

**Statement of Peggy Twohig  
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Bureau of Consumer Financial Protection  
Senate Committee on Banking, Housing and Urban Affairs  
“An Overview of Credit Bureaus and the Fair Credit Reporting Act”**

**July 12, 2018**

Chairman Crapo, Ranking Member Brown, thank you for the opportunity to testify today about the work of the Bureau of Consumer Financial Protection (Bureau) to address consumer protections in the consumer reporting market. My name is Peggy Twohig, and I am the Assistant Director for Supervision Policy at the Bureau. The Office of Supervision Policy is responsible for developing supervision strategy across bank and nonbank markets and ensuring that policy decisions are consistent across markets, charters, and regions.

Prior to my work at the Bureau, I was Director of the Office of Consumer Protection at the Department of the Treasury (Treasury), where I worked on the proposal to create a new consumer agency as part of financial regulatory reform. Immediately before joining Treasury, I served as Associate Director of the Division of Financial Practices at the Federal Trade Commission (FTC). My 17-year tenure at the FTC focused on enforcement and policy issues related to consumer financial services. I have also worked as a litigator in private practice with the firm of Arnold & Porter in Washington, D.C.

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***Credit Reporting System***

The consumer reporting market plays a critical role in the overall consumer financial services market and has enormous reach and impact; over 200 million Americans have credit files with tradelines furnished voluntarily by over 10,000 providers. This information is used by many different types of businesses, including creditors, insurers, landlords, telecommunications providers, and employers, to make decisions about individual transactions with consumers. In particular, creditors rely on the information in consumers' credit files to make decisions as to whether to approve a variety of credit transactions, including mortgages, credit cards, student

loans, and auto loans. And, when extending credit, creditors use that information to determine what terms to offer.

Accurate consumer report information is therefore important to creditors and other consumer report users to make good business decisions. For any individual consumer, an accurate consumer report can be even more important, given the significant impact that information can have on the consumer's ability to obtain or pay for financial and other products and services. Despite the impact credit reports can have on a consumer, consumers do not get to choose who collects and sells consumer report information about them.

Because of the importance of consumer report accuracy to businesses and consumers, the structure of the Fair Credit Reporting Act (FCRA) creates interrelated legal standards and requirements to support the policy goal of accurate credit reporting. These requirements anticipate that all reports will not be perfect; instead the FCRA requires that credit reporting agencies (CRAs) have "reasonable procedures to assure maximum possible accuracy" of reports.<sup>1</sup> It also imposes certain accuracy obligations on furnishers.<sup>2</sup> The FCRA also sets forth a dispute and investigation framework, with obligations on both CRAs and furnishers, to ensure potential errors are investigated and corrected promptly, if necessary.<sup>3</sup> This dispute resolution framework is important to the efficient operation of credit markets, as it provides a standard mechanism for identifying and resolving inaccuracies when they occur.

### ***Bureau Authority Over Consumer Reporting Agencies and Furnishers***

Congress authorized the Bureau to assess compliance with the requirements of Federal consumer financial laws as part of its supervision of both depository institutions and non-depository institutions. As defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Federal consumer financial laws include most

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<sup>1</sup> FCRA Section 607(b), 15 U.S.C. § 1681e(b).

<sup>2</sup> FCRA Section 623(a), 15 U.S.C. § 1681s-2(a).

<sup>3</sup> FCRA Section 611, 15 U.S.C. § 1681i; FCRA Section 623(b), 15 U.S.C. § 1681s-2(b).

provisions of the Fair Credit Reporting Act.<sup>4</sup> The FCRA is the primary statute that governs consumer reporting by CRAs, furnishing information to CRAs, and using reports generated by CRAs. Together with its implementing regulation, Regulation V,<sup>5</sup> the FCRA imposes obligations on the compilation, maintenance, furnishing, use, and disclosure of information associated with credit, insurance, employment, and other decisions made about consumers.

