on Cornerstone members. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Cornerstone and the Consumer Data Industry Association. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge, investigation and communications with

Cornerstone members. These communications include a number of calls with individual Cornerstone members, as well as discussing the Proposed Rule with members as part of group calls and Cornerstone conferences.

5. Cornerstone submitted a comment letter in response to the Proposed Rule on August 12, 2024. In the comment letter, Cornerstone argued that the Bureau should withdraw the Proposed Rule because prohibiting member credit unions from considering medical debt "could lead to a range of negative implications, including increased default rates and higher costs for credit unions and their members." Suzanne Yashewski, Comment Letter on Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), at 2–3 (Aug. 12, 2024), https://www.regulations.gov/comment/CFPB-2024-0023-1072. Cornerstone also pointed out how the Proposed Rule would conflict with various ability-to-repay provisions of other consumer financial laws. *Id.* Cornerstone suggested that the Bureau replace the Proposed Rule with guidance that would help creditors better understand the predictiveness of medical debt. *Id*. In issuing the Final Rule, the Bureau failed to adequately consider or address any of these issues.
6. By prohibiting consideration of medical debt information as part of a credit determination, the Final Rule will reduce the accuracy of underwriting decisions made by Cornerstone member credit unions. This, in turn, will lead to increased delinquencies and defaults on loans made by those members, which harms both the borrower and the credit union (and ultimately the credit union's members).
7. The Final Rule would prohibit creditors such as Cornerstone members from considering medical debt as part of evaluating a borrower for a credit transaction.

This would require Cornerstone members to make various changes to their policies and procedures related to credit underwriting, compliance, and risk management. These may include evaluating whether to change prices or eligibility requirements for products to account for increased default risk resulting from making underwriting decisions based on less complete and predictive data. Members may also have to consider whether to stop offering products if they believe that the increased default risk makes it unprofitable to offer those products. Members will need to make these changes prior to the expiration of the 60-day implementation period, and will not be able to recover those costs.

8. While not all Cornerstone members consider medical debt when underwriting credit products, many do. And many of those that do not explicitly consider medical debt do consider credit scores that incorporate a consumer's medical debt obligations.
9. Credit unions are member-owned, so all costs they incur are ultimately passed on to members through reduced benefits or increased costs for services. For example, some credit unions pay dividends to members if earnings in a given year are particularly strong. Increased costs imposed by the Final Rule and increased delinquency rates could cause these members to either reduce the amount of the dividend or forgo paying one entirely.
10. Cornerstone will also incur costs because of the Final Rule. Cornerstone regularly provides training to its members on a variety of compliance topics, including compliance with the Fair Credit Reporting Act and Regulation V. Those training materials will need to be updated to incorporate the requirements of the Final Rule.

Cornerstone will also need to communicate information about the Final Rule to its members.

11. I declare under penalty of perjury, this January 9, 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Suzanne Yashewski
Cornerstone Credit Union League

Exhibit 2

DECLARATION OF ANONYMOUS CREDIT UNION A

I, President and Chief Executive Officer of Anonymous Credit Union A ("Credit Union A"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. Credit Union A is a full-service financial institution headquartered in Texas that offers savings, checking, loans, and other digital services to its members. Credit Union A's mission is to build lifelong relationships with its members, and aims to always exceed member expectations in its commitment to their financial success.
2. On June 11, 2024, the Consumer Financial Protection Bureau ("CFPB" of "Bureau") issued a Notice of Proposed Rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) ("Proposed Rule"). I have been personally involved in Credit Union A's efforts to evaluate the Proposed Rule and the final rule posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on Credit Union A's operations. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Cornerstone Credit Union League and the Consumer Data Industry Association. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge, investigation and communications with Credit Union A employees.
3. Credit Union A is a member of Cornerstone Credit Union League.
4. Credit Union A offers a variety of credit products to members, including vehicle loans, home equity lines of credit, and personal loans. Credit Union A considers a potential borrower's medical debt when underwriting each of these types of loans. Credit Union A considers medical debt because it is predictive of future borrower

performance. The CFPB itself recognizes this; in a March 2022 report, the CFPB observed that unpaid medical bills can lead to "adverse events such as . . . increased likelihood of bankruptcy."[1] Credit Union A also considers medical debt in underwriting loans because it is a valid obligation of the potential borrower, so Credit Union A must consider it to get the clearest picture possible of the potential borrower's ability to repay a loan.

5. In order to comply with the Final Rule, Credit Union A must:

    a. Update underwriting policies and procedures: To comply with the Final Rule, Credit Union A will need to ensure that it does not directly solicit medical debt information from potential borrowers during the application process. But, Credit Union A also will need to take steps to ensure that it is getting a complete financial picture of the potential borrower. This may require asking applicants multiple times to disclose all of their known credit obligations, or, to the extent allowed by law, showing the applicant which debts are included on his consumer report and asking him to identify any that are missing. Credit Union A likely will incur substantial costs to update its policies, procedures, and systems to allow for these changes. These costs will include extra training for staff on the content of the Final Rule and changes that are made to implement it.

    b. Update to risk management: Credit Union A anticipates that its credit underwriting will be less accurate if it cannot consider medical debt as part of

