

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

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**MEMORANDUM**

**October 1, 2017**

**To: Subcommittee on Digital Commerce and Consumer Protection Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Oversight of the Equifax Data Breach: Answers for Consumers”**

On Tuesday, October 3, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Digital Commerce and Consumer Protection will hold a hearing titled “Oversight of the Equifax Data Breach: Answers for Consumers.”

**I. BACKGROUND**

On September 7, 2017, Equifax, Inc. announced that hackers had gained access to company information potentially affecting 143 million consumers in the United States.<sup>1</sup> Equifax is one of the three major consumer reporting agencies (CRAs) in the United States.<sup>2</sup> CRAs collect consumer data and provide reports on individual consumers to other businesses.<sup>3</sup> These reports are used to inform decisions on individuals’ eligibility for employment, housing, insurance, and a wide range of consumer financial services.<sup>4</sup> This data breach is the third disclosed by Equifax this year.<sup>5</sup>

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<sup>1</sup> Equifax, Inc., *Equifax Announces Cybersecurity Incident Involving Consumer Information* (Sept. 7, 2017) (press release).

<sup>2</sup> Consumer Financial Protection Bureau, *List of Consumer Reporting Companies* (Jan. 27, 2016).

<sup>3</sup> 15 U.S.C. § 1681a(f); *see* note 2.

<sup>4</sup> *See* note 2.

<sup>5</sup> *Equifax Hack Exposes Regulatory Gaps, Leaving Consumers Vulnerable*, New York Times (Sept. 8, 2017).

The information accessed in this incident includes names, birth dates, addresses, Social Security numbers, and driver's license numbers.<sup>6</sup> Credit card numbers for 209,000 consumers and documents used in disputes containing personal information on 182,000 consumers were also accessed.<sup>7</sup>

Equifax stated that the hackers exploited a vulnerability in a web application framework called Apache Struts that is used by the company's online consumer dispute resolution portal.<sup>8</sup> Apache issued a patch to fix the vulnerability on March 8, 2017, and the Department of Homeland Security sent a notice about the vulnerability on March 10, 2017.<sup>9</sup> Equifax's security team was aware of the problem at that time and has stated that it "took efforts to identify and to patch any vulnerable systems in the company's IT infrastructure."<sup>10</sup>

Nonetheless, according to Equifax, unauthorized access to consumer information took place from May 13, 2017, to July 30, 2017.<sup>11</sup> The company's security team first noticed suspicious traffic connected to the dispute portal on July 29, and took the affected web application offline on July 30.<sup>12</sup> On August 2, Equifax hired Mandiant, an independent cybersecurity firm, to investigate the breach.<sup>13</sup> The domain name for the website with consumer resources regarding the breach, equifaxsecurity2017.com, was registered on August 22.<sup>14</sup> Equifax waited until September 7 to publicly disclose the breach reportedly because it wanted to better understand the number of people and types of information affected, and its internal investigation is still ongoing.<sup>15</sup>

## II. FEDERAL AND STATE GOVERNMENT INVESTIGATIONS

The Federal Bureau of Investigation and federal prosecutors have opened a criminal investigation into the breach.<sup>16</sup> Media reports also indicate that federal law enforcement

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<sup>6</sup> See note 1.

<sup>7</sup> *Id.*

<sup>8</sup> Equifax, Inc., *Equifax Releases Details on Cybersecurity Incident, Announces Personnel Changes* (Sept. 15, 2017) (press release).

<sup>9</sup> 'We've Been Breached': Inside the Equifax Hack, Wall Street Journal (Sept. 18, 2017).

