

February 25, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: February 26, 2019, “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System.”

The Committee on Financial Services will hold a hearing entitled, “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System” on Tuesday, February 26, 2019, at 10:00 a.m. in Room 2128 Rayburn House Office Building. This will be a two-panel hearing with the following witnesses:

Panel One

- **Mr. Mark Begor**, CEO, Equifax
- **Mr. James M. Peck**, President and CEO, TransUnion
- **Mr. Craig Boundy**, CEO, Experian North America

Panel Two

- **Ms. Lisa Rice**, President and CEO, National Fair Housing Alliance (NFHA)
- **Ms. Chi Chi Wu**, Staff Attorney, National Consumer Law Center (NCLC)
- **Ms. Jennifer Brown**, Associate Director, Economic Policy, UnidosUS
- **Mr. Edmund Mierzwinski**, Consumer Program Director, U.S. Public Interest Research Group (PIRG)
- **Mr. Thomas P. Brown**, Partner, Paul Hastings

Additional witnesses may be invited.

Overview

Our nation’s credit reporting system has an impact on almost every American. Credit scores and credit reports are increasingly relied upon by creditors, employers, insurers, and even law enforcement. Yet it has been more than 15 years since Congress enacted comprehensive reform of the consumer reporting system,¹ and there are numerous shortcomings with the current system that need to be addressed. In 2017, Equifax experienced a cybersecurity breach so massive that it affected approximately 148 million consumers, which, in addition to releasing the personally identifiable information of

¹ The Fair and Accurate Credit Transactions Act of 2003 (FACT Act; P.L. 108-159), among other things, allows consumers to request and obtain a free credit report once a year from each of the three nationwide consumer reporting agencies.

approximately half of all Americans, also highlighted deficiencies in the credit reporting system.² Furthermore, many have experienced financial and other forms of distress due to incomplete or erroneous information on their consumer credit reports. While a few provisions intended to improve the consumer reporting system were enacted into law last year,³ some have argued for comprehensive reforms to make the system more consumer-oriented.⁴ Other jurisdictions, like California and the European Union, have taken steps to empower consumers to have more control over their data.⁵

Chairwoman Maxine Waters (D-CA) has two legislative proposals that will be discussed at the hearing. The first is a discussion draft entitled the “Comprehensive Consumer Credit Reform Act of 2019.” The proposal makes numerous changes to the existing credit reporting system, including increasing consumer rights to report and appeal credit report disputes, and better assisting those consumers struggling with medical debt, abusive and predatory loan products, and private student debt. The second discussion draft is cosponsored by Reps. Gregory Meeks (D-NY), Brad Sherman (D-CA), Jennifer Wexton (D-VA), and Jesús “Chuy” García (D-IL), and is entitled the “Protecting Innocent Consumers Affected by a Shutdown Act.” The proposal is designed to assist federal employees, contractors, and other consumers adversely impacted by a Federal government shutdown by preventing adverse information resulting from a temporary lack of income, through no fault of their own, from ruining their credit profiles and future credit prospects.

Background

The Fair Credit Reporting Act (FCRA) – as amended by various statutes, including the Fair and Accurate Credit Transactions (FACT) Act of 2003, the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act of 2010, and the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) of 2018 – provides the legal framework for the consumer credit reporting system, including limits on how consumer reporting agencies (CRAs) disclose credit report information.⁶ The Consumer Financial Protection Bureau (Consumer Bureau) and the Federal Trade Commission (FTC) share jurisdiction in implementing and enforcing FCRA.⁷

² The Committee held hearings on October 5, 2017 and October 25, 2017 to examine the Equifax data breach, however the Committee has not yet heard from a current executive from Equifax with any authority to speak for the company about the matter. Initial reports on the Equifax breach are available at: <https://www.gao.gov/products/GAO-18-559>, <https://oversight.house.gov/news/press-releases/top-dems-release-new-staff-report-on>, and <https://republicans-oversight.house.gov/report/committee-releases-report-revealing-new-information-on-equifax-data-breach/>. Furthermore, there have been additional cybersecurity breaches reported at all three major credit bureaus (see <https://www.upguard.com/blog/on-experian-s-poor-cyber-risk-credit-rating>), and cyber risk in the public and private sectors continues to be a major vulnerability identified by the Financial Stability Oversight Council (see: <https://home.treasury.gov/news/press-releases/sm578>).

³ Public Law No: 115-174. Section 301 of the bill eliminates fees associated with placing and removing credit freezes, but in some instances preempts stronger state laws. Section 302 provides free credit monitoring for active duty servicemembers. Section 310 of the bill directs the enterprises Fannie Mae and Freddie Mac to consider scoring models from other companies in addition to its use of FICO scores. See <http://www.crs.gov/Reports/R45073>

⁴ For example, see https://financialservices.house.gov/uploadedfiles/10.25.2017_chi_chi_wu_testimony.pdf.