[1] "Medical Debt Burden in the United States," Consumer Financial Protection Bureau (Feb. 2022) at 5, available at: https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

that process. Credit Union A intends to update its internal risk tiers to account for this change. This would mainly involve increasing the minimum credit score or lowering the maximum loan amount for a given product at a given interest rate. Credit Union A may also have to increase interest rates to account for additional risk. These changes would both negatively impact our members—who would be able to borrow less or not at all—and decrease Credit Union A's revenue if we originate fewer loans because the terms are less attractive.

c. Monitor efficacy of underwriting inputs: Because the Final Rule is removing predictive information from the credit scores that Credit Union A uses in underwriting, Credit Union A intends to closely monitor how loans perform compared to how the credit scores predicted they would perform. If there is a substantial disconnect between the two, Credit Union A will need to evaluate whether to use different credit scores or other inputs as part of the underwriting process.

d. Update compliance policies and procedures: Credit Union A's compliance policies and procedures will need to be updated to incorporate its new underwriting policies and procedures. This update may include an audit of internal controls around the new policies and procedures, and well as increased documentation. These increased compliance costs may be higher than others in the industry since Credit Union A uses a third party to assist with compliance.

6. The costs outlined above are just those that Credit Union A anticipates incurring the near term. If the Final Rule is implemented, at some point Credit Union A anticipates evaluating whether it can continue to provide certain products, such as personal loans, on a basis that is economical to the credit union and the borrower alike. Delinquencies and defaults may increase, which could put financial stress on Credit Union A, as well as affect Credit Union A's accounting, such as its CECL calculations.
7. Because Credit Union A is a credit union, all costs it incurs are ultimately passed on to its members, either in the form of increased costs or lowered benefits.
8. I declare under penalty of perjury, this January 9, 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/_Authorized Signature_____
AUTHORIZED SIGNATURE FOR
ANONYMOUS CREDIT UNION A

Signed copy maintained by Plaintiffs' counsel.

Exhibit 3

DECLARATION OF CONSUMER DATA INDUSTRY ASSOCIATION

I, Dan Smith, President and CEO of the Consumer Industry Data Association ("CDIA"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

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 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, 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. Equifax Information Services, LLC, Experian Information Solutions, Inc., TransUnion, and Anonymous Consumer Reporting Agency A are all members of CDIA.
3. In recent years some CDIA members have voluntarily made changes in the reporting of medical debt information including: 1) removing all paid medical debt collections from consumer reports; 2) extending the time before unpaid medical debt collections are included on consumer reports; and 3) removing medical debt collections less than $500 from consumer reports.
4. On June 11, 2024, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued a Notice of Proposed Rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)

("Proposed Rule"). I have been personally involved in CDIA's efforts to evaluate the Proposed Rule and the final rule posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on CDIA and its members. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the CDIA and the Cornerstone Credit Union League. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge, investigation and communications with CDIA members.

5. CDIA submitted a detailed comment letter in response to the Proposed Rule on August 12, 2024. In the comment letter, CDIA asserted, among other things, that the Proposed Rule: exceeded the Bureau's statutory authority; was arbitrary and capricious because it relied on outdated, internal data that had not been disclosed, was based on an inadequate cost benefit analysis, and was internally contradictory; improperly incorporated state law into federal law; violated the major questions doctrine; and violated the non-delegation doctrine. In issuing the Final Rule, the Bureau failed to adequately consider or address any of these issues.
6. The Final Rule would prohibit consumer reporting agencies, many of whom are CDIA members, from including accurate medical debt information in consumer reports provided to a creditor for use in making a credit determination. This would require significant changes in how CDIA members collect, store, and report medical debt information. It would also require significant changes in the algorithms that are used by CDIA members to create products that are also sold to various customers.
7. The Final Rule would impose significant compliance costs on CDIA members to modify the systems they use to collect consumer debt information, modify consumer

reports to exclude medical debt information, modify algorithms used to other products, develop systems to differentiate between customers who can receive medical debt information and those who cannot, and retrain employees regarding the Final Rule. CDIA members will immediately need to begin incurring these costs given the 60-day deadline for implementation of the Final Rule.

8. As detailed in the complaint and CDIA's comment letter, medical debt is predictive of future performance. By eliminating accurate medical debt information, the Final Rule will also undermine the accuracy and reliability of consumer reports and distort consumer credit scores for consumers with significant unpaid medical debt compared to consumers without such debt. This will result in a decreased usefulness and value of consumer reports and a likely decrease in revenue for CDIA members.

9. CDIA also runs an extensive training program to educate furnishers on the Metro 2 credit reporting format, which is the industry guidelines used by companies to furnish consumer financial information to consumer reporting agencies. In calendar year 20234, CDIA earned $578,130 in revenue from these training classes. The Bureau has predicted that the Final Rule would "decrease the incentive for health care providers and debt collectors to furnish medical debt to consumer reporting agencies." 89 Fed. Reg. 51,692 at 51,699. If this comes to pass, CDIA would lose revenue as a result of fewer companies enrolling in Metro2 education classes.

