CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity

December 20, 2017

The Honorable Robert E. Latta
Chairman
Subcommittee on Digital Commerce & Consumer Protection
Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Latta:

Thank you for the opportunity to appear before your subcommittee on November 1, 2017. In response to your December 5th letter, please find responses to additional questions from you and Congressman McKinley.

Please feel free to let me know if you have additional questions.

Sincerely,

Francis Creighton

Francis Creighton
President & CEO

Additional Questions for the Record
Francis Creighton, President & CEO
Consumer Data Industry Association

The Honorable Robert E. Latta

1. *What specific benefits do consumers see because of the personal and credit information that consumer reporting agencies (CRAs) collect and maintain in credit files?*
   a. *If CRAs did not collect and maintain such information on consumers, how would that impact the ability of banks, merchants, mortgage lenders, to name a few, to extend credit lines to consumers?*

Consumers benefit from the current system in a number of ways. The best place to start to understand the consumer benefits of consumer data on file with CRAs is what we call the "miracle of instant credit." When he was the chairman of the FTC, Tim Muris referred to the "miracle of instant credit" whereby a consumer can walk in to an auto dealer and "can borrow $10,000 or more from a complete stranger, and actually drive away in a new car in an hour or less."

Chairman Muris went on to discuss the value of the FCRA in the marketplace. He said that "the FCRA is an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information. At its core, it ensures the integrity and accuracy of consumer records and limits the disclosure of such information to entities that have 'permissible purposes' to use the information."[1]

Consumers benefit from being assessed based on their own personal credit histories. Today lenders are able to assess what product to offer a consumer based on her/his own history, accurately reflecting how s/he has handled credit in the past.

Consumers also benefit because the system today offers multiple efficiencies. Lenders do not have to require months of statements for every credit card or bank account before offering a loan product. Lenders can pull a credit report and have a comprehensive view of the consumer's history.

Because credit reports are always absorbing new information, a single missed payment is set in the context of years of on-time payments. Our credit reporting system allows for second chances for American consumers.

The US credit system contributes to the diversity of business model choices American banking consumers enjoy by providing disproportionate benefits to smaller financial institutions like community banks and credit unions, who have

[1] FTC Chairman Tim Muris, October 4, 2001 before the Privacy 2001 conference in Cleveland.

access to accurate and complete information on par with that available to very large banks. Our consumer credit system works whether you are at a global bank or a community-based credit union because companies share critical information across the system to benefit everyone.

Credit reports are also a check on human bias and assumptions. These reports provide lenders with a foundation of facts that contribute to equitable treatment for consumers. CDIA members establish an accountable and colorblind system for judging creditworthiness designed both for the best interests of consumers and safety and soundness of lending institutions – by ensuring the accuracy and completeness of information in consumer reports, and by providing businesses with the information they need to ensure consumers are treated fairly. Without this system, subjective judgements could be based on factors other than the facts of creditworthiness.

If CRAs did not collect and maintain consumer information consumers would no longer be able to be judged on their own personal histories. During the application process for new credit, financial institutions would be forced to attempt to ascertain a full picture of a borrower's current obligations. Lenders would have to present much more extensive applications and employ more people to review and confirm the information a consumer shares. In addition, because a lender would have no way of knowing whether the application presents a full and complete picture of a potential borrower's obligations, the lender would have to account for this increased risk by adding a premium to the rate being offered to the consumer. Consumers would have the burden of having to produce many more documents when being considered for a loan, and have to wait significantly longer as that information is confirmed. Ultimately, consumers would be forced to accept higher rates across the board. Consumers without significant accumulated assets would be the worst off, as companies would be likely more willing to lend based on assets available rather than on previous credit history.

2. *Please explain steps involved in how a credit check and credit report data are used by a CRA, a merchant, and a lender for example in the purchase or lease of an iPhone or another expensive consumer electronic device?*

The user in this situation is the retailer. In the case of the purchase of an expensive new personal device, the sale of the product is only part of the deal the consumer and the retailer are making. In this case a consumer is agreeing to a fixed term contract for service from a company, and the cost of the device is broken down over the course of the contract. So, for example, a $480 device may add $20 per month onto a four-year contract. But in effect, the retailer is letting someone walk out the door with a $480 device with no money down.

In this case a retailer, in effect, is extending credit to a consumer, in that the retailer is giving away a thing of value, only to have it paid back in monthly installments over a fixed term. Therefore, it is in a retailer's interest to see how this consumer has handled credit in the past. At the point of sale, after receiving personal information about a consumer, the retailer's computer system will access a credit report and determine whether someone can be extended credit and the terms if they are. This protects the retailer's investment in the consumer.

Reports have surfaced after the release of the new iPhone that some consumers who froze their credit after September 7th were not able to be among the first to sign up for the new devices as they failed to remove the freeze before visiting the store[2].

3. *Can the three major consumer reporting agencies—Experian, TransUnion, and Equifax—coordinate so that consumers only need to contact a single CRA to request a credit freeze on their credit file by all three CRAs?*

They are not able to do this at this time as each are required to individually authenticate consumers before freezing the report. Credit freezes laws vary from state to state and these differences drive state-by-state compliance. Unlike access to the annual free credit report under federal law, which allows national compliance and national coordination, the differences in state laws make national coordination and compliance impossible.

