

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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**MEMORANDUM**

**October 30, 2017**

**To: Subcommittee on Digital Commerce and Consumer Protection Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Securing Consumers’ Credit Data in the Age of Digital Commerce”**

On Wednesday, November 1, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “Securing Consumers’ Credit Data in the Age of Digital Commerce.”

**I. BACKGROUND**

Consumer reporting agencies (CRAs) collect consumer data and provide reports on individual consumers to other businesses, which are used to inform decisions on individuals’ eligibility for employment, housing, insurance, and a wide range of consumer financial services.<sup>1</sup> Equifax, TransUnion, and Experian are the three major CRAs of about 400 in the United States.<sup>2</sup>

Data brokers collect personal information about consumers from numerous sources and sell that data for purposes including marketing products, verifying an individual’s identity, and detecting fraud.<sup>3</sup> The data collected and held by data brokers are often the same data points

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<sup>1</sup> Consumer Financial Protection Bureau, *List of Consumer Reporting Companies* (Jan. 27, 2016); Congressional Research Service, *The Equifax Data Breach: An Overview and Issues for Congress* (Sept. 29, 2017) ([www.crs.gov/Reports/IN10792?source=search&guid=bc41ff61bd1946a99b91017645301da5&index=0](http://www.crs.gov/Reports/IN10792?source=search&guid=bc41ff61bd1946a99b91017645301da5&index=0)).

<sup>2</sup> *Id.*

<sup>3</sup> Federal Trade Commission, *Data Brokers: A Call for Transparency and Accountability* (May 2014) ([www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf](http://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf)).

collected and held by CRAs, including social security numbers, financial information, and employment history.

In addition to being credit reporting agencies, Equifax, TransUnion, and Experian are also in business as data brokers.<sup>4</sup> They are just a few of between 2,500 to 4,000 data brokers operating in the United States.<sup>5</sup>

Public reports of data breaches have become commonplace. Since 2005, the Privacy Rights Clearinghouse has identified more than one billion records containing consumers' personal information that have been compromised as a result of more than 7,700 data breaches.<sup>6</sup> More than 1,100 breaches, including breaches of data brokers, exposing more than 171 million records occurred so far this year.<sup>7</sup>

## **II. FEDERAL AGENCY AUTHORITY**

CRAs are subject to a number of different laws, including the Fair Credit Reporting Act (FCRA) and Gramm-Leach-Bliley (GLB) Act. The FCRA includes consumer protections intended to encourage the accuracy, fairness, and privacy of information held by CRAs.<sup>8</sup> Among other things, consumers must be told if information in their credit files has been used against them; consumers have the right to obtain a free credit report from each CRA every 12 months; consumers have the right to dispute inaccurate information and the CRAs must correct such information; and access to consumers' credit files are limited to those with a valid need.<sup>9</sup>

Generally, these requirements only apply to the CRAs. CRAs such as Equifax are therefore only covered by the FCRA when they are selling credit reports.<sup>10</sup> When these companies are collecting, sharing, or selling data in their role as a data broker, the FCRA does

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<sup>4</sup> *Meet the Data Brokers Who Help Corporations Sell Your Digital Life*, Mother Jones (Nov./Dec. 2013) ([www.motherjones.com/politics/2013/10/data-mining-companies-sell-your-info/](http://www.motherjones.com/politics/2013/10/data-mining-companies-sell-your-info/)).

<sup>5</sup> *The Secretive World of Selling Data About You*, Newsweek (May 30, 2016) ([www.newsweek.com/secretive-world-selling-data-about-you-464789](http://www.newsweek.com/secretive-world-selling-data-about-you-464789)).

<sup>6</sup> Privacy Rights Clearinghouse, *Chronology of Data Breaches* ([www.privacyrights.org/data-breach#CP](http://www.privacyrights.org/data-breach#CP)) (accessed Oct. 23, 2017).

<sup>7</sup> Identity Theft Resource Center, *2017 Data Breach Stats* (Oct. 18, 2017) ([www.idtheftcenter.org/images/breach/2017Breaches/ITRCBreachStatsReport\\_2017.pdf](http://www.idtheftcenter.org/images/breach/2017Breaches/ITRCBreachStatsReport_2017.pdf)).

<sup>8</sup> Federal Trade Commission, *Credit Reporting* ([www.ftc.gov/news-events/media-resources/consumer-finance/credit-reporting](http://www.ftc.gov/news-events/media-resources/consumer-finance/credit-reporting)) (accessed on Oct. 24, 2017).

<sup>9</sup> Consumer Financial Protection Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* ([files.consumerfinance.gov/f/201504\\_cfpb\\_summary\\_your-rights-under-fcra.pdf](http://files.consumerfinance.gov/f/201504_cfpb_summary_your-rights-under-fcra.pdf)) (accessed Oct. 24, 2017).

<sup>10</sup> *What We Can Learn from the Equifax Breach*, Transatlantic Consumer Dialogue (Oct. 23, 2017) ([tacd.org/what-we-can-learn-from-the-equifax-breach/](http://tacd.org/what-we-can-learn-from-the-equifax-breach/)).

not apply.<sup>11</sup> Both the Federal Trade Commission (FTC) and the Consumer Financial Product Bureau (CFPB) enforce the FCRA, but only the CFPB has FCRA rulemaking authority.<sup>12</sup>

The GLB requires financial institutions, including CRAs, to explain their information sharing practices to their customers and to protect the security and confidentiality of customers' nonpublic personal information.<sup>13</sup> The law includes a provision that directed the FTC and other federal financial institution regulators to establish information security safeguards.<sup>14</sup> The FTC established the Safeguards Rule, which requires financial institutions under FTC jurisdiction, including CRAs, to develop measures to keep customer information secure through their own security safeguards and taking steps to ensure that their affiliates and service providers protect customer information.<sup>15</sup> Several agencies enforce the GLB. For CRAs, the FTC and the CFPB have enforcement authority, and the CFPB also has rulemaking authority.<sup>16</sup> Currently, the FTC cannot impose financial penalties for violations of the Safeguards Rule.

In addition, the FTC possesses broad jurisdiction under Section 5 of the FTC Act to prohibit "unfair or deceptive acts or practices in or affecting commerce."<sup>17</sup> The CFPB also has broad authority to prohibit unfair, deceptive, or abusive acts or practices "in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service."<sup>18</sup> The CFPB can impose financial penalties, but the FTC cannot.

### III. WITNESSES

**Francis Creighton**  
President and CEO  
Consumer Data Industry Association

**Anne P. Fortney, Esq.**  
Partner Emeritus  
Hudson Cook

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<sup>11</sup> *Id.*

<sup>12</sup> Federal Trade Commission, *Fair Credit Reporting Act* ([www.ftc.gov/enforcement/statutes/fair-credit-reporting-act](http://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act)) (accessed Oct. 26, 2017).

<sup>13</sup> 15 U.S.C. § 6801; Federal Trade Commission, *Gramm-Leach-Bliley Act* ([www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act](http://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act)) (accessed Oct. 24, 2017).

<sup>14</sup> 15 U.S.C. § 6801(b).

<sup>15</sup> 16 CFR Part 314.

<sup>16</sup> 15 U.S.C. § 6805(a); Federal Trade Commission, *Gramm-Leach-Bliley Act* ([www.ftc.gov/enforcement/statutes/gramm-leach-bliley-act](http://www.ftc.gov/enforcement/statutes/gramm-leach-bliley-act)) (accessed Oct. 26, 2017).

<sup>17</sup> 15 U.S.C. § 45(a).

<sup>18</sup> 15 U.S.C. § 5531.

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