<sup>10</sup> See note 8.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See note 9.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Feds Reportedly Investigate Equifax Executives' Stock Sales*, USA Today (Sept. 18, 2017).

authorities are investigating possible violations of insider trading laws by Equifax executives who sold company stock on August 1 and 2, 2017.<sup>17</sup>

The Federal Trade Commission has confirmed it is investigating the data breach, while the Consumer Financial Protection Bureau is looking into Equifax's response and stated that embedding regulators within CRAs for preventative monitoring is necessary in the wake of the breach.<sup>18</sup> In addition, more than 30 state attorneys general have begun investigations.<sup>19</sup>

### III. EFFECTS ON CONSUMERS

A number of concerns have been raised regarding Equifax's data security practices and its response to consumers affected by the breach.<sup>20</sup> Various problems with the consumer response website have been reported, including inconsistent load times, incorrect information, and insecure auto-generated PINs.<sup>21</sup> Several posts from the company's official Twitter account linked to a fake version of the website.<sup>22</sup> Some consumers experienced difficulties reaching or getting answers from Equifax customer service over the phone.<sup>23</sup>

Equifax has offered one year of free credit monitoring and an identity theft protection service to all U.S. consumers who sign up by the end of January 2018.<sup>24</sup> It also is waiving its credit freeze fees until January 31, 2018.<sup>25</sup> The company further has announced that it plans to make unlimited credit locks and unlocks (which are functionally similar to credit freezes but are not legally guaranteed or regulated) free for all consumers.<sup>26</sup> This credit lock option should be available by the end of January and Equifax is stating that there will be no time limit by which a

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<sup>17</sup> *Id.*

<sup>18</sup> *The FTC is Investigating the Equifax Breach. Here's Why That's a Big Deal.*, Washington Post (Sept. 14, 2017); *Big Changes Coming for Credit Firms in Wake of Equifax Hack, CFPB Director Says*, CNBC (Sept. 27, 2017).

<sup>19</sup> *Equifax C.E.O. Richard Smith Is Out After Huge Data Breach*, New York Times (Sept. 26, 2017).

<sup>20</sup> *Equifax Customer Complaints Continue to Pile Up*, Wall Street Journal (Sept. 10, 2017).

<sup>21</sup> *Id.*; *After Equifax Breach, Here's Your Next Worry: Weak PINs*, New York Times (Sept. 10, 2017).

<sup>22</sup> *Someone Made a Fake Equifax Site. Then Equifax Linked to It.*, New York Times (Sept. 20, 2017).

<sup>23</sup> *Consumers Blast Equifax's Hack Response*, Wall Street Journal (Sept. 8, 2017); *I Called Equifax with a Simple Question. This is What Happened.*, Washington Post (Sept. 13, 2017).

<sup>24</sup> *On Behalf of Equifax, I'm Sorry*, Wall Street Journal (Sept. 28, 2017).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; Consumers Union, *Why a Credit Freeze Is Better Than a Credit Lock* ([www.consumerreports.org/credit-bureaus/why-credit-freeze-is-better-than-credit-lock](http://www.consumerreports.org/credit-bureaus/why-credit-freeze-is-better-than-credit-lock)) (accessed Oct. 1, 2017).

consumer must sign up for the lock and once signed up, the ability to lock and unlock will never expire.<sup>27</sup>

Consumers will still be responsible; however, for credit freeze fees and/or locks from other CRAs and for credit monitoring fees after one year.<sup>28</sup> Because identifiers such as birth dates and Social Security numbers are difficult or impossible to change, experts have warned that this breach could leave consumers perpetually vulnerable to identity theft, tax fraud, and other scams.<sup>29</sup> And unlike with other services, consumers have little to no choice regarding the personal information that CRAs continue to collect and hold about them.<sup>30</sup>

#### **IV. WITNESSES**

**Richard F. Smith**

Former Chairman and Chief Executive Officer  
Equifax, Inc.

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<sup>27</sup> See note 24.

<sup>28</sup> Letter from Jessica Rich, Vice President of Policy and Mobilization, Consumers Union, and Justin Brookman, Director of Consumer Privacy and Technology Policy, Consumers Union, to Richard F. Smith, Chairman and Chief Executive Officer, Equifax, Inc. (Sept. 14, 2017).

<sup>29</sup> *Equifax Data Breach Could Create Lifelong Identity Theft Threat*, USA Today (Sept. 9, 2017); *Equifax Data Breach and Credit Freeze: Beware These 3 Scams*, CBS News (Sept. 16, 2017).

<sup>30</sup> See note 5.