

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

On

The Fair Credit Reporting Act, Credit Bureaus, and Data Security

I. INTRODUCTION

Chairman Crapo and members of the Committee, my name is Maneesha Mithal, and I am the Associate Director for the Division of Privacy and Identity Protection at the Federal Trade Commission (“Commission” or “FTC”).¹ I appreciate the opportunity to appear before you today to discuss the Fair Credit Reporting Act, credit bureaus, and data security.

Congress enacted the Fair Credit Reporting Act² (“FCRA”) in 1970, recognizing the importance of “fair and accurate credit reporting” to maintain “the efficiency of the banking system” and “the public[’]s confidence” in that system, while at the same time balancing the “need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”³ The FCRA helps to (1) prevent the misuse of sensitive consumer report information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation’s banking and consumer credit systems. Since the FCRA’s passage, Congress has amended the statute to address developments in the consumer reporting system and the marketplace and to increase consumers’ rights and protections with respect to the collection and use of their data.⁴

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² 15 U.S.C. §§ 1681-1681x.

³ *Id.* § 1681(a).

⁴ The Consumer Credit Reporting Reform Act of 1996, Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (Pub. L. No. 104-208, Sept. 30, 1996), made extensive revisions to the FCRA, including expanding the duties of consumer reporting agencies, increasing obligations on users of consumer reports, and adding furnishers of information to consumer reporting agencies as a category of entities with statutory obligations. There were a number of more modest revisions over the next seven years, the most significant of which was a 1999 amendment that specifically authorized the federal financial agencies to promulgate regulations for the banks and other entities subject to their jurisdiction. The Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159 (Dec. 4, 2003) (“FACT Act”), added several sections to assist consumers and businesses in combating identity theft and reduce the damage to consumers. The Commission, often in conjunction with the federal financial agencies, issued numerous rules to implement the variou

The Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA since its enactment.⁵ In the last decade, the Commission has brought over 30 actions to enforce the FCRA against consumer reporting agencies (“CRAs”), users of consumer reports, and furnishers of information to CRAs. As the consumer reporting system evolves and new technologies and business practices emerge, vigorous enforcement of the FCRA continues to be a top priority for the Commission, as well as consumer and business education concerning applicable rights and responsibilities under the statute.

This testimony first provides background on the FCRA. Next, it discusses marketplace developments related to credit report accuracy. It then discusses the Commission’s work to enforce the accuracy provisions of the FCRA and educate consumers and businesses about their respective rights and responsibilities under the statute. Finally, it discusses the data security requirements applicable to credit bureaus and the FTC’s efforts to promote data security in this sector.

II. BACKGROUND ON THE FCRA

CRAs assemble or evaluate consumer data for third parties to use to make critical decisions about the availability and cost of various consumer products and services, including credit, insurance, employment, and housing.

credit or other benefits or pay a higher price for them. Errors in consumer reports can also cause credit issuers to make inaccurate decisions that result in declining credit to a potentially valuable customer or issuing credit to a riskier customer than intended.

increase in their credit scores such that their credit risk tier decreased and the consumer may be more likely to be offered a lower loan interest rate.

There have been significant changes in the marketplace aimed at increasing credit report accuracy since the Commission published its study. For example, the Bureau has been exercising its supervisory authority over the nationwide credit bureaus and it periodically publishes Supervisory Highlights describing its findings. Last year, it published an edition focused on accuracy issues in credit reporting and the handling and resolution of consumer disputes, and it pointed to several specific improvements it directed in these areas.¹⁴

In addition, in 2015, the nationwide credit bureaus announced a Nationwide Consumer Assistance Plan (“NCAP”)

IV. FTC ACTIVITIES TO PROMOTE CREDIT REPORT ACCURACY

A. Law Enforcement

FCRA enforcement continues to be a top priority for the Commission. With the advent in 2011 of the Bureau's supervisory authority over the nationwide credit bureaus and the coordination efforts between the agencies, the FTC has focused its FCRA law enforcement efforts on other entities in the credit reporting area and other aspects of the consumer reporting industry more broadly.

