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National Association of Federally-Insured Credit Unions

Greg Mesack
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July 19, 2022

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Committee Markup

Dear Chairman Pallone and Ranking Member Rodgers:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts ahead of tomorrow's markup of H.R. 8152, the *American Data Privacy and Protection Act* (ADPPA) and H.R. 3962, the *Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2021*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 131 million consumers with personal and small business financial service products. NAFCU and our members appreciate the Committee's attempt to address these important issues.

H.R. 8152, the American Data Privacy and Protection Act

NAFCU believes there is an urgent need for thoughtful, comprehensive federal data privacy legislation. Though, as NAFCU has previously shared, there are a significant number of data privacy and data security issues Congress must consider. As such, NAFCU would like to take this opportunity to highlight three of the most important issues that the Committee should address during tomorrow's markup.

Comprehensive federal data privacy legislation should fully respect successful existing federal data privacy legislation and regulation and wholly exempt credit unions and other already closely-regulated entities.

The ADPPA currently provides credit unions and other entities already subject to the robust data privacy and data security standards of existing federal data privacy laws, including the *Gramm-Leach-Bliley Act* (GLBA), only an information-level exemption. Qualifying language such as "subject to" has historically proven fertile ground for meaningful differences of legal and regulatory opinion which can quickly lead to the application of well-intentioned federal legislation that is anything but uniform. If Congress proceeds with such a narrow GLBA exemption, credit unions will find themselves immediately and unnecessarily exposed to new and substantial compliance and legal risks despite their and the National Credit Union Administration (NCUA) already meeting data privacy and data security risks head-on and in timely fashion and having the authority and resources to meet any future risks arising within the credit union system.

Comprehensive federal data privacy legislation should expressly preempt all state data privacy legislation and regulation.

The current patchwork of federal and state data privacy laws generates

incredible consumer confusion and significant compliance burdens while failing to address the most significant risks to Americans' data – those risks posed by the haphazard operations of insufficiently regulated entities that collect, control, and process vast amounts of our most sensitive data. Comprehensive federal data privacy legislation should build on the successes of robust, time-tested federal data privacy legislation by extending the same robust federal standards across the economy while ensuring that already closely-regulated entities, like credit unions, may confidently operate within their existing federal frameworks without fear of becoming subject to more than 50 different ineffectual state data privacy and data security standards.

Comprehensive federal data privacy legislation should vest exclusive rulemaking and discretionary enforcement authorities in covered entities' respective primary federal regulators. As to covered entities that do not presently have a primary federal regulator, e.g. international social media conglomerates and uninsured financial technology companies, the vesting of comprehensive federal data privacy rulemaking and enforcement authorities in a single federal regulator, perhaps the Federal Trade Commission (FTC), is logical and may provide a path towards the most responsible federal agency headcount and budgets. However, as to credit unions and other already closely-regulated entities, comprehensive federal data privacy legislation should vest exclusive rulemaking and discretionary enforcement authorities in their respective primary federal regulators.

While Congress has previously vested federal data privacy rulemaking and enforcement authorities in a single federal regulator, such as the Department of Health and Human Services under the *Health Insurance Portability and Accountability Act*, Congress has bifurcated similar federal data privacy rulemaking and enforcement authorities where it was appropriate to do so. Congress did not task a single federal agency with implementing and enforcing the GLBA. Though the GLBA rightly respects the NCUA as credit unions' primary federal regulator, the Federal Deposit Insurance Corporation, Federal Reserve Board, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, and other federal and state agencies play a role in implementing and enforcing the GLBA within their respective financial industries.

As stated previously, NAFCU strongly believes Congress should fully respect the GLBA's strengths and successes and wholly exempt credit unions from new federal data privacy legislation. However, if Congress provides credit unions only an information-level GLBA exemption from new federal data privacy legislation, Congress should vest exclusive rulemaking and discretionary enforcement authority as to covered credit unions in the NCUA, which has decades of experience regulating data privacy risks within the credit union system. The NCUA's granular, institutional knowledge of credit unions not only ensures it is the regulator best positioned to address new data privacy and data privacy risks as they arise within the credit union system but also ensures that the NCUA is best positioned to effectively redress any data-related harms realized within the credit union system without unnecessarily inflating compliance costs for all covered credit unions.

Furthermore, if Congress fails to preclude private rights of action and state enforcement of new federal data privacy legislation, credit unions in different federal court circuits will likely become subject to

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conflicting court precedents, and the financial resources all credit unions and other already closely-regulated institutions will be forced to expend defending even plainly frivolous claims will be staggering.

NAFCU looks forward to working with the Committee and those in industry to address these concerns with consumer privacy. In particular, any federal privacy legislation must be operationally workable for small- and medium-sized businesses like credit unions. We would urge you to work collaboratively with other interested Committees in the House to find a package that can advance and receive bipartisan support.

H.R. 3962, the *Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021*

Finally, we would also like to express our support for H.R. 3962, the *SECURE Notarization Act of 2021*. This legislation provides businesses and consumers with the ability to execute critical documents using two-way audiovisual communication. Current requirements for a signer to physically be in the presence of a notary are often impractical and sometimes impossible due to social distancing constraints resulting from COVID-19, as well as other barriers including military service or work travel. Forty states have already recognized the benefits of Remote Online Notarization (RON) and passed legislation authorizing its use.

On behalf of our nation's credit unions and their more than 131 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 Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at 703-842-2836 or jrelfe@nafcu.org.

Sincerely,



Greg Mesack

cc: Members of the House Energy and Commerce Committee