10. I declare under penalty of perjury, this January 9, 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dan Smith
President and CEO, CDIA

Exhibit 4

DECLARATION OF EQUIFAX

I, Nick Oldham, Chief Compliance Officer of Equifax Inc., the parent company of Equifax Information Services LLC ("Equifax"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. Equifax is a trusted global leader in data, analytics, and technology. Equifax is a consumer reporting agency that provides consumer reports to customers who have a permissible purpose as defined by the Fair Credit Reporting Act, including for making lending decisions. Among other things, this helps businesses make lending decisions that are better for the consumer and business alike.
2. I have been personally involved in efforts to evaluate the new rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on Equifax. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Consumer Data Industry Association ("CDIA") and the Cornerstone Credit Union League. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge, investigation, and communication with Equifax employees.
3. Equifax is a member of the CDIA. Equifax is headquartered in Atlanta, Georgia.
4. Equifax operates a nationwide consumer reporting agency that plays a critical role in the financial ecosystem. When a consumer needs credit or a loan, the consumer will go to a lender (*e.g.*, a bank) to request that credit or loan. Lenders rely on data that Equifax provides to inform their lending decisions. That data may include specific

data points about a consumer's credit history commonly called "attributes" in the industry (*e.g.,* the number of open accounts a consumer has or the number of past due accounts), may include a summarized view of a consumer's file in the form of a credit score, which is a calculated value designed to predict future behavior (in many cases the likelihood of default), or may include a more traditional consumer report that provides details about the consumer's credit history. To ensure that these data points are accurate and that lending decisions are informed, it is imperative that Equifax have access to information that provides value to these transactions.

5. Equifax has voluntarily made extensive changes to its reporting of medical debt information in consumer credit reports including: 1) removing all paid medical collection debt from a consumer credit report; 2) extending the time before unpaid medical collection debt is included on a consumer credit report from six months to one year; and 3) removing medical collection debt with an original reported balance of less than $500 from a consumer credit report. These changes were closely analyzed and were made to support greater and responsible access to credit, and to help people across the United States focus on their financial and personal wellbeing. In making these voluntary changes, Equifax assessed the impact of the changes on the predictiveness of consumer credit scores to ensure that its products continued to reliably predict future borrower behavior.

6. The Final Rule would forbid Equifax from including any "medical debt information" in consumer credit reports provided to creditors for the purpose of making a credit determination. However, not all debt related to medical transactions is considered "medical debt information" under the Final Rule, creating a need for Equifax, and

participants throughout the financial ecosystem, to develop and implement new ways to identify the types of accounts related to medical transactions. This would require Equifax to make additional, extensive changes to its systems and processes. If the Final Rule were to be invalidated for any reason, Equifax would need to undo these changes to ensure that its products remain as accurate and predictive as possible. This means not only would Equifax suffer irreparable harm in the form of costs to implement changes, but those costs would be compounded by the additional cost of reversing the changes. Given the complexity of the financial ecosystem as a whole and Equifax's technology systems specifically, those costs would be significant.

a. As an initial matter, the Equifax data ecosystem is complex and part of the broader financial ecosystem. Every month, Equifax takes in *billions* of data points from *thousands* of furnishers. Major changes, such as those required to implement the Final Rule, require substantial testing, industry alignment, and significant investment to ensure that the changes do not have unintended, adverse consequences to the Equifax data ecosystem, the broader financial ecosystem, or consumers.

    i. A change of this nature requires modifications to systems across the financial ecosystem. While Equifax can make changes to its own systems, without changes to industry platforms and each individual furnisher's system, Equifax's changes can only go so far to implement the Final Rule.

    ii. To fully implement the Final Rule, Equifax would need to develop a system to differentiate the type of medical debt covered by the Final

Rule, and the type of medical debt not covered by the Final Rule, such as credit cards that are used solely for the purpose of paying for medical costs. Both types of creditors might furnish information using the Metro 2® codes indicating that the information should be considered medical debt. Regardless of whether Equifax would address this issue through changes to its systems, supporting changes to Metro 2®, or greater emphasis on furnishers using the correct codes, the change would require Equifax to spend a significant amount of time and money on furnisher outreach, education, and training to ensure that furnishers are aware of the changes being made, and properly update their systems and processes to conform to the updated guidance.

iii. Furnishers also process disputes through the e-OSCAR platform, which is an industry platform co-owned by the nationwide consumer reporting agencies. Changes to the e-OSCAR platform would be required to allow for a new dispute type (i.e., disputing that an account is medical debt under the Final Rule, but was reported as a different account type), and updates would need to be made to the upstream and downstream processes at each furnisher and consumer reporting agency, including at Equifax.

iv. An industry change of this nature generally takes several quarters or years to implement and implementation costs will be in the millions across the industry.

b. The changes discussed above almost certainly could not be implemented within the 60-day window provided for by the Final Rule. To meet that deadline, Equifax would need to suppress all accounts reported as "medical debt" from each consumer file regardless of whether the account is "medical debt information" under the final rule. This would result in significant irreparable harm in the form of diminished data quality, data accuracy, and product performance, ultimately harming Equifax's core business and consumers. Equifax would also incur costs to update its internal systems and processes. These costs fall into three broad categories: coding costs, customer interactions, and product impacts.

i. Coding costs: Equifax will have to make substantial changes to its systems across the data lifecycle – from data ingestion to product delivery – in order to comply with the Final Rule.

