



WORLD **PRIVACY** FORUM

3108 Fifth Avenue
Suite B
San Diego, CA 92103

November 27, 2015

United States Senate
Committee on the Judiciary
Washington, DC 20510-6275

Dear Senator Blumenthal:

Thank you for your follow-up question about the existing authority of the Consumer Financial Protection Bureau to provide oversight over data brokers.

Two pathways of oversight of certain data brokers are available under CFPB's existing authority.

First, the CFPB's Larger Participant Rule covers any entity whose receipts exceed \$7 million from consumer reports. The key issue is that consumer reports are more narrowly defined under Dodd-Frank than under the Fair Credit Reporting Act. Dodd-Frank only covers reports used for financial products and services. It excludes employment-use reports, tenant screening and reports used for government benefits.

If a data broker is selling over \$7 million in third-party data that is used for lending or banking, it should already be covered. The question is whether the CFPB agrees with this, and whether it will conduct examinations over such an entity. Note that the CFPB does not need to make individualized determinations via rulemaking that an entity is a "larger participant" consumer reporting agency, and in fact, will not reveal publicly the companies that it considers to be "larger participants."

Second, as you know, one of the gray areas is whether data used for marketing is covered as a consumer report. One way around this is to include data brokers in another category of larger participants, those that present "risks to consumers with regard to the offering or provision of consumer financial products or services." This particular category of larger participant does require an individualized determination to be made by the CFPB.¹

¹ See <http://www.law360.com/articles/453384/cfpb-extends-consumer-finance-oversight-to-nonbank-cos>.

The CFPB under its existing authority has issued several non-bank larger participant rules for auto finance,² debt collectors,³ student loan services,⁴ and non-bank international money transfer providers.⁵ Under Dodd-Frank, these larger participants were identified, and then the CFPB undertook separate rulemakings for each participant.

Because certain data broker activities constitute financial services, as was discussed in the hearing, the CFPB could define data brokers as non-bank larger participants. As adjunct financial service companies, there are robust justifications for the CFPB making such a designation. Acxiom, Lexis Nexis (newly renamed to Relx), and Experian and Equifax (in their non-credit bureau segments), among other large data brokers, handle substantial consumer financial and debt portfolios and segmentations, alternate (unregulated) credit scores, and other meaningful financial services and analyses based on sensitive consumer financial and other related data.

For these reasons, I see CFPB as a crucial avenue to explore in data broker regulation in the area of financial services. CFPB examination of larger participant data brokers would be a meaningful step toward data broker oversight.

Please let me know if I can assist with further information about this issue. I stand ready to help.

Sincerely,



Pam Dixon
Executive Director,
World Privacy Forum

² Final Rule, Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 FR 37495, June 30, 2015. <https://www.federalregister.gov/articles/2015/06/30/2015-14630/defining-larger-participants-of-the-automobile-financing-market-and-defining-certain-automobile>.

³ Final Rule: Defining Larger Participants of the Consumer Debt Market. 77 FR 65775, October 31, 2012. <https://www.federalregister.gov/articles/2012/10/31/2012-26467/defining-larger-participants-of-the-consumer-debt-collection-market>.

⁴ Final Rule: Defining Larger Participants of the Student Loan Servicing Market. 78 FR 73383, December 6, 2013. <https://www.federalregister.gov/articles/2013/12/06/2013-29145/defining-larger-participants-of-the-student-loan-servicing-market>.

⁵ Final Rule: Defining Larger Participants of the International Money Transfer Market. September 23, 2014, 79 FR 56631. <https://www.federalregister.gov/articles/2014/09/23/2014-22310/defining-larger-participants-of-the-international-money-transfer-market>.