

September 6, 2017

The Honorable Jeb Hensarling  
Chairman  
House Committee on Financial Services  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
House Committee on Financial Services  
Washington, DC 20515

**Re: Credit Services Protection Act of 2017 (Royce) (Oppose)**

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned consumer, civil rights and community organizations write to express our strong opposition to the misleadingly-named “Credit Services Protection Act” (Royce). This bill would exempt the big three credit bureaus – and possibly many illegitimate credit repair organizations – from the Credit Repair Organizations Act (CROA). Instead, the bill would substitute a weaker and far less enforceable law governing “credit services providers.” The bill eliminates private remedies, preempts state law and state attorney general enforcement authority, and could limit the Consumer Financial Protection Bureau’s authority as well.

This exemption from CROA is unnecessary and harmful to consumers and would remove protections for credit monitoring, identity theft prevention, and other products that are of dubious value. These products have been the subject of highly deceptive marketing as revealed by enforcement actions taken just this year by the Consumer Financial Protection Bureau (CFPB).

Currently, CROA applies to any person who provides services that purport to improve a consumer’s credit record if they charge money for such services. Only non-profit organizations and a few other entities are exempted. The proposed amendment exempts from CROA any “nationwide consumer reporting agency” under Section 603(p) of the Fair Credit Reporting Act – i.e., the credit bureaus Experian, Equifax and TransUnion - or any of their subsidiaries or affiliates. It also exempts any other entity that obtains the status of “authorized credit services provider” by applying and obtaining approval from the Federal Trade Commission (FTC). Approval is automatic after 60 days if the FTC does not act.

For years, the credit bureaus have sought an exemption from CROA in order to expand their sale of high-priced credit monitoring, identity theft prevention, and other subscription products. In addition to being far less effective for identity theft prevention than the simple tool of state-law mandated security freezes, the marketing of the credit bureaus’ products has been notoriously rife with deception and abuse. These abuses are well-documented and include:

- Just this past January and March 2017, the CFPB took enforcement actions against all three credit bureaus for deceptive practices in their marketing of credit monitoring subscriptions. The CFPB ordered Equifax and TransUnion to refund over \$17.6 million to consumers who were deceived into buying these subscriptions, plus pay fines totaling \$5.5 million. The Bureau also ordered Experian to pay a fine of \$3 million for its deceptive practices.

- Ten years ago, the FTC took similar action against Consumerinfo.com d/b/a Experian Consumer Direct, ordering that credit bureau to refund nearly \$1 million for deceptive practices in its promotion of credit monitoring products.
- The CFPB took enforcement actions against several of the largest credit card issuers (including Discover, Capital One, JPMorgan Chase, and Bank of America) over misleading marketing tactics in the sale of add-on products, including credit monitoring services. Collectively, these banks paid \$1.38 billion in restitution and \$79 million in civil fines in these cases.

There is absolutely no reason to exempt the credit bureaus from CROA so they can aggressively offer even more paid products similar to credit monitoring without the protections of the Act. While the proposed amendment does create a separate regulatory scheme for “authorized credit services providers,” these protections are far weaker. Weaknesses of the proposed bill include:

- ***Eliminates protections.*** The bill does not include CROA’s existing prohibition against charging advance fees. Nor does it require written contracts for these products, or require authorized credit services providers to provide copies of the contract to the consumer. It allows authorized credit services providers to sell products without CROA’s existing requirement that they retain signed disclosures for a minimum of two years to insure compliance.
- ***No clear right to cancel.*** The bill gives the consumer a three-day right to cancel a contract for these products, *but does not require that the consumer ever be notified of this right or that any notice be conspicuous*, making it mere window dressing and a departure from other consumer protection laws.
- ***Requirement to pay fees.*** The bill creates a new requirement that a consumer who terminates a contract must pay “reasonable value for services actually rendered.” In contrast under CROA, consumers may cancel without any penalty within 3 days. Thus, the bill allows credit bureaus to charge and retain steep “setup” fees or all of their fees upfront, so long as they refund some portion if the consumer cancels. The bill also could be read to imply that a consumer who has been sold a subscription for three years of credit monitoring services at \$29.95 a month can cancel it only within the first three days, and has no right to cancel it later on if the services prove unsatisfactory or unnecessary.
- ***Automatic approval of applications after 60 days.*** The bill would allow a large number of organizations, not just the major credit bureaus, to escape from CROA. Illegitimate credit repair organizations are likely to apply *en masse* for registration with the FTC. Section 427(c)(3) provides that, unless the FTC acts upon an application within 60 days, it is “deemed as approved” and the applicant “shall be registered as an authorized credit services provider.”
- ***Eliminates consumer remedies.*** This bill removes private remedies for consumers against the credit bureaus and other authorized credit services providers. It does not include a right of action for violation of its new additional provisions, including the prohibition against untrue or misleading statements regarding the services offered for

credit education or identity theft prevention. More importantly, even when CROA does apply to a credit bureau or authorized services provider, it provides that only the FTC can enforce CROA with respect to those entities.

- ***Preempts stronger state laws.*** The bill preempts state laws that provide great consumer protection for credit education, identity theft protection and credit repair services offered by a credit bureau or an authorized credit services provider.
- ***Protections might be eliminated in fine print.*** Unlike CROA, there is nothing in the new additional provisions that states that any waiver of its protections is void and unenforceable. Thus, it is possible that the fine print of a contract could completely waive the bill's protections.
- ***Might eliminate CFPB authority.*** Section 425 of the bill could be interpreted to eliminate CFPB authority, making the FTC the sole enforcement authority for the credit bureaus with respect to credit education and identity protection services. The bill might have prevented the CFPB from bringing the recent enforcement actions discussed above.
- ***Denies state attorney general authority.*** Section 425 also appears to deny state Attorneys General the ability to enforce these provisions—either against one of the credit bureaus or against any other entity that obtained automatic approval of an application as an authorized credit services provider.

The credit bureaus claim that CROA impedes them from providing credit education to consumers. However, CROA merely institutes protections when the credit bureaus *charge for these products*. A plethora of websites and businesses provide the same or greater credit education than the credit bureaus for free, such as NerdWallet and CreditKarma. These websites earn revenue through referrals to credit card products but do not charge upfront fees and the consumer is not required to sign up for a credit card. In fact, one of the credit bureaus – TransUnion – is now offering a version of credit monitoring which is actually free using this model, thus showing that the credit bureaus can offer these products without seeking an upfront payment.

On a global level, facilitating the credit bureaus' sale of highly profitable credit monitoring products would in fact give them a vested interest in the inaccuracy of the credit records they maintain. The more that consumers are concerned about inaccuracies in their credit records, the better these products will sell. There is no need or reason to give the credit bureaus an exemption from CROA.

**The Credit Services Protection Act of 2017 weakens an important law available to consumers. We strongly urge your opposition.**

Sincerely,

Allied Progress  
Americans for Financial Reform  
Arizona Community Action Association  
Arizona PIRG  
Arkansans Against Abusive Payday Lending  
CALPIRG  
Center for Economic Integrity  
Center for Responsible Lending  
ConnPIRG  
Consumer Action  
Consumer Federation of America  
CoPIRG  
East Bay Community Law Center  
Empire Justice Center  
Florida Alliance for Consumer Protection  
Florida PIRG  
Georgia PIRG  
Georgia Watch  
Greater Boston Legal Services (on behalf of its low-income clients)  
Illinois PIRG  
Indiana PIRG  
Iowa PIRG  
Jacksonville Area Legal Aid, Inc.  
Kentucky Equal Justice Center  
Maryland Consumer Rights Coalition  
Maryland PIRG  
MassPIRG  
MontPIRG  
MoPIRG  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low-income clients)  
National Housing Resource Center  
NCPIRG  
NHPIRG  
NJPIRG  
NMPIRG  
Ohio PIRG  
Oregon PIRG (OSPIRG)  
PennPIRG  
PIRG in Michigan (PIRGIM)  
Public Good Law Center

Public Justice Center  
Reinvestment Partners  
RIPIRG  
TexPIRG  
Virginia Citizens Consumer Council  
Virginia Poverty Law Center  
WashPIRG  
West Virginia Center on Budget and Policy  
WISPIRG  
World Privacy Forum