1. Data Storage: Equifax's business relies on data, and Equifax has invested significantly in systems, processes, and tools to ensure the quality of its data and products. Under the Final Rule, Equifax would be required to suppress a substantial amount of data from consumer files, which in turn would remove that information from Equifax products. Suppressing these accounts would mean that they would not be available in consumer reports, and they would not be updated with current information except in limited circumstances (e.g., to update an account number or furnisher identifier used to track the

account). If the Final Rule is nullified, Equifax would not be able to restore the accounts to include their complete and accurate account information, including payment history and other account information furnished while the account was suppressed without developing and implementing new rules to allow such updates, which would come at great cost and take a significant amount of time to implement. This creates an irreparable harm as the result of suppressing data in an attempt to comply with the Final Rule may create a situation where that data cannot be restored in a way that complies with the FCRA's accuracy requirements if the Final Rule is nullified.

2. Data Ingestion: Equifax processes account data through internal systems that are designed to receive files in the Metro 2® format, analyze the data within those files, apply validation rules, and format the data before it is incorporated into the applicable consumer file. When data is ingested, it goes through a process to identify the consumer file to which it relates, and make the appropriate update to the consumer file. To do this, Equifax maintains systems with thousands of rules to assess ingested data and make determinations regarding how the data should be treated. For example, Equifax identifies whether the information relates to a new account or should be

applied as an update to an existing account. Equifax also organizes information within a consumer file into "segments" based on the account type. To implement the Final Rule, Equifax would need to review and update existing rules as well as create new rules designed to identify and prevent accounts that are medical debt information from being added to consumer files.

3. Data Maintenance: Equifax maintains systems designed to update data on a consumer file in the regular course of business to ensure ongoing accuracy. This includes systems with hundreds of rules that regularly review data in consumer files for accuracy and systems designed to support the consumer dispute process. To comply with the Final Rule, Equifax would need to update these systems and rules to incorporate rules and logic designed to handle situations related to the Final Rule – for example, where a consumer claims that an item on his consumer report is actually prohibited medical debt. In this situation, if an account is identified as misreported, Equifax's systems would need to be updated to include rules that update the account type to reflect that the account is medical debt information and suppress the account. These systems process data internally, transmit data externally, process data received from data furnishers, and generate consumer communications.

Each component would need to be reviewed, updated, tested, and deployed into production to comply with the Final Rule. That means that updates would need to be made to connections between systems by changing configurations and updating the data format and data definitions that each system uses to operate. The cost to revert these types of changes is substantial and requires coordination between Equifax and third-parties at a cost similar to the cost of implementing the changes themselves.

ii. Customer interactions: Equifax would also need to communicate changes required to comply with the Final Rule to the thousands of entities that furnish data to or receive data from Equifax. Much of this outreach would have to take place on a one-to-one basis, explaining to furnishers the exact nature of the changes and how they will affect their interactions with Equifax, and explaining to users changes in product outputs. If the Final Rule is invalidated, re-educating furnishers and users would come at an additional cost and likely lead to confusion and lost revenue based on perceived instability in furnishing guidelines or product outputs.

iii. Product impacts: The Final Rule also impacts the quality of Equifax products.

1. Equifax maintains a number of models and other products that are sold to customers. Models (commonly referred to as credit

scores) produce a single value that represents the likelihood of a future outcome – in most cases the likelihood of default. Nearly all models and products in use today consider medical debt to some extent. Model performance is measured using an industry standard value called the K-S score, which assesses the predictive value of a model (*i.e.*, the likelihood that the model prediction is accurate in the future). Removing medical debt from current models will cause a meaningful reduction in the predictive value of many current models. The magnitude of predictive value decline is significant and will make some models unusable while others will have significantly reduced value in lenders' decisions, resulting in significant irreparable harm in the form of decreased revenue because customers will be unwilling to pay for, or willing only to pay less for, Equifax's products, and in the form of reputational harm because Equifax's products may produce less reliable outputs.

2. To address this, every model and other product that includes medical debt today would need to be updated and revalidated to account for the loss of medical debt as an input, both from a technical standpoint (i.e., they can no longer expect certain types of data to be input) and from an efficacy standpoint (i.e., reformulating the model calculation to attempt to recover the

loss in predictive value). These changes would require robust analysis and testing to make sure that the updated products deliver the level of predictiveness promised to customers. The models would also need to be validated to ensure compliance with all other legal requirements, such as those imposed by the Equal Credit Opportunity Act.

3. Because of the impact on the predictive value of many credit scores that Equifax sells, the value of those products will be significantly reduced by the Final Rule. Reduced accuracy of Equifax products has an adverse impact on consumers' access to credit; if creditors have less accurate tools to predict future borrower performance, they may be less willing to extend credit or extend credit at higher cost to consumers.

c. Another key issue for Equifax is devoting resources to comply with the Final Rule. The staff that will be necessary to update the coding in various systems, necessarily takes that staff away from other critical projects. For example, the teams that would normally focus on making improvements to optimize data intake, enhance consumer-facing processes, and develop new models or products that help consumers gain access to credit would have to put those initiatives on hold for months to focus on implementing changes related to the Final Rule. This diversion costs Equifax by delaying the benefits of those projects (i.e. improved product quality or increased revenue) months or years later than expected.

