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**National Association of Federally-Insured Credit Unions**

March 25, 2019

The Honorable Jerry Moran  
Chairman  
Subcommittee on Manufacturing, Trade,  
and Consumer Protection  
Committee on Commerce, Science,  
& Transportation  
United States Senate  
Washington, D.C. 20510

The Honorable Richard Blumenthal  
Ranking Member  
Subcommittee on Manufacturing, Trade,  
and Consumer Protection  
Committee on Commerce, Science,  
& Transportation  
United States Senate  
Washington, D.C. 20510

**Re: Tomorrow's Hearing on "Small Business Perspectives on a Federal Data Privacy Framework"**

Dear Chairman Moran and Ranking Member Blumenthal:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing entitled "Small Business Perspectives on a Federal Data Privacy Framework." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 116 million consumers with personal and small business financial service products. NAFCU and our members welcome the Subcommittee taking an important step in holding this hearing to address consumer privacy and data security standards.

As NAFCU has previously communicated to the Committee, a major aspect of consumer privacy is ensuring the security of a consumer's financial data. While depository institutions have had a national standard on data security since the passage of the *Gramm-Leach-Bliley Act (GLBA)* over two decades ago, other entities who handle consumer financial data do not have such a national standard. That is why we believe that there is an urgent need for a national data security standard for entities that collect and store consumers' personal and financial information that are not already subject to the same stringent requirements as depository institutions. As you examine this topic in relation to small businesses, it is important to note that one of the top features of the GLBA is that it is flexible and scalable to the size of the institution. The GLBA works for the largest bank and the smallest credit union.

We recognize that a legislative solution to establish such a standard is a complex issue, and thus NAFCU has established a set of guiding principles to help define key issues credit unions would like to see addressed in any comprehensive cyber and data security effort that may advance. These principles include:

- **Payment of Breach Costs by Breached Entities:** NAFCU asks that credit union expenditures for breaches resulting from card use be reduced. A reasonable and equitable way of addressing this concern would be to enact legislation to require entities to be accountable for costs of data breaches that result from negligence on their end.
- **National Standards for Safekeeping Information:** It is critical that sensitive personal information be safeguarded at all stages of transmission. Under the GLBA, credit unions and other depository institutions are required to meet certain criteria for safekeeping consumers' personal information and are held accountable if those criteria are not met through examination and

penalties. Unfortunately, there is no comprehensive regulatory structure akin to the GLBA that covers other entities who collect and hold sensitive information. NAFCU strongly supports the passage of legislation requiring any entity responsible for the storage of consumer data to meet standards similar to those imposed on depository institutions under the GLBA.

- **Data Security Policy Disclosure:** Many consumers are unaware of the risks they are exposed to when they provide their personal information. NAFCU believes this problem can be alleviated by simply requiring merchants to post their data security policies at the point of sale if they take sensitive financial data. Such a disclosure requirement would come at little or no cost to the merchant but would provide an important benefit to the public at large.
- **Notification of the Account Servicer:** The account servicer or owner is in the unique position of being able to monitor for suspicious activity and prevent fraudulent transactions before they occur. NAFCU believes that it would make sense to include entities such as financial institutions on the list of those to be informed of any compromised personally identifiable information when associated accounts are involved.
- **Disclosure of Breached Entity:** NAFCU believes that consumers should have the right to know which business entities have been breached. We urge Congress to mandate the disclosure of identities of companies and merchants whose data systems have been violated so consumers are aware of the ones that place their personal information at risk.
- **Enforcement of Prohibition on Data Retention:** NAFCU believes it is imperative to address the violation of existing agreements and law by those who retain payment card information electronically. Many entities do not respect this prohibition and store sensitive personal data in their systems, which can be breached easily in many cases.
- **Burden of Proof in Data Breach Cases:** In line with the responsibility for making consumers whole after they are harmed by a data breach, NAFCU believes that the evidentiary burden of proving a lack of fault should rest with the negligent entity who incurred the breach.

NAFCU looks forward to working with the Subcommittee to address concerns with consumer privacy as it relates to the broader topic of data security. We are also pleased to work with those in industry to try to find common ground on a comprehensive proposal. We would urge you to work collaboratively with other interested Committees in the Senate to find a package that can advance and receive bipartisan support.

On behalf of our nation's credit unions and their more than 116 million members, we thank you for your attention to this important matter. Should you have any questions or require any additional information please contact me or Alex Gleason, NAFCU's Associate Director of Legislative Affairs, at 703-842-2237 or [agleason@nafcu.org](mailto:agleason@nafcu.org).

Sincerely,



Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Manufacturing, Trade, and Consumer Protection