Federal consumer financial laws also include substantive provisions of Title X of the Dodd-Frank Act.<sup>6</sup> One of these provisions is the prohibition on a covered person or service provider from engaging in unfair, deceptive, or abusive acts or practices (UDAAP).<sup>7</sup> Many CRAs are “covered persons” under the Dodd-Frank Act because they collect, analyze, maintain, or provide consumer report information or other account information used or expected to be used in connection with decisions regarding the offering or provision of consumer financial products or services and delivered, offered, or provided in connection with a consumer financial product or service.<sup>8</sup> Depending on the facts and circumstances of any given transaction, CRAs might also be considered service providers.<sup>9</sup>

The Bureau has supervisory authority over consumer reporting agencies that are larger participants in the consumer reporting market. In July 2012, the Bureau promulgated the first larger participant rule to define larger participants in the consumer reporting market because of

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<sup>4</sup> *Id.* at § 5481(14), (12)(F).

<sup>5</sup> 12 C.F.R. part 1022.

<sup>6</sup> 12 U.S.C. § 5481(14).

<sup>7</sup> 12 U.S.C. §§ 5531, 5536(a).

<sup>8</sup> *Id.* at § 5481(5), (15)(A)(ix).

<sup>9</sup> *Id.* at § 5481(26) (defining “service provider” as “any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service . . .”).

the importance of this function to efficient credit markets.<sup>10</sup> The larger participant rule defines a larger participant of the consumer reporting market as a nonbank covered person with more than \$7 million in annual receipts resulting from relevant consumer reporting activities.<sup>11</sup> The Bureau estimated 30 companies that account for about 94 percent of the market's annual receipts met the larger participant threshold.<sup>12</sup>

Participants in this market include nationwide consumer reporting companies, consumer report resellers, and specialty consumer reporting companies.<sup>13</sup> The Bureau reviews the operations of these larger participants for compliance with Federal consumer financial laws, including the FCRA and Regulation V. The Bureau also has supervisory authority over a substantial number of entities that furnish credit information to CRAs. As part of its exercise of this authority, the Bureau reviews compliance with the FCRA's furnishing requirements at other institutions subject to the Bureau's supervisory authority, such as large banks. The Bureau also has enforcement authority over nearly every person, regardless of status as a supervised entity, who violates the FCRA.<sup>14</sup> The Bureau is the first federal or state agency to have both supervisory and enforcement authority over CRAs and the other participants in the consumer reporting market.

In addition to enforcement and supervisory authority over CRAs, the Bureau has broad authority to promulgate rules "as are necessary to carry out the purposes of" the FCRA.<sup>15</sup> The Bureau's rules are applicable to any person subject to the FCRA, except certain

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<sup>10</sup> <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/defining-larger-participants-consumer-reporting-market/>.

<sup>11</sup> 12 C.F.R. § 1090.104.

<sup>12</sup> <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-supervise-credit-reporting/>.

<sup>13</sup> The term "consumer reporting company" means the same as "consumer reporting agency," as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), including nationwide consumer reporting agencies as defined in Section 1681a(p) and nationwide specialty consumer reporting agencies as defined in Section 1681a(x).

<sup>14</sup> E.g., Section 1029 of the Dodd-Frank Act excludes certain motor vehicle dealers from the Bureau's rulemaking, enforcement, or other authority.

<sup>15</sup> 15 U.S.C. § 1681s(e)(1).

motor vehicle dealers.<sup>16</sup> The Bureau does not, however, have rulemaking authority (or supervisory or enforcement authority) under Sections 615(e) and 628 of the FCRA. These provisions direct the Federal banking agencies, the National Credit Union Administration, the FTC, the Commodity Futures Trading Commission, and the Securities and Exchange Commission to promulgate regulations relating to Red Flags, and Disposal of Records. The FTC used its authority under these provisions of the FCRA to promulgate its ID Theft Red Flags Rule<sup>17</sup> and its Consumer Report Records Disposal Rule.<sup>18</sup> Other agencies have promulgated comparable rules pursuant to these sections.

CRA and other participants in the consumer reporting market may also be subject to other laws within the Bureau's authority, such as the Gramm-Leach-Bliley Act's (GLBA) notice and opt-out and privacy provisions. GLBA gives the Bureau rulemaking and enforcement authority over these provisions.<sup>19</sup> (Since these provisions are federal consumer financial laws they are also within the Bureau's supervisory authority under section 1024 of the Dodd-Frank Act.) The Bureau cannot, however, implement GLBA section 501(b), which requires that financial institutions develop, implement, and maintain comprehensive information security programs that contain administrative, technical, and physical safeguards.<sup>20</sup> The Bureau has no supervisory, enforcement, or rulemaking authority with regard to GLBA section 501(b) or its implementing rules; that section is excluded from the definition of Federal consumer financial law.<sup>21</sup> Section 501(b) is implemented by rules and guidelines promulgated by the

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<sup>16</sup> 12 C.F.R. § 1022.1(b)(2).