4. *Can a consumer request a credit freeze on their credit file by accessing a credit bureau's website, calling its toll-free telephone number, or mailing required documentation to the credit bureau via U.S. mail?*
    a. *How much time does it typically take for a credit freeze to take effect once a consumer requests such a freeze on their credit file?*
    b. *How much time does it typically take to thaw a credit freeze so a consumer to apply for credit or for any other financial transaction that requires third-party access to their credit file?*
    c. *Would a credit freeze mobile app allow consumers to instantaneously freeze and thaw access to their credit files?*

Nationwide CRAs are able to receive and act on requests, providing the consumer's information received is accurate and can be authenticated, via website, telephone of US Mail. Some state laws, however, dictate the process by which freezes must be placed. A uniform national standard on freezes would be preferable for all consumers.

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[2] See, e.g. Associated Press: "Equifax breach could hit new iPhone buyers", September 15, 2017. https://www.cbsnews.com/news/equifax-breach-iphone-buyers-credit-freeze/ . Last accessed December 8, 2017

Once the request for a freeze placement, lifting, or removal is received and authenticated, action is taken, and often within minutes.

A mobile app for a credit freeze would only work if it allows for an ongoing relationship with a consumer. The reason why it can take time for a freeze to be set or lifted is because of requirements around authentication. Today, under state law, once a freeze is set, there is no further business relationship. However, having an app would suggest that the authentication credentials are stored in the app. Ensuring that this is the case requires a company to keep records and update them at all times. Today's system is PIN-based because that is the alternative authentication process.

5. *Can a consumer request a credit lock on their credit file by accessing a credit bureau's website, calling its toll-free telephone number, or mailing required documentation to the credit bureau via U.S. mail?*
    a. *How much time does it typically take for a credit lock to take effect once a consumer requests such a lock on their credit file?*
    b. *How much time does it typically take to unlock a credit lock so a consumer to apply for credit or for any other financial transaction that requires third-party access to their credit file?*
    c. *Would a credit lock mobile app allow consumers to instantaneously lock and unlock access to their credit files?*

The three nationwide CRAs are in different places on this important question. Since credit locks exist outside of state law, companies are able to be more flexible on what and how they offer these products.

TransUnion is currently the only company with a product on the market, and Equifax has announced that they will have a lock product available next year. Because of this, we can only address how TransUnion's lock product works.

For TransUnion's product, once the consumer has set up the system, the lock, unlock, thaw process happens very quickly, virtually instantaneously. This product is app-based and is designed to allow consumers to lock and unlock their files in real time at a point of sale. Equifax has announced that it will have a similar product available in early-2018.

6. *What is the process by which CRAs acquire credit report data?*
    a. *Please identify each of the specific types of data furnishers and suppliers that provide credit report data to the CRAs?*

CRAs have individual voluntary agreements with data furnishers, such as banks and other financial institutions, creditors, utilities, mobile phone carriers, and landlords. There are roughly 15,000 data furnishers.

7. *Why is it necessary for data furnishers, like creditors, to voluntarily supply personal and credit data and information to the CRAs?*
    a. *Are there government regulation or requirements that necessitate the constant supply of such data and information to maintain credit files?*

As noted in a seminal paper on credit data sharing[3],

> Comptroller of the Currency John Hawke, Jr. testified before Congress in 1999 that information exchanges serve a "useful and critical market function" that benefits consumers and businesses alike."[4] Consumer credit markets provide a case in point. The current U.S. economic boom has significantly raised the standard of living for U.S. citizens through the availability of over $5 trillion in outstanding mortgages and other consumer loans. Consumer credit finances homes and cars, funds college educations, and provides the credit cards that consumers use every day to purchase goods and services. The "almost universal reporting" of personal credit histories (under the rules of the Fair Credit Reporting Act) is, in the words of economist Walter Kitchenman, the "foundation" of consumer credit in the United States and a "secret ingredient of the U.S. economy's resilience."[5] Studies have shown that the comprehensive credit reporting environment in this country has given U.S. consumers access to more credit, from a greater variety of sources, more quickly, and at lower cost than consumers anywhere else in the world.[6]

Student loan servicers are required to report to credit bureaus by law (20 U.S. Code § 1080a). Fannie Mae and Freddie Mac guidelines require credit reporting. Federal banking regulators have strongly encouraged their regulated communities to participate in credit reporting. Non-bank furnishers of data, such as non-bank auto-lenders, landlords and others, participate in the system on a voluntary basis.

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[3] Fred H. Cate, Michael E. Staten, The Value of Information-Sharing, The National Retail Federation's, Protecting Privacy in the New Millennium Series.

[4] Financial Privacy, Hearings before the Subcommittee on Financial Institutions and Consumer Credit of the Comm. on Banking and Financial Services, House of Representatives, 106th Cong., 1st Sess. (July 21, 1999) (statement of John D. Hawke, Jr.).

[5]Walter F. Kitchenman, *U.S. Credit Reporting: Perceived Benefits Outweigh Privacy Concerns* 1 (The Tower Group 1999).