7. Equifax estimates that it will incur well over one million dollars in costs to update its systems and processes to fully comply with the Final Rule. Equifax will also incur immeasurable costs in the form of reduced or lost revenue and reputational damage because of the degradation of the quality of its data and products, which is not recoverable.

8. Equifax will have to immediately begin incurring these costs given the 60-day implementation deadline in the Final Rule. Indeed, as discussed above, Equifax cannot complete the full extent of the changes it needs to make to comply with the Final Rule in this 60-day period; at best, all it will be able to do is suppress all medical debt information from all consumer reports. This will irreparably degrade its data environment. These compliance costs will not be recoverable if the Final Rule is struck down by the courts.

9. I declare under penalty of perjury, this 10th day of January 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Nick Oldham
Chief Compliance Officer
Equifax, Inc.

Exhibit 5

DECLARATION OF EXPERIAN

I, Sandy Anderson, Executive Vice President, Data Office, Ops and Governance, of Experian Information Solutions, Inc. ("Experian"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. Experian, as a consumer credit reporting agency ("CRA"), houses credit information regarding individual consumers that has been reported to it by its contracted data furnishers, and makes that information available to entities who have a permissible purpose to receive it. In this capacity Experian operates under the requirements of the federal Fair Credit Reporting Act (FCRA). Medical debt is one type of information included by Experian in consumer reports and is regulated by the FCRA.
2. I have been personally involved in efforts to evaluate the new rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on Experian. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by Consumer Data Industry Association ("CDIA") and Cornerstone Credit Union League. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge and investigation.
3. Experian is a member of the CDIA. Experian is headquartered in Costa Mesa, California.
4. In recent years Experian has voluntarily made extensive changes to its reporting of medical debt information in consumer reports including: 1) removing all paid medical collections from consumer reports; 2) extending the time before unpaid medical

collections are included on consumer reports; and 3) removing medical collections less than $500 from consumer reports. These changes allowed more time for insurance reimbursements and other third-party payments to catch up to corresponding consumer debt obligations before the obligations are included on a consumer report. Importantly, the changes were made after extensive research and study determined that removing those items from consumer reports would not adversely affect the overall predictive nature of the data presented.

5. The Final Rule would forbid Experian from including any medical debt information in consumer credit reports provided for the purpose of making a credit determination. This would require Experian to make extensive, additional changes to its systems and processes (above and beyond the changes already made to implement the items discussed in Paragraph 4 above).

    a. As an initial matter, the Final Rule requires Experian to decide whether to continue collecting and maintaining medical debt information on any of its systems. Since the Final Rule only prohibits the furnishing of medical debt information to a user making a credit decision, Experian would have the option of continuing to receive and maintain medical debt information, but would have to develop methods to only provide that information to customers who can receive it consistent with the Final Rule. Alternatively, Experian could choose to remove medical debt information from all of its consumer reports and delete all medical debt tradelines from Experian systems. This decision would be based on a number of factors, including Experian's

estimate of the operation and legal risks associated with each alternative. As explained below, pursuing either would involve substantial expense.

b. If Experian were to choose to stop reporting medical debt information on all reports and remove medical debt information from its systems ("block and delete"), it would entail substantial changes to Experian systems and processes.

    i. First, Experian would need to update its systems to identify tradelines that contain prohibited medical debt information, and block them from being furnished to Experian. While Experian may be able to leverage existing processes and codes to identify medical debt information from furnishers, substantial systems development would still be necessary to scale those processes to cover all data received. Experian would also need to conduct extensive testing to ensure that the medical debt information is being excluded, while all other data is being loaded properly into Experian systems.

    ii. Experian would then need to delete the existing medical debt tradelines from its systems. This likely would include one to two weeks to run reports and analyze data to scope the effort, plus actual processing time. It would also require a substantial amount of computing time and systems resources to actually delete the information from the systems. Specifically, given the volume of data that would need to be removed, special steps will need to be taken to

ensure that the deletion does not interfere with providing credit reports to customers in the ordinary course of business.

iii. In total, Experian estimates that the "block and delete" project would take 10-12 weeks to complete, and involve over 700 man-hours.

iv. Deleting data is an especially consequential step; once data is deleted from the system it is gone forever. If the Final Rule is ultimately invalidated for any reason, Experian likely would not be able to recover all of the data that was deleted, and what it could recover would come at great cost. Tradelines stay on consumer reports for seven years; if that historical data is deleted, it is likely that not all of it would be provided again by the furnisher, either because the company is no longer actively furnishing, or because its active systems do not contain the historical data that was deleted.

c. If Experian were to choose to continue to take in, store, and report medical debt information for non-credit purposes ("ingest and suppress"), this would also entail substantial changes to Experian systems and processes, but ones that are fundamentally different than those that would be put in place if it were to choose to block and delete.

i. Currently, Experian does not have the capability to suppress medical debt from consumer reports for purposes prohibited by the Final Rule while allowing the use of medical debt for purposes permitted by the Final Rule, so it would need to develop this capability from scratch.

ii. It then could leverage existing systems to suppress medical debt from consumer reports where it cannot appear, but expanding that suppression function would still entail substantial development resources.