<sup>17</sup> 16 C.F.R. Part 681.

<sup>18</sup> 16 C.F.R. Part 682.

<sup>19</sup> 15 U.S.C. §§ 6804(a)(1)(A) and 6805(a)(8). The Bureau's GLBA authority does not extend to certain motor vehicle dealers. 12 C.F.R. § 1016.1(b)(1).

<sup>20</sup> 15 U.S.C. § 6801(b).

<sup>21</sup> 15 U.S.C. § 5481(12), (14).

FTC and other agencies and include the FTC's GLBA Customer Information Safeguards Rule.<sup>22</sup>

### ***Bureau Credit Reporting Work***

In both its supervision and enforcement work, the Bureau has focused on credit reporting accuracy and dispute handling by both CRAs and furnishers.

In March 2017, the Bureau issued a special edition of its *Supervisory Highlights* publication in which it reported out on the supervisory work undertaken in consumer reporting.<sup>23</sup> As discussed in the report, the Bureau has focused its supervisory work on the key elements underpinning accuracy. As a result of these reviews, the Bureau directed specific improvements in data accuracy and dispute resolution at one or more CRA, including:

- improved oversight of incoming data from furnishers;
- institution of quality control programs of compiled consumer reports;
- monitoring of furnisher dispute metrics to identify and correct root causes;
- enhanced oversight of third-party public records service providers;
- adherence to independent obligation to reinvestigate consumer disputes, including review of relevant information provided by consumers; and
- improved communication to consumers of dispute results.

In addition, the Bureau directed both bank and nonbank furnishers, consistent with the FCRA's requirements, to develop reasonable written policies and procedures regarding accuracy of the information they furnish and to take corrective action when they furnished information they determined to be inaccurate. The Bureau also found that furnishers failed to either conduct investigations or send results of dispute investigations to consumers and demanded that these furnishers bring their dispute handling practices into compliance with legal requirements.

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<sup>22</sup> 16 C.F.R. Part 314.

<sup>23</sup> [https://www.consumerfinance.gov/documents/2774/201703\\_cfbp\\_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf](https://www.consumerfinance.gov/documents/2774/201703_cfbp_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf).

In addition to supervisory work, the Bureau has brought enforcement actions and entered into settlements related to institutions' violation of the FCRA's accuracy and dispute investigation requirements.<sup>24</sup> The Bureau will continue to examine and investigate CRAs and furnishers, using the authority and tools provided by the Dodd-Frank Act and other statutes.

The Bureau is also focused on educating consumers by providing consumers with tools and information to help them know what to do when they encounter a problem, or how to avoid problems in the first place. For example, we provide information to consumers about how they can obtain access to their credit reports to check their accuracy and dispute any information they believe to be incorrect.<sup>25</sup>

### *Data Security*

CRAs hold a tremendous amount of information about consumers, including sensitive financial information. If CRAs do not protect this data, it may lead to data breaches and other unauthorized access to it. Unauthorized access to data at consumer reporting agencies creates the risk of substantial harm to consumers, including the risk of identity theft. Because of these risks, since the Equifax breach, the Bureau has increased its attention to data security issues in our supervisory and enforcement activities.

The Bureau has the authority to conduct data security investigations and examinations at nonbanks over which it has supervisory authority, including CRAs.

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<sup>24</sup> See, e.g., [http://files.consumerfinance.gov/f/201510\\_cfpb\\_consent-order\\_general-information-service-inc.pdf](http://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf); [http://files.consumerfinance.gov/f/201512\\_cfpb\\_consent-order\\_clarity-services-inc-timothy-ranney.pdf](http://files.consumerfinance.gov/f/201512_cfpb_consent-order_clarity-services-inc-timothy-ranney.pdf); [https://files.consumerfinance.gov/f/documents/bcfp\\_security-group-inc\\_consent-order\\_2018-06.pdf](https://files.consumerfinance.gov/f/documents/bcfp_security-group-inc_consent-order_2018-06.pdf); [https://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_CitiFinancial-consent-order.pdf](https://files.consumerfinance.gov/f/documents/201701_cfpb_CitiFinancial-consent-order.pdf).

