

4 October 2017

## RE: Equifax Breach Response

Dear Senator:

We, the undersigned consumer, community, civil rights, housing and other organizations write in advance of this week's House and Senate hearings into the massive and unprecedented breach of personal information held by Equifax, including Social Security Numbers and dates of birth for 143 million consumers. We write to express our grave concerns over the company's slow response to the breach and then its shifting, maddening, and ultimately inadequate response to consumers including our members, clients and other constituencies. We write with several recommendations for what Congress should and should not do in response.

**First, the Equifax scandal underscores the importance of the Consumer Financial Protection Bureau's rule to protect a citizen's right to sue financial companies.** While Equifax *appears* to have finally dropped the applicability of its forced arbitration clauses for consumers taking advantage of any parts of its relief package, the company continues to include clauses in its fine print in other places that forbids a consumer from taking the company to court (see <http://www.equifax.com/terms/>). Further, this unjust limitation of consumer rights would still apply to other consumers of Equifax products. Its actions, and those of Wells Fargo, show the need for all consumers of all financial firms to have their day in court restored to make the marketplace work more fairly.

**Second, Congress should enact free credit freeze legislation immediately.** Consumers are not credit bureau customers, we are their product. The only way for us to secure our credit reports from being accessed by an identity thief applying for new credit in our names is to "freeze" our credit, then lift or "thaw" it temporarily whenever we plan to apply for credit. Yet, except in a few states, nearly all consumers, with a few exceptions for seniors and others, must pay a fee of up to \$10 each time they freeze or thaw their own credit reports. While Equifax says that it will soon offer a similar "lock" product for free, consumers deserve to have a right to this control by law, and without cost. Furthermore, it must apply to all of the so-called "Big 3" credit bureaus, Equifax, Experian and TransUnion, because protecting your credit report at only one leaves two doors open.

**Third, Congress should resist attempts from the financial and other industries to pass weak federal breach notice legislation that preempts stronger state laws, and to pass sweetheart laws that unjustly benefit the credit bureaus.** Every time there is a major data breach, industry actors urge passage of federal legislation that limits when consumers are required to be notified, defines harms narrowly, and limits consumer and state legal rights. Furthermore, these industry actors seek bills that would broadly preempt any state activities, not just on breach notification, but data security and privacy as well. While we are very troubled that Equifax delayed notification, possibly in violation of state breach notification laws, we are confident that an ongoing bi-partisan state attorneys general investigation will hold the firm accountable for that. Congress should also permanently reject consideration of H.R 2359 (Loudermilk), which would eliminate punitive damages under the Fair Credit Reporting Act and cap class actions at \$500,000 in damages, as well as the Credit Services Protection Act of 2017 (Royce), which would exempt the credit bureaus from important protections under the Credit Repair Organizations Act.

**Fourth, Congress should consider the need to reform all the activities of the Big 3 credit bureaus, as well as specialized consumer reporting agencies.** Consumer reporting agencies, including the Big 3 credit bureaus and other specialized agencies are regulated by the 1970 Fair Credit Reporting Act (FCRA). "Larger participant" consumer reporting agencies, including the Big 3, are under the supervisory and examination authority of the Consumer Financial Protection Bureau for

their credit reporting businesses. The CFPB has begun in just a few years to rein in the worst practices of the Big 3 credit bureaus, such as deceptive marketing of subscription credit monitoring products and failure to comply with existing law's requirements on conducting reasonable dispute reinvestigations. This is important, as the Big 3, in particular, are powerful gatekeepers to financial and employment opportunity, yet numerous studies have shown that their deficient procedures and industry favoring practices result in too many mistakes that harm consumers.

Several thoughtful proposals, such as comprehensive reforms from Rep. Maxine Waters and Sen. Brian Schatz, would update the FCRA in many ways and deserve strong consideration. But Congress should also understand that the bits and pieces of our financial DNA lost by Equifax remain under the jurisdiction of the Federal Trade Commission (see Dodd-Frank Section 1093, which excludes CFPB from the Gramm-Leach-Bliley Act's data security provisions). FTC has limited to no authority to write regulations, conduct supervisory examinations, investigate violations, or impose penalties.

In closing, we urge Congress to take firm and assertive actions to ensure consumers are not further harmed, but made whole, after this egregious data breach by Equifax. If you or your staff have any questions, please contact Ed Mierzwinski of U.S. PIRG at 202-461-3821 ([edm@pirg.org](mailto:edm@pirg.org)) or Chi Chi Wu of the National Consumer Law Center at 617-542-8010 ([cwu@nclc.org](mailto:cwu@nclc.org)) or Susan Grant of the Consumer Federation of America at 202-939-1003 ([sgrant@consumerfed.org](mailto:sgrant@consumerfed.org)).

Thank you for your consideration,

Americans for Financial Reform

Allied Progress  
Center for Digital Democracy  
Consumer Action  
Consumer Federation of America  
Consumer Watchdog  
Massachusetts Communities Action Network (MCAN)  
MHANY Management Inc.  
Mobilization for Justice, Inc.  
NAACP  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low-income clients)  
Public Citizen  
Tennessee Citizen Action  
U.S. PIRG  
Woodstock Institute  
World Privacy Forum