

## LEGISLATIVE ACTIVITY

IDENTITY THEFT—Equifax removes arbitration clause from identity theft protection services

By [Katalina M. Bianco, J.D.](#)

Equifax has removed forced arbitration clauses from TrustedID, the company's free credit monitoring and identity protection services offered to customers. The removal of the clauses comes in the wake of a data security breach that spurred heated response from legislators and consumer groups (see [Banking and Finance Law Daily](#), Sept. 11, 2017). Equifax announced on Sept. 7, 2017, that the breach occurred from mid-May through July and put millions of Americans at risk for identity theft (see [Banking and Finance Law Daily](#), Sept. 8, 2017).

Senator Sherrod Brown (D-Ohio), Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, on September 8 had urged Equifax to remove the clauses. He [responded](#) to the removal of the clause by stating that while it is “a step in the right direction,” Equifax's corporate and affiliated websites still contain forced arbitration language and the company's overall policy on arbitration “remains unclear.” Equifax needs to clarify the terms of use for credit monitoring and identity theft services provided to data breach victims as well as clarifying their arbitration clause, the senator said.

“The fact that it took a public shaming to force Equifax to drop forced arbitration from TrustedID, is further proof why the Consumer Financial Protection Bureau's rule is needed,” Brown said. The CFPB's final arbitration rule bans mandatory predispute arbitration clauses in consumer financial product contracts if those clauses prevent class actions (see [Banking and Finance Law Daily](#), July 10, 2017).

**Letter to Equifax.** Sens. Catherine Cortez Masto (D-Nev) and Al Franken (D-Minn) and 18 of their colleagues, including Brown, on September 11 sent a [letter](#) to Equifax CEO Richard Smith “pressuring” him to “drop support for and use of forced arbitration agreements.” The lawmakers also [requested](#) that Equifax explain its stance on the CFPB's arbitration rule and the Republican-sponsored S.J. Res. 47, a resolution to repeal the rule. They noted in their letter that the company “presumably” is lobbying the Senate to reverse the rule and limit its liability through the resolution.

**Hatch and Wyden requests.** Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore) have [requested](#) that Equifax respond to the data breach reports. In a [letter](#) to Smith, the legislators asked for details on the breach and information on what Equifax is doing to mitigate its effects on consumers.

**SECURE Act reintroduced.** Senator Brian Schatz (D-Haw) has [reintroduced](#) the Stop Errors in Credit Use and Reporting (SECURE) Act, legislation intended to make it easier for consumers to catch and resolve identity theft, fraud, and errors in their credit reports. In addition to Sen. Schatz, the legislation is supported by Sens. Elizabeth Warren (D-Mass), Claire McCaskill (D-Mo), Richard Blumenthal (D-Conn), Bernie Sanders (I-Vt), and Jeff Merkley (D-Ore). The

reintroduction follows Schatz's calls for Equifax to do more to assist consumers affected by the breach.

Companies: Equifax Inc.

LegislativeActivity: CFPB ConsumerCredit CyberPrivacyFeed FinTech IdentityTheft Privacy