

Congress of the United States
Washington, DC 20510

September 6, 2018

Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20007

Dear Chairman Simons and Director Mulvaney:

We are writing to bring your attention to a new Government Accountability Office (“GAO”) report regarding the massive 2017 Equifax data breach, and to request information on the status of your agencies’ investigations.¹ The new GAO report, which we released today, details how attackers exploited Equifax’s significant vulnerabilities to gain unauthorized access to sensitive personal information belonging to more than 145 million Americans, and describes the initial actions taken by your agencies in response to this breach. The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) have both publicly acknowledged opening investigations, but one day prior to the first anniversary of Equifax’s public acknowledgement of the breach, neither agency has taken any public action to hold Equifax accountable for its failures.

Equifax executives — including its Chief Security Officer and Chief Executive Officer — kept the public in the dark for more than a month after they found out about the security intrusion. On September 14, 2017, a week after the public disclosure, both the FTC and CFPB announced that they would exercise their statutory authority to investigate the breach and Equifax’s response.² No public enforcement actions have been taken by either agency in response to the breach. Credit Reporting Agencies (CRAs) should be given special attention by regulators because of the unique characteristics of the industry. As former CFPB Director Richard Cordray described,

¹ Government Accountability Office, *Data Protection: Actions Taken by Equifax and Federal Agencies in Response to the 2017 Breach* (Aug. 2018) (GAO-18-559).

² USA Today, “Equifax data breach: Feds start investigation,” Roger Yu and Kevin McCoy, September 14, 2017, <https://www.usatoday.com/story/money/2017/09/14/ftc-investigating-equifax-over-data-breach/665550001/>.

credit reporting agencies are “one of the markets where people cannot vote with their feet by choosing another provider if they are dissatisfied.”³

Companies like Equifax do not ask the American people before they collect their most sensitive information. This information can determine their ability to access credit, obtain a job, secure a home loan, purchase a car, and make dozens of other transactions that are critical to their personal financial security. This is why effective oversight of these companies by your agencies is vital, and why the American people deserve an update on your investigations.

In April 2018, a letter from Sen. Warren and her Senate colleagues was sent to Director Mulvaney requesting information on the CFPB’s investigation⁴ amid disturbing reports that under his leadership, the CFPB has stalled its inquiry, failing to take even the most preliminary investigative steps, and cutting back supervision of large consumer reporting agencies.⁵ We have yet to receive a response. The letter accompanied the release of a staff report finding that the CFPB received more than 20,000 complaints regarding Equifax in the six months after the company announced the data breach.⁶ These consumer complaints included improper use of credit reports, incorrect information on credit reports, inadequate assistance in resolving problems, and problems with Equifax credit monitoring, fraud alerts, and security freezes in the wake of the breach.⁷ The last update received from the FTC regarding their investigation was in October 2017.

The GAO report finds that “Equifax determined that several major factors had facilitated the attackers’ ability to successfully gain access to its network and extract information from databases containing PII,” and that “key factors that led to the breach were in the areas of identification, detection, segmentation, and data governance.”⁸ This report confirmed the findings of Sen. Warren’s investigation which also revealed that Equifax had advance notice of its vulnerabilities and still failed to take steps to protect the personal information of millions of Americans.⁹

The review also confirms that FTC and CFPB are the two federal agencies with primary oversight over CRAs. The FTC has authority over organizations that maintain consumer data under the Federal Trade Commission Act and can investigate and bring enforcement actions for

³ CFPB, “Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting,” March 02, 2017, <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-consumer-advisory-board-meeting-march-2017/>.

⁴ Letter from Senator Elizabeth Warren, Senator Robert Menendez, and Senator Brian Schatz to Acting Director English and Director Mulvaney, April 30, 2018.

⁵ Reuters, “Exclusive: U.S. consumer protection official puts Equifax probe on ice,” Patrick Rucker, February 5, 2018, <https://www.reuters.com/article/us-usa-equifax-cfpb/exclusive-u-s-consumer-protection-official-puts-equifax-probe-on-ice-sources-idUSKBN1FP01Z>.