For example, the FTC settled cases against furnishers that allegedly had inadequate policies and procedures for reporting accurate credit information to CRAs. In *Credit Protection Association, LP*, the Commission alleged that a debt collector failed to have adequate policies and procedures to handle consumer disputes, did not have a policy requiring notice to consumers of the outcomes of investigations about disputed information, and in numerous instances failed to inform consumers of the outcome of disputes.¹⁶ The settlement included \$72,000 in civil penalties.¹⁷ And, in *Tricolor Auto Acceptance, LLC*, the Commission alleged that the loan-servicing department of an auto dealer failed to have written policies and procedures designed to ensure that the credit information it reported to CRAs was accurate and failed to properly investigate consumer disputes regarding the accuracy of credit information.¹⁸ The settlement included \$82,000 in civil penalties.

¹⁶ *U.S. v. Credit Protection Association, LP*, No. 3:16-cv-01255-D (N.D.Tex. filed May 9, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3142/credit-protection-association>.

¹⁷ As specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2861, as amended by the Debt Collection Improvements Act of 1996, Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, in relevant part, civil penalties under t72.3 (al)2.9

In addition, the FTC has settled cases against background screening CRAs that compile background reports on consumers that may include driving records, employment and education history, eviction records, and criminal records for use in making employment and housing decisions. These settlements include allegations relating to inaccuracies in consumer reports, as well as failures to protect the privacy of consumer reports by ensuring permissible use. For example, in *InfoTrack Information Services, Inc.*, the Commission alleged that a background screening CRA failed to have reasonable procedures to ensure the maximum possible accuracy of consumer report information and, as a result, provided inaccurate information suggesting that job applicants potentially were registered sex offenders.¹⁹ The settlement included \$1 million in civil penalties, which was suspended upon payment of \$60,000 based on inability to pay. In *Instant Checkmate, Inc.*, the Commission alleged that the CRA compiled public record information into background reports and marketed its services to landlords and employers but failed to comply with several FCRA provisions, including failing to maintain reasonable procedures to ensure the accuracy of its reports, failing to have reasonable procedures to ensure that those using its reports had permissible purposes for accessing them, and providing reports to users that it did not have reason to believe had a permissible purpose to receive them.²⁰ The settlement included \$525,000 in civil penalties.

The FTC has also brought cases against check authorization CRAs for failing to comply with their accuracy obligations. Check authorization companies compile consumers' personal information and use it to help retail merchants throughout the United States determine whether to

¹⁹ *U.S. v. Infotrack Information Services, Inc.*, No. 1:14-cv-02054 (N.D.Ill. filed Apr. 9, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3092/infotrack-information-services-inc-et-al>.

²⁰ *U.S. v. Instant Checkmate, Inc.*, No. 3:14-cv-00675-H-JMA (S.D.Cal. filed Apr. 9, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3221/instant-checkmate-inc>.

accept consumers' checks. In its settlements with *Telecheck*²¹ and *Certegy*,²² two of the nation's largest check authorization companies, the Commission charged these companies with failing to follow FCRA accuracy procedures, failing to follow proper procedures for consumer disputes, and failing to establish and implement reasonable written policies regarding the accuracy of information the companies furnish to other CRAs. The FTC obtained \$3.5 million in civil penalties against each company.

B. Business Guidance and Consumer Education

The Commission also continues to educate consumers and businesses on their consumer reporting rights and obligations under the FCRA. The FTC has published guidance for employment and tenant background screening companies regarding their obligations under the FCRA, including with respect to accuracy and consumer disputes.²³ For furnishers, the FTC publication *Consumer Reports: What Information Furnishers Need to Know* provides an overview of obligations under the FCRA.²⁴ Similarly, for users of consumer reports, FTC guidance includes publications for employers, landlords, insurers, and creditors, as well as guidance on secure disposal of consumer information for all businesses.²⁵

