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December 8, 2021

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Director Chopra:

I write to urge the Consumer Financial Protection Bureau (CFPB) to prevent credit agencies from selling Americans' personal data for purposes entirely unrelated to consumers' credit or financial decisions, including to law enforcement, via data brokers. The government should be seeking a subpoena or court order for this information, but these data brokers are serving as shady middlemen to sell this personal information without any legal protections.

Equifax, Experian, Transunion and other credit reporting agencies collect, process, and sell data on hundreds of millions of Americans. But while the sale of credit data, revealing payment history and credit lines, by the credit agencies is strictly regulated under federal law, these companies also sell a subset of the same data — including names, addresses, dates of birth, and social security numbers — in bulk, to data brokers who then sell it to private investigators and the government. The sale of this so-called "credit-header" data is regulated by CFPB, pursuant to the 1999 Gramm-Leach-Bliley Act (GLBA).

I began looking into the sale of credit-header data this spring, after researchers and the press exposed the purchase and use of this information by U.S. Immigration and Customs Enforcement (ICE). The Washington Post revealed in February that ICE purchased access to a commercial data service offered by Thomson Reuters, which resold bulk utility company data that it obtained from the National Consumer Telecom & Utilities Exchange (NCTUE), a customer credit data co-op run by energy, cable, and phone companies.

What I learned was troubling. NCTUE outsourced the operation of the utility industry's credit reporting service to Equifax, which provided this service to NCTUE at no cost. However, under the terms of their agreement, NCTUE permitted Equifax to resell credit-header data for 171 million people and to keep all of the revenue those data sales generated. Moreover, major utility companies that sit on NCTUE's board had no idea that their customers' data was being sold, and the companies' privacy lawyers learned about this practice for the first time when they were contacted by my office.

Equifax sold this information without consumers' knowledge or consent. And while Equifax informed my office that Californians could opt-out of the sale of their data, it was unlikely that

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many people would take advantage of this opt-out, since neither Equifax, NCTUE, nor the utility companies were transparent with consumers. Selling personal information that people provide to sign up for power, water and other necessities of life, and giving them no choice in the matter, is an egregious abuse of consumers' privacy.

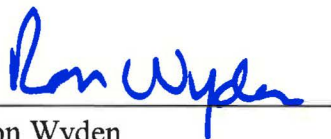
Thankfully, in October, NCTUE instructed Equifax to cease the sale of credit-header data. This was a direct result of action by Comcast and AT&T, with whom my office engaged in productive conversations for several months in their capacity as members of the NCTUE board. However, NCTUE is not promising to put the genie back in the bottle. The data brokers that purchased NCTUE credit-header data are continuing to sell the data they received before October. And while some of the addresses will be less accurate as people move in the months and years ahead, their dates of birth and social security numbers will obviously remain the same for the rest of their lives. Moreover, even if NCTUE were able to force the data brokers and their customers to destroy these records, it is just one source of consumer credit-header data. The big three credit agencies also sell credit-header data from the records they receive from banks.

The personal privacy of hundreds of millions of people should not depend upon the goodwill of corporations worried about negative headlines caused by a public letter from a U.S. Senator. While the GLBA was an important first step in limiting the sale of credit-header data, it continued to permit credit agencies to sell this data for a variety of purposes, including to the government. However, the text of the GLBA and CFPB's implementing regulations fail to define the circumstances in which government agencies may get access to this data. To date, CFPB has issued no public guidance on this portion of the regulations, known as Regulation P, nor conducted any public investigations into the widespread sale of consumers' personal credit-header data.

The data broker industry is out of control, in part because of vague and undefined regulations first promulgated by the Federal Trade Commission, and then adopted by CFPB a decade ago. I know you, and the Biden administration as a whole, share my goal of protecting Americans' privacy and civil liberties. CFPB must rein in the sale of Americans' data by credit agencies for non-credit related purposes. It should do so by investigating the sale of this sensitive personal data, issuing clarifying guidance and updating Regulation P, including by limiting disclosures to the government to those only in response to a subpoena or court order. If CFPB believes it needs additional authorities to fully protect Americans' privacy in this way, please detail the agency's analysis in your response so Congress can act accordingly.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,



Ron Wyden
United States Senator