

March 26, 2019

The Honorable Raja Krishnamoorthi, Chairman  
The Honorable Michael Cloud, Ranking Member  
U.S. House Committee on Oversight and Government Reform  
Subcommittee on Economic and Consumer Policy  
2157 Rayburn House Office Building  
Washington, D.C. 20515

## Re: Improving Cybersecurity at Consumer Reporting Agencies

Dear Chairman Krishnamoorthi and Ranking Member Cloud:

We write to you regarding your upcoming hearing on “Improving Cybersecurity at Consumer Reporting Agencies.”<sup>1</sup> EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.<sup>2</sup> We appreciate your interest in the role of the FTC and consumer protection.

The Federal Trade Commission helps to safeguard consumers and to promote competition, but the FTC is not an effective data protection agency. The agency lacks authority to enforce basic data protection obligations and has failed to enforce the orders it has established. The FTC also lacks the ability, authority and expertise to engage the broad range of challenges we now confront— such as Internet of Things, Artificial Intelligence, connected vehicles, and more. This problem will not be solved by granting the FTC more authority: the agency has failed to use the authority it already has.

Given the enormity of the challenge, the United States would be best served to do what other countries have done and create a dedicated data protection agency. An independent agency could more effectively utilize its resources to police the current widespread exploitation of consumers’ personal information and would be staffed with personnel who possess the requisite expertise to regulate the field of data security.

The United States is one of the few democracies in the world that does not have a federal data protection agency, even though the original proposal for such an institution emerged from the U.S. in the 1970s.<sup>3</sup> The United States was once a global leader on privacy. The Fair Credit Reporting Act (FCRA), passed in 1970, was viewed at the time as the first modern privacy law—a response to the growing automation of personal data in the United States.<sup>4</sup>

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<sup>1</sup> *Improving Cybersecurity at Consumer Reporting Agencies*, 116th Cong. (2019), H. Comm. on Oversight and Gov’t Reform, <https://oversight.house.gov/legislation/hearings/subcommittee-on-economic-and-consumer-policy-hearing-on-improving-data-security> (Mar. 26, 2019).

<sup>2</sup> *About EPIC*, EPIC (2019), <https://www.epic.org/epic/about.html>.

<sup>3</sup> See, EPIC, *The Privacy Act of 1974*, <https://epic.org/privacy/1974act/#history>.

<sup>4</sup> EPIC, *The Fair Credit Reporting Act*, <https://www.epic.org/privacy/fcra/>.

Almost every other advanced economy has recognized the need for an independent agency to address the challenges of the digital age. Current law and regulatory oversight in the United States is woefully inadequate to meet the challenges faced by consumers and businesses. While often relied upon to police privacy, the Federal Trade Commission is fundamentally not a data privacy agency. While the FTC does have limited data security authority under the “Safeguards Rule” of the Gramm-Leach-Bliley Act (GLB), this rule only applies to financial institutions, and compliance is merely voluntary. Moreover, GLB disperses oversight of financial institutions across seven agencies and fails to cover credit reporting agencies, such as Equifax. Given that credit reporting agencies hold more sensitive personal data than many of the other financial institutions combined, it makes little sense for those companies to be given special treatment under the rules.

The Dodd-Frank Act transferred authority over certain privacy provisions of GLB to the Consumer Financial Protection Bureau, but Dodd-Frank did not give the CFPB authority to establish data security standards. The CFPB, like the FTC, can only bring enforcement actions based on a company’s affirmative misrepresentations about data security practices. The CFPB similarly lacks data protection authority and only has jurisdiction over financial institutions. Neither of these agencies possess the resources needed to address data security.

As the data breach epidemic reaches unprecedented levels, the need for an effective, independent data protection agency has never been greater. An independent agency can more effectively utilize its resources to police the current widespread exploitation of consumers’ personal information. An independent agency would also be staffed with personnel who possess the requisite expertise to regulate the field of data security.

EPIC appreciates the Committee’s decision to convene this hearing and respects the FTC’s role as the lead consumer protection agency in the United States. But as for data protection in the United States, the FTC is not up to the task. It is time to establish an independent federal data protection agency.<sup>5</sup>

We ask that this letter and the attachment be entered in the hearing record.

Sincerely,

/s/ Marc Rotenberg  
Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald  
Caitriona Fitzgerald  
EPIC Policy Director

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<sup>5</sup> See Privacy and Digital Rights for All, *The Time is Now: A Framework for Comprehensive Privacy Protection and Digital Rights in the United States* (2019), <https://www.citizen.org/sites/default/files/privacy-and-digital-rights-for-all-framework.pdf>.