



October 3, 2017

Hon. Mike Crapo, Chairman
Hon. Sherrod Brown, Ranking Member
U.S. Senate Banking Committee
Washington, D.C. 20510

Re: For the hearing scheduled for October 4, 2017 titled, *An Examination of the Equifax Cybersecurity Breach*

Dear Chairman Crapo and Ranking Member Brown:

The National Association of Consumer Advocates (NACA), a national nonprofit association actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means, writes to share its views for the Oct. 4 hearing on the Equifax cybersecurity breach. We appreciate the Committee's examination of the data breach. It is an object lesson on the consequences of a powerful entity that lacks adequate controls and incentive to act responsibly and in good faith in the marketplace. We urge the Committee to assert its intention to protect the tens of millions of impacted consumers across the country by supporting effective policies that: protect their personal information; restore and preserve their legal rights – such as the Consumer Financial Protection Bureau's arbitration rule; and afford them meaningful remedies to make them whole when they are wronged.

As you know, the cybersecurity breach that Equifax announced on Sept. 7 impacted the personal information of 145 million consumers, making them vulnerable to identity theft and other violations of their personal data. Equifax bungled its already devastating announcement in various ways. For one, it used the opportunity to promote its paid credit monitoring services; two, it delayed public disclosure of this and other cybersecurity breaches for weeks and even months; and three, it infringed on consumers' rights by inserting terms and conditions for its services that required private arbitration on an individual basis to resolve disputes and prohibited consumers' participation in class actions. After a massive public outcry, Equifax withdrew the forced arbitration requirement and offered complimentary credit monitoring for the data breach.

Preserve their legal rights and support the CFPB arbitration rule. The public's outrage at Equifax's use of forced arbitration to shut the courthouse doors highlights the court system as a critical tool for leveling the playing field for ordinary consumers against formidable corporate bad actors. Far too often, forced arbitration clauses shield wrongful conduct and deny consumers the ability to seek remedies in court.

A CFPB rule issued in July 2017 that limits forced arbitration can help restore much-needed accountability for Equifax and other bad actors in the financial services sector. The rule bars arbitration clauses in financial contracts that ban class actions. It does not ban arbitration clauses for individual disputes. This rule ensures that consumers harmed by widespread or systemic misconduct can once again band together in court to seek remedies. Indeed, in a comprehensive

three-year study on arbitration, the CFPB found that class action lawsuits returned \$2.2 billion to 34 million consumers over a five-year period, after deducting attorneys' fees and court costs.

The arbitration rule is crucial to hold Equifax and other financial institutions accountable for systemic unlawful practices and to encourage them to comply with the law. The Senate should reject any efforts to repeal the arbitration rule.

Enact policies that protect consumers' personal information. Individuals have little control or knowledge about the vast consumer information market and the use and manipulation of their data for profit by credit reporting agencies and other industry players. The consumer data market is ripe for reform. We support legislation that would, for example, fix the dispute process, expand access to consumer reports and credit scores, add protections for borrowers victimized by predatory and abusive practices, restrict credit checks for employment, and shorten the time that adverse credit information stays on reports.¹ Most immediately, consumers should have the right to freeze their credit free of charge and protect their information, especially when their credit data becomes vulnerable to theft or other misuse.

Preserve and enhance meaningful remedies. On the same day that Equifax's data breach was announced, a House subcommittee held a hearing to consider a group of credit bureau-friendly bills, including one introduced by Rep. Barry Loudermilk of Georgia, the state where Equifax is headquartered, that would undermine remedies available to harmed consumers under the Fair Credit Reporting Act (FCRA).² The bill would amend the FCRA to eliminate punitive damages for individuals and impose a one-size-fits-all cap on damages in class actions for groups of consumers who seek remedies against the same wrongdoer. The ill-advised proposal would undermine accountability for credit bureaus and background check companies. It would deprive victims of credit reporting abuses of deserved compensation for their losses. This and any other similar proposals would amount to an underserved gift to industry lobbyists and would make consumers vulnerable to even more abuse in the credit reporting market. Now more than ever, Congress must speak up for consumers' right to be made whole for egregious and consequential harms caused by bad actors in the credit reporting industry.

Credit bureaus have tremendous power over the distribution of consumers' data and information. Their misconduct, whether negligent, reckless, or willful, affects individuals' reputations and financial security, which in turn impacts the economy. When these entities fail at their duties, as Equifax most recently has done with the cybersecurity breach, they must be held accountable for the disruption they cause in the marketplace. Consumer protections under the FCRA, together with the CFPB arbitration rule are crucial to incentivize credit reporting industry players to comply with the law and handle consumers' private credit information with care.

Sincerely,

Christine Hines
Legislative Director

¹ See, e.g. H.R.3755 - *Comprehensive Consumer Credit Reporting Reform Act of 2017*, 115th Cong., and S.1816 - *Freedom from Equifax Exploitation Act*, 115th Cong., 2017 and 2018.

² H.R.2359 - *FCRA Liability Harmonization Act*, 115th Cong., 2017 and 2018.