⁵ See <http://www.crs.gov/Reports/IF10896> regarding the European Union’s new General Data Protection Regulation (GDPR), and <http://www.crs.gov/Reports/LSB10213> regarding the new California Consumer Privacy Act (CCPA).

⁶ “Consumer and Credit Reporting, Scoring, and Related Policy Issues,” Congressional Research Service, September 13, 2018, <http://www.crs.gov/Reports/R44125>.

⁷ <https://www.banking.senate.gov/hearings/an-overview-of-the-credit-bureaus-and-the-fair-credit-reporting-act>

Furthermore, CRAs are also subject to the data protection requirements of Section 501(b) of the Gramm-Leach-Bliley Act (GLBA), which mandate appropriate safeguards to maintain the security and confidentiality of consumer records and information, as well as to protect against unauthorized access or use of such records or information which could result in substantial harm or inconvenience to any customer. The FTC has the authority to enforce Section 501(b) for CRAs. The FTC has little upfront supervisory or enforcement authority, so the agency typically uses its enforcement authority after an incident occurs.

CRAs are defined under the law as any person in the practice of assembling or evaluating consumer credit information, or other consumer information, for the purpose of furnishing consumer reports to third parties and who uses any means of interstate commerce to do so. CRAs are required to have reasonable procedures in place to ensure the maximum possible accuracy of information contained in consumer files. While there are only three nationwide CRAs — Experian, Equifax, and TransUnion — there are other types of CRAs that collect and sell consumers' data, such as employment and tenant history, to others. Some of these companies are referred to as nationwide specialty CRAs.⁸

CRAs receive information voluntarily supplied by “furnishers.” For the nationwide CRAs, these furnishers are generally creditors and debt collectors. The CRAs then compile and maintain this information on a person's consumer report.

A “consumer report”⁹ at the three nationwide CRAs generally include five types of information: (1) identifying information or header, such as a person's name, social security number, birthdate, current and previous addresses, and phone numbers; (2) trade lines that includes account information, such as the type of credit obtained, the date the account was opened and closed, credit limits or loan amounts, the outstanding balances, the timeliness of payments, and whether the accounts are delinquent or in collections; (3) public record information; (4) collections that includes information about third party collection items that are reported by debt buyers or collections agencies on behalf of a creditor; and (5) inquiries that list businesses and entities that have accessed the person's consumer file for the last two years for employment purposes and for at least one year for credit and other purposes. Information that is not contained in a credit report includes: (1) a person's race, color or national origin and (2) income information. Most adverse information typically remains on a report for seven years.¹⁰

A “credit score” is defined under FCRA as a numerical value or categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan

⁸ For a list of nationwide specialty CRAs, compiled by the Consumer Bureau, see:

http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf

⁹ Consumer reports from the nationwide CRAs are commonly referred to as “credit reports,” even though “credit reports” is not a term defined under the FCRA.

¹⁰ The statutory time periods do not apply when a report is provided in three circumstances: (1) a credit transaction involving, or which may reasonably be expected to involve, \$150,000 or more; (2) the underwriting of life insurance involving, or which may reasonably be expected to involve, \$150,000 or more; and (3) the employment of an individual at an annual salary which equals, or which may reasonably be expected to equal, \$75,000 or more. However, as a practical matter, because the FCRA prohibits CRAs from reporting inaccurate information, information is considered obsolete and typically removed from a report when the statutory time period is reached.

to predict the likelihood of default on a payment.¹¹ The numerical value is also sometimes referred to as a risk predictor or “risk score.”

The CRAs’ business model is unique in our financial system. Unlike other businesses, where dissatisfied and unhappy consumers can decide to stop doing business with a company, consumers have almost no control over whether furnishers provide information about them to CRAs that is compiled and maintained in the CRAs’ databases. Consumers’ concerns about credit reporting errors, fears about stolen credit information and identity theft have also increased consumers’ purchases of credit monitoring services and other products from the nationwide CRAs, which has allowed these companies to profit, in part, from their own deficient practices.

According to the Consumer Bureau, many consumers believe consumer reports are “hard to get and hard to understand.”¹² Unlike a consumer’s federal right to obtain a free annual consumer report from each of the nationwide CRAs and nationwide specialty CRAs, in most cases, consumers have no legal right to their credit score.¹³ The Consumer Bureau has found that there is significant consumer confusion about the differences between the credit scores available to consumers and those that are sold to, and used by, creditors or lenders. This confusion can lead to consumers forming inaccurate perceptions of their ability to access credit on affordable terms.

Another source of consumer confusion is rooted in the fact that consumers do not have just “one” credit score. Because the submission of credit information to CRAs is voluntary, and not all creditors submit information to every CRA, the information contained in a person’s credit report also varies among CRAs. As a result, the credit score generated by each CRA is likely to vary, resulting in potentially different credit decisions for a consumer.