iii. It would be easier for Experian to "block and delete" rather than "ingest and suppress" because the development of quality control and other processes to ensure that the correct information is suppressed on the correct consumer reports would be extensive. As a result, this option would be even more time and labor intensive. Experian estimates that the "ingest and suppress" project would take 14 to 18 weeks and require approximately 1,020 man-hours.

d. In both scenarios, Experian would need to develop extensive monitoring protocols to ensure that the new systems and processes are working as anticipated and designed. Experian estimates that this would take an additional two weeks to set up, requiring roughly 100 additional man hours, plus five hours per month to continue monitoring.

e. Both scenarios would also require extensive training across the organization, especially for the customer service function, that would need to be able to explain to consumers and consumer report users alike the changes that were made, and how it would impact them and their operations. Experian estimates that this would require two weeks per operating unit, requiring roughly 200 additional man-hours.

f. Experian would also need to conduct new analyses of the products it provides to customers that would be affected by these changes. Many of these products aggregate or summarize various data fields. Removing medical debt information from these products would change their predictiveness and other utility to customers. Experian would need to closely study the effect that the changes have on the products and communicate those changes to customers, so they in turn can update their analytics and processes.

g. Experian also would need to work with credit scoring companies such as FICO to evaluate the impact these systems and process changes might have on their products that use Experian data. All told, Experian estimates that updates to its products and its interaction with credit scoring companies will require eight weeks, plus two additional weeks for each client that requests changes or additional information. This would equal 460 additional man hours, plus up to 500 additional man-hours for each client that requests custom reports.

h. Regardless of the path chosen, Experian will have to prioritize these systems and procedural changes over other projects currently under development. Delaying these projects will impose additional costs on Experian, since their benefits will not be fully realized until weeks if not months later than expected initially.

6. Experian estimates that it will incur between $130,000 and $165,000 in costs to comply with the Final Rule.

7. Experian will have to immediately begin incurring these costs given the 60 day implementation deadline in the Final Rule. Indeed, given the extensive changes that will be required, Experian believes that the only option that it could successfully implement within the 60-day implementation period would be to suppress all medical debt tradelines from all reports. Other, more complicated and nuanced changes, would take much longer to implement. These compliance costs will not be recoverable if the Final Rule is struck down by the courts.

8. The consumer reports Experian creates will be less complete and accurate if information regarding unpaid medical debt is excluded from the reports. Thus, Experian projects that some creditors will no longer be willing to purchase Experian consumer reports and/or will be willing to pay less for Experian consumer reports. This will result in a significant loss of revenue to Experian from its consumer reporting business.

9. I declare under penalty of perjury, this 9th day of January, 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge. information and belief.

Sandy Anderson

Sandy Anderson
Executive Vice President, Data Office, Ops and Governance
Experian Information Solutions, Inc.

Exhibit 6

DECLARATION OF TRANSUNION

I, James Utz, Vice President, Data Integration of TransUnion, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. TransUnion is a leading global information and insights company that makes trust possible between businesses and consumers, helping people around the world access opportunities that can lead to a higher quality of life. That trust is built on TransUnion's ability to deliver safe, innovative solutions with credibility and consistency. As part of this, TransUnion provides consumer reports to customers nationwide who have a permissible purpose as defined by the Fair Credit Reporting Act ("FCRA"), including for conducting background checks and making lending decisions.
2. I have been personally involved in efforts to evaluate the new rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on TransUnion. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Consumer Data Industry Association ("CDIA") and Cornerstone Credit Union League. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge and investigation.
3. TransUnion is a member of the CDIA. TransUnion is headquartered in Chicago, Illinois.
4. In recent years TransUnion has voluntarily made extensive changes to its reporting of medical debt information in consumer reports including: 1) removing all paid medical

debt collections from consumer reports; 2) extending the time before unpaid medical debt collections are included on consumer reports; and 3) removing medical debt collections less than $500 from consumer reports. These changes allowed more time for insurance reimbursements and other third-party payments to catch up to corresponding consumer debt obligations before the obligations were included on a consumer report, while continuing to provide predictive data to users of consumer reports. Importantly, the changes were made after extensive research and study determined that removing those items from consumer reports would not adversely affect the overall predictive nature of the data presented to TransUnion customers.

5. The Final Rule would prohibit TransUnion from including any medical debt information in consumer reports provided for the purpose of making a credit determination. This would require TransUnion to make extensive changes to its systems and processes.

    a. Because of the way TransUnion's systems are currently configured, the only way that TransUnion can comply with the Final Rule during the 60-day implementation period is to code the systems to suppress *all* medical debt from *all* consumer reports prepared by TransUnion. TransUnion customers certify that they have a permissible purpose for requesting a consumer report, but in most cases do not specify at a transaction level whether they are requesting a consumer report for a credit determination or another permissible purpose. Thus, TransUnion cannot easily differentiate between a consumer report that would be used for credit determinations (and therefore cannot

include medical debt), and a consumer report that would be used for some other permissible purpose (and therefore could include medical debt).

i. Changing TransUnion systems and processes to allow for differentiation between permissible purposes at the transaction level would require a wholesale redesign and re-engineering of existing systems, along with customer outreach and education. Many customers would need to change their systems to comply with these new TransUnion system requirements. Such a change would take a couple of years and likely cost over a million dollars.

