

September 18, 2019

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairman Simons:

I am writing to raise serious concern and request additional information regarding what appears to be the latest attempt to “throttle cash awards” promised to victims of the Equifax data breach.¹ Last month, I requested the Federal Trade Commission (FTC) Inspector General launch an investigation into your agency’s handling of the settlement payout process after questions were raised about the FTC’s role in misleading the American public about the terms of the settlement and their ability to obtain the full reimbursement.² And now new reports indicate that the Settlement Administrator is employing questionable tactics using suspicious-sounding emails to reduce the final number of claimants likely to receive payments.³

In 2017, Equifax Inc. – one of the nation’s largest credit reporting agencies – failed to adequately protect its computer systems and consequently compromised data belonging to approximately 147 million Americans to criminal hackers. Investigations of this breach by my staff and others, one of the most significant data security lapses in history, uncovered how Equifax employed inadequate cybersecurity measures, failed to notify and assist affected consumers in a timely and appropriate fashion, and later attempted to profit from its errors.⁴

Almost two years after the breach, on July 22, 2019, Equifax reached a settlement with the FTC, the Consumer Financial Protection Bureau, and 50 U.S. states and territories, agreeing to pay between \$575 and \$700 million.⁵ The settlement offered affected consumers the option to choose four years of credit monitoring or a cash award of up to \$125. However, the settlement

¹ The American Prospect, “Another Equifax Settlement Bait and Switch,” David Dayen, September 9, 2019, <https://prospect.org/article/another-equifax-settlement-bait-and-switch>.

² Letter from Senator Elizabeth Warren to FTC Inspector General Katsaros, August 13, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.08.13%20Letter%20to%20FTC%20IG%20on%20Equifax%20settlement.pdf>.

³ The American Prospect, “Another Equifax Settlement Bait and Switch,” David Dayen, September 9, 2019, <https://prospect.org/article/another-equifax-settlement-bait-and-switch>.

⁴ Office of Senator Elizabeth Warren, “Bad Credit: Uncovering Equifax’s Failure to Protect American’s Personal Information,” February 2018, https://www.warren.senate.gov/files/documents/2018_2_7_%20Equifax_Report.pdf.

⁵ Federal Trade Commission, “Equifax to Pay \$575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach,” press release, July 22, 2019, <https://www.ftc.gov/news-events/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related>.

only allotted \$31 million to this cash award fund and stipulated that payments “shall be reduced on a *pro rata* basis”⁶ – information that was not provided in an appropriate fashion to consumers until after they had signed up for the payments. Following the settlement, the FTC released statements informing consumers of their ability to receive a \$125 cash payment – excluding any information that the cash payment was subject to and in fact, was very likely to be, severely reduced. Ultimately, the FTC altered its recommendation and advised consumers to select the credit monitoring option because it “provides a much better value.”⁷

But on September 7, 2019, consumers who requested the \$125 payment before August 2, 2019, received an email from the Settlement Administrator informing them of additional steps they would need to complete before they could receive any cash payments. The email informed them that unless they “provide the name of [the] credit monitoring service” they had before filing their claim or “amend [their] claim to request free credit monitoring” instead of the cash award, their claim for \$125 “will be denied.”⁸ The Settlement Administrator never explicitly shared this verification step with consumers in the initial stages of the claims process.

The specific content and design of this email is even more troubling. It contains a suspicious subject line presumably designed to discourage many victims from opening the email or to push it into spam folders. When clicked on, the email sends users to a website that requires claimants to enter a long claim number and, at least in some cases, long Captcha strings.⁹ The website does not allow users to correct errors when they report their credit monitoring service, and contains alarming legalistic language implying that they may be breaking the law by providing inaccurate information. Moreover, the email does not make clear what precisely qualifies as credit monitoring, or what is sufficient for naming an individual’s credit monitoring service – an additional deterrent to individuals seeking cash payments under the settlements.

In order to help me understand the flaws in the FTC settlement that first resulted in misleading consumers about their potential award, and then added complicated new steps that appear to be clearly designed to weed out deserving claimants, and the agency’s awareness of these flaws, I ask that you provide answers to the following questions no later than October 2, 2019.

1. When did Equifax, the Settlement Administrator or the FTC decide to communicate with consumers about additional steps they need to take in order to receive their benefits – as described in the September 7, 2019 email from the Settlement Administrator to consumers who filed a claim before August 2, 2019?
 - a. Was this step an original part of the payout plan?
 - b. Is this step consistent with the intent of the payout plan?
 - c. Is this step consistent with the legal requirements of the payout plan?

⁶ Federal Trade Commission, Proposed Equifax Settlement Agreement, July 19, 2019, https://www.ftc.gov/system/files/documents/cases/172_3203_equifax_proposed_order_7-22-19.pdf.

⁷ Federal Trade Commission, “Equifax Data Breach Settlement,” September 2019, <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement#FAQ5>.

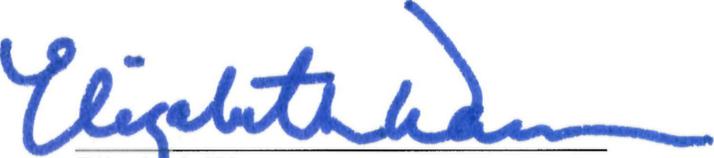
⁸ The American Prospect, “Another Equifax Settlement Bait and Switch,” David Dayen, September 9, 2019, <https://prospect.org/article/another-equifax-settlement-bait-and-switch>.

⁹ *Id.*

2. Was the FTC aware of the decision to ask consumers who filed a claim before August 2, 2019 to complete additional steps before they could receive their benefits?
 - a. Who informed the FTC and how?
 - b. If so, please provide electronic copies of all emails or other communications between the FTC and Equifax, the Settlement Administrator or other government agencies related to the addition of these steps.
3. Does the FTC, under the settlement plan or under statutory law, have the authority to act to require Equifax or the Settlement Administrator to modify its practices under the settlement, such as requiring that they eliminate this email step or use a less “scammy” email format to contact consumers?
4. Is the FTC aware of any additional steps that consumers will have to take before they can receive the \$125 cash payment?
5. At this time, how many individuals are currently expected to receive cash payments under the settlement? How many consumers who completed the initial settlement process requesting cash payments will now not be receiving them because they failed to reply to or provided incorrect answers to the September 7, 2019 email?
6. How is the FTC monitoring Equifax’s compliance with the settlement, including whether the company is establishing new and inappropriate procedures to reduce the number of claimants receiving cash awards?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

CC:
FTC Commissioners: Noah Joshua Phillips, Rohit Chopra, Rebecca Kelly Slaughter, and Christine S. Wilson

Inspector General Andrew Katsaros
Federal Trade Commission
Office of Inspector General
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Washington, D.C. 20580