[6]John M. Barron and Michael E. Staten, "The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience," Credit Research Center, McDonough School Business, Georgetown University, February, 2000; Tullio Japelli and Marco Pagano, "Information Sharing, Lending and Defaults: Cross-Country Evidence," Working Paper No. 22, Centre for Studies in Economics and Finance, University of Salerno, May, 1999.

While the system is regulated through the Fair Credit Reporting Act, it is mainly a voluntary system where lenders take their sensitive customer information, and share it with a trusted third party, so that another financial institution – potentially a competitor—can access that information to make a better lending decision. Again, this is all done voluntarily, but within a significant regulatory structure. The resulting competition lowers prices to the consumer.

8. *What other specific data and information do consumer reporting agencies (CRAs) generate about U.S. consumers that are then supplied to other firms?*
    a. *Are CRAs using algorithms to compile enhanced profiles on U.S. consumers?*
    b. *Are data algorithms being utilized to credit new lines of business or business products for sale?*

CRAs are organized specifically as businesses that comply with the Fair Credit Reporting Act. Some CDIA members have additional business lines, which CDIA does not represent, that provide additional data brokerage services. Those data products are operated outside of the credit file. The credit file is kept entirely segregated and by law cannot be intermingled with these other businesses.

Credit scoring is another product that CDIA members provide as do other companies. The most famous version is FICO, which is not a CDIA member, though each of the nationwide CRAs provide scoring systems to a variety of lenders.

Different lenders have different needs. A long-term lender like a mortgage company might weigh certain facts in a credit report differently than a credit card lender as they are very different products. Therefore, they would likely use different soring systems. Our companies help businesses meet their risk management needs by customizing models for our customer's unique needs.

9. *What best practices or standardized requirements have CDIA and the CRAs implemented to protect personal and credit data at rest, in transit, and in process?*
    a. *Is encryption part of any CDIA best practices?*

CDIA members have implemented their own best practices to protect their systems. They are also regulated by state and federal law to ensure the highest level of protection. My written testimony goes into significant detail outlining the different requirements and standards to which CDIA member companies must live up.

CDIA does not maintain a best-practices program.

10. *What best practices or standardized requirements have CDIA and the CRAs implemented for post-breach notification and consumer protection remediation to consumer affected?*

CDIA does not maintain a best-practices program, but our members spend a lot of financial and personnel resources to develop systems to protect data and to protect consumers, all of which are done with legal compliance as the benchmark.

11. *Since 2012, the CFPB has subjected the larger CRA entities to agency supervision. Prior to 2012, that wasn't the case. Explain how CPFB supervision covers information security matters and might have prevented the Equifax breach.*

CFPB supervision does not extend to data security. Congress specifically designated credit reporting agencies as financial institutions that are subject to the information security requirements of the Gramm-Leach-Bliley Act (GLBA), in 1999, and its implementing regulation, the Standards for Safeguarding Customer Information ("Safeguards Rule") promulgated by the Federal Trade Commission (FTC).

The Safeguards Rule requires financial institutions to "develop, implement, and maintain a comprehensive information security program" that includes appropriate administrative, technical and physical safeguards to achieve these objectives. This program is required to be tailored to the institution's size and complexity, the nature and scope of its activities and the sensitivity of any customer information at issue. The common-sense provisions of the Safeguards Rule are general parameters designed to allow evolving standards to keep pace with the evolving threat landscape. At their inception lawmakers and regulators anticipated that private institutions and the government overseers closest to the battle lines and with the greatest expertise in these matters would fine-tune industry best practices over time.

<u>The Honorable David McKinley</u>

1. *What is the <u>one</u> most important thing companies like Equifax should do to enhance our confidence in their ability to keep sensitive data secure?*

Businesses that hold personal information must continue to organize their companies, governance, and investments with security as the highest business goal, not an afterthought when designing a new product.

2. *What is the <u>one</u> most important thing Congress should do?*

Congress should require the executive branch to vigorously pursue hackers and hold them accountable to the same kinds of justice to which we hold other international criminals.

3. *How long does it take to freeze or thaw a credit freeze? Is it instantaneous? If it's longer than a few minutes or hours, would a mobile app make it instantaneous?*

Nationwide CRAs are able to receive and act on requests, providing the information received is accurate and can be authenticated, via website, telephone of US Mail. Some state laws, however, dictate the process by which freezes must be placed. A uniform national standard on freezes would be preferable for all consumers.

Once the request for the placement, lifting, or removal of a freeze is received and authenticated, action is taken, often with minutes.

A mobile app for a credit freeze would only work if it allows for an ongoing relationship with a consumer. The reason why it can take time for a freeze to be set or lifted is because of requirements around authentication. Today, under state law, once a freeze is set, there is no further business relationship. However, having an app would suggest that the authentication credentials are stored in the app. Ensuring that this is the case requires a company to keep records and update them at all times. Today's system is PIN-based because that is the alternative authentication process.

4. *Can consumers freeze and lock their Equifax account simultaneously?*

Not at this time. Equifax's lock system has not come on line yet and until it does we do not know precisely what features will be available.