<sup>25</sup> For information about how to access your credit reports and how to dispute errors: <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/>; For information about obtaining credit reports: <https://www.consumerfinance.gov/ask-cfpb/how-do-i-get-a-copy-of-my-credit-reports-en-5/>; For information about how to dispute errors: <https://www.consumerfinance.gov/ask-cfpb/how-do-i-dispute-an-error-on-my-credit-report-en-314/>; For information about common credit issues: <https://www.consumerfinance.gov/about-us/blog/3-common-credit-issues-and-what-you-can-do-fix-them/>.

Data security reviews conducted by the Bureau are comprised of three specific inquiries, consistent with the three prongs of the Bureau’s general examination authority.<sup>26</sup> First, the Bureau assesses the facts and circumstances to determine whether a nonbank’s data security practices and policies constitute violations of Federal consumer financial law, including violations of the Dodd-Frank Act’s prohibition against unfair, deceptive or abusive acts and practices (UDAAP)<sup>27</sup> and of the Fair Credit Reporting Act.<sup>28</sup> Second, the Bureau obtains information about compliance management systems and procedures relating to data security practices. Third, the Bureau detects and assesses risks posed by potential data security lapses to consumers and to markets for consumer financial products and services.

In addition to this work, the Bureau website has a list of resources and information for consumers about data breaches to help consumers understand what steps or actions they can take to protect their personal information.<sup>29</sup> The Bureau also provides resources to help consumers protect themselves from identity theft,<sup>30</sup> to help military personnel and their families secure their identities,<sup>31</sup> and specific resources on the *Top 10 ways to protect yourself in the wake of the Equifax data breach*.<sup>32</sup> In addition, the Bureau’s online tool, *Ask CFPB*, has provided consumers

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<sup>26</sup> Section 1024 of the Dodd-Frank Act grants the Bureau the authority to conduct examinations of certain nonbank financial institutions, including larger participants in the consumer reporting market, under its risk-based supervision program for the purposes of: (a) assessing compliance with the requirements of Federal consumer financial law; (b) obtaining information about the activities and compliance systems or procedures of such person; and (c) detecting and assessing risks to consumers and to markets for consumer financial products and services. 15 U.S.C. § 5514.

<sup>27</sup> Both courts and executive branch agencies have found that, in certain circumstances, insufficient data security can constitute an unfair or deceptive practice. *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236 (3d Cir. 2015); *FTC v. AshleyMadison.com*, No.1:16-cv-02438 (D.D.C. filed Dec. 14, 2016); available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3284/ashley-madison>.

<sup>28</sup> FCRA Section 607(a), 15 U.S.C.1681e.

<sup>29</sup> <https://www.consumerfinance.gov/equifaxbreach>.

<sup>30</sup> <https://www.consumerfinance.gov/about-us/blog/identity-theft-protection-following-equifax-data-breach/>.

<sup>31</sup> <https://www.consumerfinance.gov/about-us/blog/servicemembers-should-secure-their-identity-after-equifax-data-breach/>.

<sup>32</sup> <https://www.consumerfinance.gov/about-us/blog/top-10-ways-protect-yourself-wake-equifax-data-breach/>.



with answers to frequently asked questions about a variety of topics, including identity theft, credit freezes, fraud alerts, and credit and identity monitoring.<sup>33</sup>

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### *Conclusion*

Large breaches call for a coordinated response, and the Bureau will continue to coordinate with other federal and state agencies. We will also continue to exercise our authority to examine and investigate credit reporting companies and furnishers of information, and to educate consumers about important consumer financial issues. Consumers should have confidence that their credit reports comply with all applicable legal requirements.

Thank you again for the opportunity to testify today at this important hearing. I would be happy to answer your questions about the Bureau's work related to credit reporting.

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<sup>33</sup> Available at [http://www.consumerfinance.gov/askcfpb/search/?selected\\_facets=tag\\_exact%3Aidentity+theft](http://www.consumerfinance.gov/askcfpb/search/?selected_facets=tag_exact%3Aidentity+theft).