



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Remarks of Commissioner Rebecca Kelly Slaughter¹

2019 CDIA Law & Industry Conference

**Consumer Data Industry Association
Washington, D.C.
June 5, 2019**

Good afternoon, I'm Rebecca Kelly Slaughter and I want to thank CDIA for inviting me to speak with you all today. I hope when I'm done you won't regret the invitation; my remarks today will be a little less festus and a little more Festivus—an Airing of the Grievances—than you may have hoped. Like the Seinfeld team, I'm a native New Yorker and blunt is my standard MO. But fear not, I will not be challenging anyone to Feats of Strength.

Consumer data is a pretty hot topic in Washington today, as I certainly don't have to tell any of you. There are vigorous and healthy debates about whether consumer privacy is adequately protected under current law (I believe not); what role competition can and should play in data collection and dissemination (I believe an important one); and whether we should revisit our federal laws related to data privacy and even competition (I believe yes). But there is by no means consensus on these points.

There are however, categories of information that we all agree are so sensitive that of course they deserve the utmost care: financial information, sensitive personally identifying information, and medical bills. You have some or all of that information for more than 200 million Americans.² This fact alone would make the consumer data industry one of unique concern from a consumer protection standpoint even if all of those Americans had given you all that data freely. But you generally have all that information without the permission of the consumers.

When I'm speaking about consumer privacy generally, I often share observations about how the notice and consent framework feels like an increasingly poor fit in the world of legalese-laden click-through contracts. But in that general context, notice and consent has at least a patina

¹ The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

² CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JAN. 1 – DEC. 31, 2017 at 13 (2018), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf.

of applicability. That patina falls away entirely when it comes to the consumer data industry, which collects information without needing or getting consumer consent.

The absence of consumer choice needs to be considered in combination with the sensitivity of the collected data and the profound consequences reports generated from that data can have on the lives of American consumers. This confluence of factors should result in the consumer data industry exercising the highest degree of care in its treatment of consumer data and its handling of consumer disputes. The consumer should be the first priority, never an afterthought. Too often, however, we hear reports that you are missing the mark for many consumers. I would like to use my time today to share my concerns in this area specifically regarding accuracy, dispute resolution, and transparency. And I want to issue a challenge to the industry: do better.

Accuracy & Dispute Resolution

Credit reports and credit scores touch on the most critical parts of a consumer's life: whether they will have the money to pay for a car or a home, whether they will be offered an apartment, or even a job. The Society for Human Resources Management found that 47% of employers conduct credit checks on job applicants.³ With such critical consequences, it is imperative that the information in our credit reports is accurate. And on what should be the rare occasions that it is not, correcting inaccuracies must be quick and easy.

In 2012, the Federal Trade Commission published a study that found that 20% of consumers found errors on at least one of their credit reports and that 5% of consumers found errors so serious they would be denied credit or charged higher rates.⁴ Once a consumer identified an error and disputed it, in many cases, the error was corrected—but how many consumers do not even know that an inaccuracy exists? Further, in a follow-up study completed two years later, around half (41–53%) of consumers who were notified that a disputed item would not be removed did not recall receiving the required explanation.⁵ More troubling, of the consumers who still had at least one unresolved dispute from 2012, nearly 70% continued to believe that at least some of the disputed information was inaccurate.⁶ Many of those consumers were planning to continue to do battle with the CRAs, but 50% planned to just give up.⁷

So, have things dramatically improved since 2012 and 2014? In both 2017 and 2018, “credit or consumer reporting” generated more consumer complaints to the CFPB than any other

³ *Background Checking—The Use of Credit Background Checks in Hiring Decisions*, SOC'Y FOR HUMAN RES. MGMT. (July 19, 2012), <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/creditbackgroundchecks.aspx>.

⁴ *In FTC Study, Five Percent of Consumers Had Errors on Their Credit Reports That Could Result in Less Favorable Terms for Loans*, FED. TRADE COMM'N (Feb. 11, 2013), <https://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports>.

⁵ FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 17 (2015), <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>.

⁶ *Id.* at 18.

⁷ *Id.* at 19.

category, besting traditional front-runner “debt collection.”⁸ The most common subject of those complaints? Incorrect information on consumers’ credit reports.⁹ In a 2017 supervisory report, the CFPB also found that in cases where consumers had submitted documentary evidence in support of a dispute, “one or more [credit bureaus] failed to review and consider the attached documentation and relied entirely on the furnisher to investigate the dispute.”¹⁰ CFPB examiners also found that one or more credit bureaus sent dispute notices to consumers that did not report the results of the dispute investigation—a basic failing.¹¹ This is not exactly evidence of a dramatically improving industry.

