September 6, 2017

The Honorable Blaine Luetkemeyer
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Luetkemeyer:

The undersigned organizations support H.R. 2359, the "FCRA Liability Harmonization Act," sponsored by Representative Barry Loudermilk. We greatly appreciate your attention and look forward to the Committee's consideration of the legislation as soon as possible.

As you know, the FCRA Liability Harmonization Act would align the Fair Credit Reporting Act (FCRA) with other financial consumer protection laws by capping the amount of statutory damages allowed in class action lawsuits at one percent of a defendant's net worth or $500,000, whichever is less, and eliminating the possibility of punitive damages. The bill would alleviate the uncertainty of the amount of liability that businesses face in class action lawsuits. The legislation would provide economic stability for a wide range of impacted businesses by reducing the potential for crippling and catastrophic class action damage awards.

Other financial consumer protection statutes, such as the Electronic Fund Transfer Act (EFTA), the Fair Debt Collection Practices Act (FDCPA), the Equal Credit Opportunity Act (ECOA), and the Truth in Lending Act (TILA), place similar caps on damage amounts in class action litigation. When the FCRA was enacted, it only permitted consumers to seek actual damages and did not permit statutory or punitive damages in a private right of action and, therefore, caps on damage awards were unnecessary. As FCRA class action litigation has become more prevalent, however, Congress should appropriately revisit the liability structure of the FCRA.

Bringing the FCRA in line with other financial consumer protection statutes is especially important in light of the current trend of FCRA class action litigation against employers. In recent years, FCRA class action lawsuits have been filed against businesses from a variety of sectors including fast food restaurants, grocers, retailers, universities, and transportation companies. These employers are particularly victimized by lawsuits where consumer harm is not at issue but rather the allegations are highly technical violations related to their use of consumer reports for employment screening. With the possibility of unlimited damages and grave reputational harm, employers and others often settle instead of defending their practices in court.

Now is the time to bring relief to employers by establishing reasonable limits on liability in FCRA class action litigation. Even with the proposed limits on total economic damages in FCRA class actions, the FCRA would still permit consumer redress. Under the FCRA Liability Harmonization Act, consumers could continue to bring individual cases seeking damages for actual harm and the costs of litigation. The tool of class action litigation would also still be available for violations impacting a broader population.

Thank you again for your leadership, and we look forward to working with you on this issue.

Sincerely,

American Financial Services Association
Consumer Bankers Association
Consumer Data Industry Association
Electronic Transactions Association
National Association of Professional Background Screeners
Retail Industry Leaders Association
Society for Human Resource Management
Software & Information Industry Association
U.S. Chamber Institute for Legal Reform
U.S. Chamber of Commerce