

September 26, 2018

The Honorable Michael Crapo  
Chairman  
U.S. Senate Committee on Banking,  
Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Sherrod Brown  
Ranking Member  
U.S. Senate Committee on Banking,  
Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

We write to you regarding last week's hearing on "Fintech: Examining Digitization, Data, and Technology."<sup>1</sup> The financial services industry is undergoing tremendous, rapid change, and ensuring that consumers remain protected must continue to be a top priority. While financial technology ("fintech") may provide consumers with new tools and opportunities, it also raises substantial privacy and data security concerns.

The Equifax breach of 143 million consumer records last year provides a stark reminder that Americans' most sensitive data is entrusted to companies who repeatedly fail to protect that information.<sup>2</sup> The Electronic Privacy Information Center ("EPIC"), founded in 1994, has long advocated for greater transparency and cybersecurity safeguards for consumer information held by financial and commercial organizations, and has repeatedly urged Congress to ensure that financial institutions and fintech companies adequately protect consumer financial data. EPIC submitted a statement to this Committee for the September 2017 hearing, "Examining the Fintech Landscape," and to the House Committee on Energy & Commerce for the June 2017 hearing, "Improving Consumer's Financial Options With FinTech."<sup>3</sup> As this Committee examines fintech, several security and consumer privacy issues should remain at the forefront.

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<sup>1</sup> *Examining the Fintech Landscape*, 115th Cong. (2018), S. Comm. Banking, Housing, and Urban Affairs, [https://www.banking.senate.gov/hearings/fintech\\_examining-digitization-data-and-technology](https://www.banking.senate.gov/hearings/fintech_examining-digitization-data-and-technology).

<sup>2</sup> EPIC, *143 Million US Consumers Suffer Massive Data Breach, Equifax at Fault* (Sept. 8, 2017), <https://epic.org/2017/09/143-million-us-consumers-suffe.html>.

<sup>3</sup> Statement from Electronic Privacy Information Center (EPIC) to Senators Crapo and Brown (Sept. 11, 2017), <https://www.epic.org/testimony/congress/EPIC-SBHUA-FinTech-Sep2017.pdf>; Statement from Electronic Privacy Information Center (EPIC) to Representatives Latta and Schakowsky (June 9, 2017), <https://www.epic.org/testimony/congress/EPIC-HEC-FinTech-Jun2017.pdf>.

Many new fintech platforms—and established firms entering the fintech space—rely on third-party data aggregators to provide them with consumer financial data.<sup>4</sup> When aggregators cannot legitimately obtain consumer financial information, they often simply take that information from consumers by “scraping”—or copying—the information when consumers input it, often without alerting the consumer.<sup>5</sup> Fintech platforms may also provide aggregators with consumer information through Application Programming Interfaces (APIs) that allow aggregators to simply access financial information in bulk.<sup>6</sup> Congress should take a proactive role in examining how consumer financial data is accessed, aggregated, and used. Specifically, this Committee should ensure that consumers’ financial data is strongly protected no matter who holds it. Data aggregators should be held to the same standards as financial institutions, and should not be permitted to engage in reckless processing and distribution of consumer financial data.

Consumers must also have confidence that their data is being processed fairly and accurately. As EPIC Advisory Board member Professor Frank Pasquale told this committee, unmonitored data brokers poke holes in consumer protections by processing data in secret and using inaccurate information.<sup>7</sup> Companies using consumer financial data should instead be required to register with the Federal Trade Commission or another federal agency and should notify consumers when using their financial data.<sup>8</sup> Those consumers should be provided with the ability to challenge the use and accuracy of their data, and companies should be held accountable for improper use of personal data.<sup>9</sup> Extending the Fair Credit Reporting Act (FCRA) to data aggregators would benefit consumers and help ensure fair and accurate uses of personal information.

Fintech and all companies in the financial services industry should be subject to strict privacy rules to protect consumers. While the Consumer Financial Protection Bureau provides principles on consumer-authorized access and use of consumer financial information, companies are not required to follow these.<sup>10</sup> The rising popularity of banking and finance apps—combined with the lack of meaningful oversight and consumer protection—will no doubt lead to another breach similar in scale to the Equifax breach, with millions of financial records exposed simultaneously. Congress should therefore require fintech companies to ensure that data transfers of consumer financial data are secure and that third parties receiving that data are subject to limitations on use and disclosure.

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<sup>4</sup> U.S. Dep’t Treasury, *A Financial System that Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation* 24 (2018), [https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation\\_0.pdf](https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf) 23-24.

<sup>5</sup> *Id.* at 25.

<sup>6</sup> *Id.* at 26. Similar APIs were at issue in the Facebook/Cambridge Analytica scandal, where Facebook allowed third-party developers to access troves of user information without alerting the users themselves. See *In re Facebook – Cambridge Analytica*, EPIC, <https://epic.org/privacy/facebook/cambridge-analytica/>.

<sup>7</sup> *Exploring the Fintech Landscape: Hearing Before the Senate Cmmtte on Banking, Housing, and Urban Affairs*, 115th Cong. 6 (2017) (testimony of Frank Pasquale, Professor of Law, University of Maryland), <https://www.banking.senate.gov/imo/media/doc/Pasquale%20Testimony%2009-12-17.pdf>.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> See *id.*

<sup>10</sup> Consumer Fin. Prot. Bureau, *Consumer Protection Principles: Consumer Authorized Financial Data Sharing and Aggregation* (2017), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-protection-principles\\_data-aggregation.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf).

Thank you for your attention to this critical issue. EPIC looks forward to working with the committee to ensure that consumers are protected and informed about their financial information. We ask that this letter be entered in the hearing record.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald  
EPIC Policy Director

/s/ Jeff Gary

Jeff Gary  
EPIC Legislative Fellow