²¹ *U.S. v. TeleCheck Services, Inc.*, No. 1:14-cv-00062

The FTC also has a number of user-friendly resources for consumers designed to inform them of their rights under the FCRA and assist them with navigating the consumer reporting system. The publication *Credit and Your Consumer Rights* provides an overview of credit, explains consumers' legal rights, and offers practical tips to help solve credit problems.²⁶ The FTC also has publications that explain how consumers can obtain their free annual credit reports from each of the nationwide consumer reporting agencies²⁷ and use the FCRA's dispute procedures to ensure that information in their consumer reports is accurate.²⁸ For consumers seeking employment or housing, the FTC has materials on employment background checks²⁹ and tenant background checks.³⁰ The Commission continues to update and expand its materials as new issues arise.

V. DATA SECURITY

The FTC is committed to protecting consumer privacy and promoting data security in the private sector. The Commission is the nation's primary data security regulator and enforces several statutes and rules that impose data security requirements on companies across a wide spectrum of industries, including credit bureaus. Since 2001, the Commission has undertaken substantial efforts to promote data security in the private sector through enforcement of Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, such as businesses making false or misleading claims about their data security procedures, or failing to employ reasonable

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security measures.³¹ The Commission is also the federal enforcement agency for the Children’s Online Privacy Protection Act (“COPPA”), which requires reasonable security for children’s information collected online.³²

Further, the Commission’s Safeguards Rule, which implements the Gramm-Leach-Bliley Act (“GLB Act”), sets forth data security requirements for financial institutions within the Commission’s jurisdiction, which includes credit bureaus.³³ The Safeguards Rule requires financial institutions, or companies that are significantly engaged in offering consumer financial products or services, to develop, implement, and maintain a comprehensive information security

A. Law Enforcement

The Commission has brought over 60 law enforcement actions against companies that allegedly engaged in unreasonable data security practices. In 2014, the Commission took the unusual step of publicly confirming its investigation into a major data breach due to the scale of public interest in the matter.

The FTC has significant experience with enforcing data security laws against CRAs. In 2006, the FTC brought the seminal *Choicepoint* case against Choicepoint, which sold consumer reports to identity thieves who did not have a permissible purpose for the information under the FCRA, as well as failed to employ reasonable security measures to protect the information.

on the lessons of recent law enforcement actions, closed investigations, and experiences companies have shared about data security in their business.⁴³

The Commission also educates consumers on security. For example, the FTC has provided guidance for consumers on securing their home wireless networks, a critical security step for protecting devices and personal information from compromise. These resources are accessible on the FTC's consumer guidance website, consumer.ftc.gov. The FTC also assists consumers affected by data breaches through its identitytheft.gov website that allows consumers who are victims of identity theft to quickly file a complaint with the FTC and get a free, personalized guide to recovery that helps streamline many of the steps involved. In the wake of the announcement of the Equifax data breach last year, the agency published numerous materials and created a dedicated page on its website, ftc.gov/Equifax, with resources to educate consumers about fraud alerts, active duty alerts, credit freezes and locks, credit monitoring, and how to reduce the risk of identity theft.

C. Policy Initiatives

The FTC engages in a variety of policy initiatives to enhance data security. The FTC has hosted workshops and issued reports to highlight the privacy and security implications of new technologies. For example, last year the FTC hosted a workshop to examine consumer injury in the context of privacy and data security and various issues related to the injuries consumers suffer when information about them is misused.⁵⁰ Most recently, the Commission announced plans to hold a series of public hearings on the impact of market developments on competition and consumer protection enforcement, including the Commission's remedial authority to deter unfair and deceptive conduct in privacy and data security matters.⁵¹

⁵⁰ *Informational Injury Workshop* (Dec. 12, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/12/informational-injury-workshop>.

⁵¹ Press Release, *FTC Announces Hearings On* O4-717d ()Tj2.5 7w 9.96 -0 0.006 11.04 -0 0 1(5t Tm Tw 4.0 Td ()Tj77b(p()Tj7

VI. CONCLUSION

Thank you for the opportunity to provide the Commission's testimony on credit report accuracy and security. We look forward to continuing to work with Congress and this Committee on these important issues.