Accuracy problems are not just about the three major CRAs; in 2018, the FTC resolved a case against a Texas company providing tenant screening reports, RealPage. The FTC alleged that RealPage’s screening reports associated some potential renters with criminal records that did not belong to them and that those renters may have been turned down for housing or other opportunities. The company agreed to pay \$3 million to settle the FTC’s charges that they failed to take reasonable steps to ensure the accuracy of the information they provided.¹²

When the industry makes mistakes, it is up to the consumer to find the error and dispute it. All too often, the process to correct errors arising from fraud or the industries’ mistakes is frustrating and seemingly endless. Take Adrienne Escobar. From 2014 to 2016, Adrienne had to submit four disputes with documentation to the credit bureaus and file a police report before the credit bureaus would remove a fraudulent default from her file. After this two-year ordeal, another collections agency took over the affected account and trouble began again with one of the credit bureaus.¹³

More distressing is the case of Peggy, a woman whose bank blocked her credit and debit cards, who was denied credit, and who even received multiple letters of consolation for her own death after two credit bureaus listed her as deceased. Even after one bureau assured her that her account had been cleared of deceased notices following Peggy’s written dispute, she was denied another credit card for this same reason. She has now gone to court seeking a remedy.¹⁴

⁸ CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JAN. 1 – DEC. 31, 2017 at 12 (2018), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf; CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JAN. 1 – DEC. 31, 2018 at 9 (2019) https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf.

⁹ CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JAN. 1 – DEC. 31, 2017 at 14 (2018), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf; CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JAN. 1 – DEC. 31, 2018 at 19 (2019) https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf.

¹⁰ CONSUMER FIN. PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS CONSUMER REPORTING SPECIAL EDITION: ISSUE 14, WINTER 2017 10–11 (2017), https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

¹¹ *Id.* at 11.

¹² *Texas Company Will Pay \$3 million to Settle FTC Charges That it Failed to Meet Accuracy Requirements for its Tenant Screening Reports*, FED. TRADE COMM’N (Oct. 16, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/texas-company-will-pay-3-million-settle-ftc-charges-it-failed>.

¹³ CHI CHI WU ET AL., NAT’L CONSUMER LAW CTR., AUTOMATED INJUSTICE REDUX 18–19 (2019), https://www.nclc.org/images/pdf/credit_reports/automated-injustice-redux.pdf.

¹⁴ *Id.* at 21.

Finally, consumers have reported experiences with the credit bureaus reminiscent of a Kafka tale. At least one credit bureau has the practice of labeling certain dispute letters as “suspicious requests.” One complainant reported to the CFPB that in response to his documented disputes, the credit bureau replied: first, that it would protect his identity by ignoring this “suspicious request;” second, that it couldn’t verify his identity despite having been sent his Social Security card, passport, and driver’s license; and third, that it had already verified this account and would not process his dispute. Finally, the credit bureau stopped sending any response to the consumer at all.¹⁵

Concerns about accuracy and dispute resolution are not partisan. At a recent hearing before the United States Senate Committee on Appropriations, Republican Senator Kennedy posed some tough questions to FTC Chairman, Joe Simons, on the difficulties consumers face when trying to dispute and correct credit-reporting errors. If anyone here saw that hearing, you’ll be glad that I’m the one here today, not Senator Kennedy. He voiced the frustration of many consumers when he demanded:

“What I’m asking is can you visit with our credit ratings agencies to have them set up a system that looks like somebody designed it on purpose so that consumers can say, hey—you got my information wrong, please fix it, and then they’ll do it, as opposed to saying you don’t pay our fees, business guys pay our fees, so call somebody who cares.”¹⁶

We all know that the law already requires the system Senator Kennedy is demanding, and I know that those of you in this room take that responsibility very seriously, but Senator Kennedy’s anger represents the voices of the many consumers experiencing inaccuracies, for whom the current system is not working.

We also know that the impact of credit inaccuracies can have an outsized effect on some of our most vulnerable consumers. The biggest consequence of these errors is that they make consumers appear riskier than they are. That means higher interest rates and less favorable terms, often for consumers who can least afford to pay extra percentage points. And of course loss of an employment opportunity can be even more devastating to lower income consumers—which has no doubt played a part in the growing number of jurisdictions that have placed significant restrictions on the troubling use of credit checks in hiring.¹⁷ Disputing credit inaccuracies can also be more difficult for low-income consumers who may have more limited time and resources at their disposal to get help navigating a difficult system.

¹⁵ *Id.* at 21–22.

¹⁶ *Review of the FY2020 Budget Request for the FCC & FTC Before the Subcomm. on Fin. Servs. and Gen. Gov’t of the S. Comm. on Appropriations*, 116th Cong. (2019) (question of Sen. John Kennedy, Chairman, Subcomm. on Fin. Servs. and Gen. Gov’t of the S. Comm. on Appropriations), <https://www.appropriations.senate.gov/hearings/review-of-the-fy2020-budget-request-for-the-fcc-and-ftc>.

¹⁷ Another reason a growing number of jurisdictions have enacted laws prohibiting the use of credit history for employment is because they have concluded that a person’s credit is not a relevant factor in most hiring determinations. See Pamela Q. Devata et al., *Using Credit Histories in Employment Decisions: An Overview of Divergent State & Local Requirements*, SEYFARTH SHAW LLP (June 12, 2018), <https://www.laborandemploymentlawcounsel.com/2018/06/using-credit-histories-in-employment-decisions-an-overview-of-divergent-state-local-requirements/>.