⁶ Office of Senators Warren, Schatz and Menendez, “Breach of Trust: CFPB’s Complaint Database Shows Consumers Need Help After Equifax Breach,” April 2018, <https://www.warren.senate.gov/imo/media/doc/Breach%20of%20Trust%20Equifax%20Report.pdf>.

⁷ *Id.*

⁸ Government Accountability Office, *Data Protection: Actions Taken by Equifax and Federal Agencies in Response to the 2017 Breach* (Aug. 2018) (GAO-18-559).

⁹ Office of Sen. Elizabeth Warren, “Bad Credit: Uncovering Equifax’s Failure to Protect American’s Personal Information,” February 2018, https://www.warren.senate.gov/files/documents/2018_2_7_%20Equifax_Report.pdf.

violations of laws that protect consumer information.¹⁰ Further, FTC's authority under the Gramm-Leach-Bliley Act provides data security requirements for non-bank financial institutions, which includes CRAs.¹¹ The FTC also has the responsibility for enforcing CRAs' compliance with the Fair Credit Reporting Act.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB has a statutory mandate to implement and enforce federal consumer protection laws, including the Fair Credit Reporting Act.¹² CFPB has clear supervisory authority over the largest consumer reporting agencies, and CFPB has previously taken enforcement actions against CRAs for violations of the Fair Credit Reporting Act, including bringing enforcement actions against CRAs for any unfair, deceptive, or abusive acts or practices.¹³

The GAO report we released today confirmed that the breach was caused, in part, by numerous data security failures on the part of Equifax. In response to Congressional inquiry into your investigations, you reaffirmed your commitment to protecting consumer privacy, promoting data security, and using your agencies' authorities to address wrongdoing by CRAs.¹⁴ Yet, to date, your agencies appear to have taken no definitive action to hold Equifax accountable.

Therefore, I ask that you provide us with a staff-level briefing to provide an update on your agencies' investigations and that you answer the following questions by September 20, 2018:

1. On September 14, 2018, both of your agencies confirmed that investigations were opened to examine the Equifax breach.¹⁵ Are these investigations still ongoing? If not, why were investigations halted, and who directed that these investigation be closed?
2. If the investigation is ongoing, who is the point of contact currently leading the Equifax investigation in your agencies?
3. If your agency is conducting an investigation, please describe what steps you agency has taken in furtherance of the investigation.
 - a. Has your agency issued Civil Investigative Demands (CIDs)?
 - b. Has your agency interviewed Equifax personnel?
 - c. Has you agency examined Equifax systems or gone onsite to Equifax facilities?
4. Have you conducted investigations of or undertaken cybersecurity examinations over any other CRAs, including Experian and TransUnion, to identify whether these CRAs are adequately protecting personal information? If so, please describe your activities.

¹⁰ Federal Trade Commission Act, 15 U.S.C. § 45(a).

¹¹ 15 U.S.C. § 6801(b).

¹² Dodd-Rank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5481(14).

¹³ Defining Larger Participants of the Consumer Reporting Market, 12 C.F.R. § 1090.101; GAO Report at 10-11.

¹⁴ Response letter to FTC re Equifax Breach, September 27, 2017, <http://thehill.com/policy/technology/373198-dem-call-for-more-action-on-equifax-hack>.

¹⁵ USA Today, "Equifax data breach: Feds start investigation," Roger Yu and Kevin McCoy, September 14, 2017, <https://www.usatoday.com/story/money/2017/09/14/ftc-investigating-equifax-over-data-breach/665550001/>.


5. What other steps have your agencies taken to prevent future data breaches?

Thank you for your prompt attention to this request.

Sincerely,



Elizabeth Warren
United States Senator



Elijah E. Cummings
Member of Congress

cc Commissioner Maureen Ohlhausen
Commissioner Noah Joshua Phillips
Commissioner Rohit Chopra
Commissioner Rebecca Slaughter