ii. If TransUnion competitors comply with the Final Rule in a way that allows them to differentiate between permissible purposes at the transaction level, this would put competitive pressure on TransUnion to offer similar products, which in turn could force TransUnion to undertake the long and expensive project of redesigning our systems.

b. TransUnion would need to make a number of coding and process changes to TransUnion systems in order to suppress all medical debt information from TransUnion consumer reports. TransUnion estimates that this would take approximately 100 resource hours over one to two months. After relevant data in the system is suppressed, daily jobs would continue to suppress all new incoming medical debt.

i. Currently, Transunion only accepts data from furnishers that use the Metro2 format. That format includes codes that can be leveraged to identify some medical debt that must be excluded from consumer

reports consistent with the Final Rule. But those codes are most useful when dealing with third-party debt collectors or debt buyers. Since the Final Rule covers additional types of first-party medical debt, TransUnion would need to work with nearly all of the thousands of institutions that furnish data to make sure that they accurately identify any medical debt that is furnished.

1. TransUnion has thousands of active furnishers, so this outreach effort would be substantial and take many weeks if not months to complete.
2. TransUnion also will likely have to develop additional processes to monitor furnishing to ensure that automated processes for excluding medical debt are working as expected, and processes to identify and remove medical debt that may have evaded the automated filters.

ii. TransUnion would also need to update policies and procedures to be able to handle new types of disputes alleging that medical debt is appearing on consumer reports improperly.

1. TransUnion anticipates an increase in the number of consumers who dispute tradelines based on those tradelines including medical debt information. Addressing those types of disputes likely will require an industry-wide effort to update e-OSCAR, the industry standard complaint handling system. Currently, e-OSCAR does not have a dispute code that would indicate that

the dispute is from a consumer claiming that the disputed item is medical debt that should not appear on a consumer report used for credit purposes.

2. TransUnion may also need to implement policies and procedures, and make additional systems updates, to monitor medical debt-related disputes to ensure that creditors are accurately identifying furnished data as medical debt.

iii. The one-to-two month estimate applies only to removing existing medical debt information from TransUnion systems and suppressing new medical debt information as it is furnished. Making systemic changes that would prevent medical debt information from entering the system in the first place would require approximately an additional 50 hours, and would not be completed for three to four months.

iv. TransUnion would also need to dedicate additional system resources to running daily processes that would identify and suppress medical debt information that was furnished the day before. It would also need to run regular reports to ensure that the processes to suppress medical debt are working as intended.

c. Suppressing medical debt information would have a substantial and irreversible impact on TransUnion. Once information is suppressed from a consumer file, it can rarely if ever be put back into the consumer file because TransUnion does not currently have a way to track *why* the information was suppressed. So, for example, some medical debt information in TransUnion

databases might currently be suppressed because it is the type of veteran medical debt that cannot be reported under FCRA. If TransUnion were to suppress all medical debt information as part of its efforts to comply with the Final Rule, data suppressed only because of the Final Rule would look exactly the same as other suppressed data, such as the hypothetical veteran medical debt.

d. If the Final Rule were held invalid or otherwise reversed, TransUnion would have no way of restoring the suppressed information, because it could not be confident that any given tradeline was suppressed only to comply with the Final Rule. Because of this, it would take months if not years for TransUnion consumer files to become as complete as they were before the Final Rule went into effect.

    i. Alternatively, TransUnion could develop a process to identify why records were removed from the system, including tracking records that are removed as part of complying with the Final Rule. But this would increase substantially the time and expense required to comply with the Final Rule, and could jeopardize TransUnion's ability to comply with the Final Rule within the 60-day implementation period.

e. Removing medical debt trade lines from consumer reports would negatively affect the value of TransUnion's products for consumers who use those tradelines in making non-credit decisions, such as employment.

6. TransUnion estimates that it will incur over $1,000,000 in costs to comply with the Final Rule over the next couple of years.

7. TransUnion will have to immediately begin incurring these costs given the 60 day implementation deadline in the Final Rule. These compliance costs will not be recoverable if the Final Rule is struck down by the courts.
8. The consumer reports TransUnion creates will be less complete and accurate if truthful information regarding medical debt is excluded from the reports. Thus, TransUnion projects that some creditors will no longer be willing to purchase TransUnion consumer reports and/or will be willing to pay less for TransUnion consumer reports. This will result in a significant loss of revenue to TransUnion from its credit reporting business.
9. I declare under penalty of perjury, this 9th day of January 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Signed by:
James Utz
464F12E18171423...

James Utz
Vice President, Data Integration
TransUnion

Exhibit 7

DECLARATION OF ANONYMOUS CRA A

I, the Chief Executive Officer of Anonymous Consumer Reporting Agency A ("CRA A"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. CRA A is not a national consumer reporting agency. Rather, it is a specialized consumer reporting agency that among other things, focuses on providing consumer reports to a specific segment of users. CRA A maintains two separate databases to provide high-quality, cost-efficient consumer credit data to its customers to help ensure that they make the best loan decisions possible.
2. On June 11, 2024, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued a Notice of Proposed Rulemaking titled Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) ("Proposed Rule"). I have been personally involved in CRA A's efforts to evaluate the Proposed Rule and the final rule posted on the CFPB's website on January 7, 2025 (hereinafter "Final Rule"), and its impact on CRA A's operations. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Consumer Data Industry Association and the Cornerstone Credit Union League. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge, investigation and communications with CRA A employees.
3. CRA A is a member of the Consumer Data Industry Association.
4. CRA A has previously taken steps to review and implement data rules related to medical debt collection information for debts under $500, consistent with the program implemented by the nationwide consumer reporting agencies.