Increasing Transparency

While we have some limited government and private studies on the scope of credit inaccuracies, and the ensuing dispute resolution process, there is not enough transparency in this area. Consumers *and your customers* should know how accurate your credit information is and how responsive you are being to resolving potential inaccuracies. Publishing information about accuracy and dispute resolution would be beneficial to consumers and would provide a competitive advantage to those getting it right.

Accuracy is not the only area where increased transparency into the consumer data industry is critical. Consider the heartbreaking story shared by a woman named Gillian Brockell, of losing her baby to stillbirth and then continuing to face a flood of advertisements every time she went online, for pregnancy, motherhood, and the nursery she would not fill. Her open letter was primarily addressed to the tech companies that showed so much sophistication tracking her browsing and posting online to learn she was pregnant, but none at all in neglecting the signs of her loss. But the final, crushing intrusion she shared was receiving an email from a credit bureau asking her to “finish registering your baby” for lifetime credit monitoring, a process she had never started and would never have reason to complete.¹⁸ Ms. Brockell’s story served as a painful reminder that the public *does not know* the extent of information that the consumer data industry has collected about us, from where, and how it is being used, shared and sold.

As we debate how best to improve protections for personal consumer privacy—through increased consent requirements, limitations on use, or an opt-out regime to name just a few options—the consumer data industry should be an important part of the conversation. The industry sells products, analytics, and data well beyond standard credit reports: first and foremost, consumers should know how that data is collected and to what extent it is shared or sold. And I believe that consumers should have the same protections when a member of the consumer data industry is trafficking in their data as they will everywhere else.

What’s Next?

There is no question that the consumer data industry provides a valuable service: helping consumers access credit (or a car or a home) by providing accurate evidence of the consumer’s credit worthiness. But in the face of the myriad and ongoing concerns about accuracy and transparency under the current system, I find myself listening with interest to questions about whether the current model is the only way in which this service can be delivered.

Normally, in our free market system, we count on competition to provide innovation and improved options for consumers. But in the consumer data market, firms don’t primarily compete for *consumers’* business. Given that consumers do not even have the option to make a choice—even if there was robust competition among CRAs—when problems are grave and persistent,

¹⁸ Gillian Brockell, *Dear tech companies, I don’t want to see pregnancy ads after my child was stillborn*, WASH. POST (Dec. 12, 2018), <https://www.washingtonpost.com/lifestyle/2018/12/12/dear-tech-companies-i-dont-want-see-pregnancy-ads-after-my-child-was-stillborn/>.

there is limited market incentive for consumer-facing improvement. So I have to wonder, is there a better way?

The National Consumer Law Center has pointed out that in some countries, credit reporting is either a public function or there is a publicly owned database that serves as a public option. They have called for Congress to establish a publicly owned alternative for credit reporting.¹⁹ Other groups have made similar calls, specifically pushing for the establishment of a public credit registry housed in the Consumer Financial Protection Bureau.²⁰

The leaders here today can help push their companies and their clients to avoid these types of alternatives, but doing so comes through a commitment to consumers. Just a few things I think could help include:

- (1) A policy of “when it doubt, keep it out”—if there is any question about a piece of negative information in a credit file, CRAs should be erring on the side of consumers and keeping out or deleting that information, not erring on the side of furnishers or clients;
- (2) Routine public reporting of the number of inaccuracies identified in credit reports, the number of disputes resolved and unresolved, and the time it takes for consumers to get resolution;
- (3) Full disclosure of the types of information collected or shared as part of other data products, beyond credit reporting, and options for consumers to request that their information not be shared; and
- (4) A willingness to take voluntary steps to protect our more vulnerable consumers: offering free credit monitoring when called to do so, offering ways to help the “credit invisible” enter the system, and limiting use of algorithms to those that can be explained, tested and improved as necessary.

Adopting any or all of these approaches would truly be a Festivus Miracle.

I appreciate your patience with my list of grievances. I share because I care. In all sincerity, the responsibility your companies have is literally awesome. I believe public officials like myself owe it to you to be candid about the problems we see and to help identify paths for improvement. I know you take this responsibility seriously, and that is why I know you can handle hearing about the changes that could make the system work better for everyone.

¹⁹ CHI CHI WU ET AL., NAT’L CONSUMER LAW CTR., AUTOMATED INJUSTICE REDUX 24 (2019), https://www.nclc.org/images/pdf/credit_reports/automated-injustice-redux.pdf.

²⁰ See, e.g., AMY TRAUB, DEMOS, ESTABLISH A PUBLIC CREDIT REGISTRY 3 (2019), https://www.demos.org/sites/default/files/2019-03/Credit%20Report_Full.pdf (describing a proposed public credit registry that “would gradually replace the for-profit corporate system. The public credit registry would be responsive to consumer needs and equity concerns rather than the corporate bottom line. A public credit registry would develop algorithms that diminish the impact of past discrimination, deliver transparent credit scoring, provide greater data security and offer a publicly accountable way to resolve disputes.”).