Consumers often refer to their credit score as a “FICO” score. However, FICO is a specific brand of credit score developed by the firm formally known as the Fair Isaac Corporation. FICO scores range from 300 to 850. The higher the score, the lower the risk the consumer is considered to be by creditors. While other companies have credit scoring models, most lenders still use FICO scores for underwriting and rating of loans. For instance, Fannie Mae and Freddie Mac both currently use FICO-developed credit scoring models in evaluating which mortgage loans are eligible for purchase. VantageScore was introduced in 2006, as a competitor to FICO.¹⁴ It was developed jointly by the three nationwide CRAs but is independently managed and marketed.

¹¹ Credit scores generally rank the probability that a person will become 90 days delinquent on a new loan within two years.

¹² See: https://files.consumerfinance.gov/f/201502_cfpb_report_consumer-voices-on-credit-reports-and-scores.pdf

¹³ The Dodd-Frank Act, amended the FCRA, to require “adverse action notices” (which are disclosures sent to consumers by creditors when a person has applied, but been denied, credit by a company to identify for the consumer, the CRA that the company obtained a report from to help make this decision) and “risk-based pricing notices” (which are disclosures sent to consumers by creditors informing a consumer that their request for new credit has been granted to them but, on materially less favorable terms and conditions, than the creditor has provided to other consumers to identify the CRA that the creditor obtained a report from to help make this decision) to include credit score disclosures.

¹⁴ See note 3. Due to the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018’s passage into law, the Federal Housing Finance Agency, regulator of Fannie Mae and Freddie Mac, is currently seeking comment on updates or changes to how they incorporate different credit score models such as FICO or Vantage Score.

The Consumer Bureau began accepting consumer complaints about credit reporting in October 2012. Between November 2016 to October 2018, the Consumer Bureau handled about 213,000 credit reporting complaints, which was the most complaints received about any consumer product or service during that time.¹⁵ Many of these complaints involved consumers' frustrations about the burdensome and time-consuming process of trying to fix mistakes. Other common types of complaints related to the improper use of a report, trouble obtaining a report or score, the CRAs' investigations, and credit monitoring or identity protection.”

Comprehensive Consumer Credit Reporting Reform Act of 2019

The discussion draft of the Comprehensive Consumer Credit Reporting Reform Act of 2019 makes several key changes to FCRA,¹⁶ including:

- Minimizing the time-consuming and onerous burdens for consumers trying to safeguard their credit and data on their reports;
- Expanding access to free consumer reports and real credit scores;
- Reforming the dispute process by shifting the burden from consumers to the credit bureaus and furnishers;
- Shortening the time periods that most adverse credit information stays on reports from 7 to 4 years, and from 10 to 7 years for bankruptcies;
- Protecting the credit standing of victims of predatory and abusive practices;
- Restricting the use of credit checks for employment purposes; and
- Further empowering the Consumer Bureau by providing explicit authority to monitor the development of credit scoring models.

The discussion draft also addresses concerns raised by organizations regarding the credit reporting provisions included in EGRRCPA,¹⁷ including by allowing consumers to benefit from stronger credit freeze provisions authorized by their state, and by granting a private right of action for active-duty servicemembers receiving credit monitoring.

Protecting Innocent Consumers Affected by a Shutdown Act

The discussion draft of the Protecting Innocent Consumers Affected by a Shutdown Act is designed to help those who are adversely impacted by a Federal government shutdown. Individuals experiencing a loss of income due to a government shutdown may miss payments on debts such as mortgages, student loans, car loans, business loans, or credit cards. Once negative information is reported to consumer reporting agencies, affected employees are likely to see a reduction in their credit scores, thereby negatively affecting their ability to access credit in the future. The proposal establishes a mechanism to identify affected consumers, and it restricts furnishers and the CRAs from including adverse financial information resulting from a government shutdown in the affected consumers

¹⁵ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfbp_complaint-snapshot-mortgage_2019-01_liwsYNV.pdf

¹⁶ The discussion draft is similar to H.R.3755 (115th Congress), the Comprehensive Consumer Credit Reporting Reform Act of 2017, <https://www.congress.gov/bill/115th-congress/house-bill/3755>. The bill was supported by consumer, civil rights, labor, and community organizations. Also see <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400788>.

¹⁷ See: <https://uspirg.org/resources/usp/over-80-groups-oppose-s2155-its-benefits-credit-bureaus> and <https://nclc.org/images/pdf/legislation/house-opp-s2155-2018.pdf>.

credit profiles for the duration of a shutdown plus 90 days. The bill also restricts any user of consumer reports, including creditors, potential employers, and others, from considering adverse information regarding a consumer affected by a shutdown.