5. CRA A provides consumer reports to its customers, who are creditors that primarily focus on providing services to consumers who have thin credit files or no mainstream credit history. These customers may also furnish consumer credit information to CRA A. CRA A accepts information in both the Metro 2 format and its own proprietary format. Both formats use codes that identify a record as medical debt. In addition, CRA A maintains a larger database of consumer payment data. That database also potentially contains information related to a consumer's medical debt. CRA A also provides a product to its customers that may include a credit score. Those scores are the result of complicated analyses of the consumer information in CRA A's databases.
6. To comply with the Final Rule, CRA A will need to make many time-consuming and costly changes to its processes and products. It will need to update its policies and procedures to ensure that all products and programs comply with the Final Rule. Most significantly, CRA A would need to modify its systems to suppress all medical debt from consumer reports it provides to its customers. CRA A's compliance efforts would include substantial re-analysis and re-engineering of credit scores to account for the loss of predictive medical debt information as an input. These re-analyzed and re-engineered scores would also need to be tested to ensure compliance with other laws and regulations, such as the Equal Credit Opportunity Act. Complying with the Final Rule would also divert resources from other projects and programs.
7. CRA A estimates that complying with the rule would cost roughly between $250,000 and $500,000 in time and costs to the company.

8. I declare under penalty of perjury, this January 9, 2025, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Authorized Signature
AUTHORIZED SIGNATURE FOR
ANONYMOUS CRA A

Signed copy maintained by Plaintiffs' counsel.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CORNERSTONE CREDIT UNION LEAGUE AND CONSUMER DATA INDUSTRY ASSOCIATION,	§	
	§	CIVIL NO. 4:25-cv-16-SDJ
v.	§	
CONSUMER FINANCIAL PROTECTION BUREAU and ROHIT CHOPRA in his official capacity as Director of the CFPB	§	

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Before the Court is Plaintiffs' Motion for a Preliminary Injunction. The Court, having considered the pleadings on file and the arguments of counsel, is of the opinion that Plaintiffs' Motion should be granted.

Plaintiffs have shown a likelihood of success on the merits of their claims that the regulation recently promulgated by the Consumer Financial Protection Bureau ("CFPB")— Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) (January 7, 2025) (to be codified at 12 C.F.R. §§ 1022.3, 30, 38) (hereinafter the "Final Rule")—exceeds the CFPB's statutory authority and is otherwise not in accordance with law for at least three reasons. *First*, the Final Rule prohibits consumer reporting agencies ("CRAs") from reporting coded medical debt information to creditors, but 15 U.S.C. § 1681b(g)(1)(C) affirmatively authorizes CRAs to do so. *Second*, the Final Rule operates to prohibit creditors from considering coded medical debt information in credit decisions, but 15 U.S.C.

§ 1681b(g)(2) affirmatively authorizes creditors to consider such information. And *third*, the CFPB lacks statutory authority to prohibit CRAs from including coded medical debt information in consumer reports based on rules applicable to creditors, including state laws, especially when those state laws are preempted by 15 U.S.C. § 1681t(a).

Plaintiffs have also shown that the remaining factors for a preliminary injunction weigh in their favor. The Plaintiffs' members will incur unrecoverable compliance costs to comply with the Final Rule. The Final Rule forces CRAs and credit unions that are members of Plaintiff trade associations to spend substantial resources updating their information technology, policies, and procedures to remove medical debt information from credit reports and credit determinations. These costs cannot be recouped in the ordinary course of litigation. And finally, the balance of the equities and public interest weigh in favor of preserving the status quo while Plaintiffs litigate their claims that the Final Rule exceeds the CFPB's statutory authority.

Plaintiffs are thus entitled to a preliminary injunction. *See Louisiana v. Biden*, 55 F.4th 1017, 1022 (5th Cir. 2022).

It is therefore **ORDERED** that Plaintiffs Motion for a Preliminary Injunction, is **GRANTED**. The Court **ORDERS** that the Final Rule be **ENJOINED** pending the resolution of this lawsuit. Defendants are hereby **RESTRAINED** and **ENJOINED** from implementing and enforcing the Final Rule in its entirety, pending further order of the Court. The Court further **ORDERS** that the effective date of the

Final Rule and all implementing dates be extended day by day for each day the injunction remains in place.

The Court has also considered the issue of security pursuant to Rule 65(c) of the Federal Rules of Civil Procedure. Defendants will not suffer any financial loss that warrants the need for Plaintiffs to post security. After considering the facts and circumstances of this case, the Court finds that security is unnecessary and exercises its discretion not to require the posting of security here.

Plano, Texas, this ___ day of _____ 2024, at _____.

_____

SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE