

June 9, 2017

The Honorable Robert Latta, Chairman  
The Honorable Janice Schakowsky, Ranking Member  
U.S. House Committee on Energy & Commerce  
Subcommittee on Digital Commerce and Consumer Protection  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Latta and Ranking Member Schakowsky:

We write to you regarding the Disrupter Series Hearing on “Improving Consumer’s Financial Options With FinTech.”<sup>1</sup> The financial services industry is one of many industries that are rapidly changing due to new technologies. While financial technology (“fintech”) can bring financial services to consumers in new and innovative ways, it also presents substantial privacy and safety concerns.

The Electronic Privacy Information Center (“EPIC”) was founded in 1994 to focus attention on emerging privacy and related human rights issues, and to protect privacy, the First Amendment, and constitutional values. EPIC has long advocated for cybersecurity safeguards for consumer information held by financial and commercial organizations. EPIC has played a leading role in developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers. EPIC has previously testified before Congress on the need for financial institutions and companies to protect consumers against data breaches.<sup>2</sup>

Fintech has transformed the financial services industry and, in some instances, has improved consumer access to financial services. However, privacy and security is now a primary

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<sup>1</sup> *Disrupter Series: Improving Consumer’s Financial Options With FinTech*, 115<sup>th</sup> Cong. (2017), H. Comm. on Energy & Commerce, S. Comm. on Digital Commerce and Consumer Protection, <https://energycommerce.house.gov/hearings-and-votes/hearings/disrupter-series-improving-consumer-s-financial-options-fintech>.

<sup>2</sup> See, e.g., Testimony and Statement for the Record of Marc Rotenberg, Executive Director, Electronic Privacy Information Center on “Cybersecurity and Data Protection in the Financial Sector,” Before the Senate Committee on Banking, Housing, and Urban Affairs, June 21, 2011, [https://epic.org/privacy/testimony/EPIC\\_Senate\\_Banking\\_Testimony%20\\_6\\_21\\_11.pdf](https://epic.org/privacy/testimony/EPIC_Senate_Banking_Testimony%20_6_21_11.pdf); Testimony and Statement for the Record of Marc Rotenberg, Executive Director, Electronic Privacy Information Center, Hearing on the Discussion Draft of H.R. \_\_\_\_\_, A Bill to Require Greater Protection for Sensitive Consumer Data and Timely Notification in Case of Breach, Before the House Committee on Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade, June 15, 2011, [http://epic.org/privacy/testimony/EPIC\\_Testimony\\_House\\_Commerce\\_6-11\\_Final.pdf](http://epic.org/privacy/testimony/EPIC_Testimony_House_Commerce_6-11_Final.pdf).

concern for financial services. As this Subcommittee examines fintech, there are several security issues that should be considered.

Some fintech companies use unconventional methods to determine who to approve or reject for loans. While traditional loan determinations are made based on familiar factors such as salary and assets, many financial services companies now include other sources, such as social media, to make determinations about consumers.<sup>3</sup> Furthermore, the Subcommittee should be concerned about algorithms that determine if an individual qualifies for a loan.<sup>4</sup> Any algorithms used to make such determinations should be transparent in order to ensure consumer fairness.

Security should also be a priority. The serious threat that hacks and data breaches pose to the consumer information held by financial institutions cannot be overstated.<sup>5</sup> Fintech companies should be subject to strict privacy rules to protect consumers. Current rules and regulations for financial services companies should be revised so that they are mandatory, not merely guidance.<sup>6</sup>

Finally, the Subcommittee should inquire into how fintech companies deal with lending money to individuals whose credit scores or financial situations would lead them to be denied by loans from traditional lenders. There is already ample evidence that individuals who may be struggling financially are frequently exploited by predatory lenders.<sup>7</sup> As technology has advanced, lenders take extreme steps to obtain payment and added fees. For example, a complaint filed by EPIC with the CFPB focused on the use of “starter interrupt devices” that allow auto lenders to disable a vehicle when a payment is past due. This practice disproportionately affects low-income borrowers.<sup>8</sup>

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<sup>3</sup> Elizabeth McGinn et al., *Consumer Privacy Should Be Top-Of-Mind For FinTech Firms To Avoid Scrutiny*, Bloomberg, May 8, 2017, <https://www.bna.com/consumer-privacy-topofmind-n73014450574/>.

<sup>4</sup> *Algorithmic Transparency: End Secret Profiling*, EPIC, <https://epic.org/algorithmic-transparency/>.

<sup>5</sup> Portia Crowe, *JPMorgan Fell Victim to the Largest Theft of Consumer Data from a Financial Institution in US History*, Business Insider, Nov. 10, 2015, <http://www.businessinsider.com/jpmorgan-hacked-bank-breach-2015-11>; Greg Masters, *Discover Financial Services Reports Two Breaches to California AG*, SC Media, Mar. 2016, <https://www.scmagazine.com/discover-financial-services-reports-two-breaches-to-california-ag/article/529021/>.

<sup>6</sup> *Financial Institutions and Customer Information: Complying with the Safeguards Rule*, Federal Trade Commission, Apr. 2006, <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying>.

<sup>7</sup> Richard D. Ralls, *Payday Lending Traps Low-Income Families In Tragic Cycle Of Debt*, Kansas City Star, Aug. 2, 2016, <http://www.kansascity.com/opinion/readers-opinion/guest-commentary/article93346342.html>; Paul Kiel, *The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt*, Pro Publica, May 13, 2013, <https://www.propublica.org/article/installment-loans-world-finance>.

<sup>8</sup> Complaint, Request for Investigation, Injunction, and Other Relief Submitted by The Electronic Privacy Information Center (“EPIC”) to the Consumer Financial Protection Bureau (CFPB), *In*

We ask that this letter from EPIC be entered in the hearing record.

EPIC looks forward to working with the Subcommittee to ensure that necessary privacy and security standards are developed to safeguard consumers.

Sincerely,

/s/ Marc Rotenberg  
Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald  
Caitriona Fitzgerald  
EPIC Policy Director

/s/ Kim Miller  
Kim Miller  
EPIC Policy Fellow

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*the Matter of CAG Acceptance, LLC, and Gordon Howard Associates, Inc., d/b/a/ PassTime USA* (Mar. 15, 2017), <https://epic.org/privacy/cfpb/EPIC-CFPB-SID-Complaint.pdf>.