



PRIVACY LEGISLATION

BACKGROUND

The American Data Protection and Privacy Act (ADPPA), H.R. 8152, was introduced by House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Ranking Member Cathy McMorris Rodgers (R-WA) on June 21, 2022. This legislation was unveiled as a bipartisan-bicameral draft along with Senator Roger Wicker (R-MS), the Ranking Member of the Senate Commerce Committee. The legislation has not received the support of Senate Commerce Committee Chairwoman Maria Cantwell (D-WA), who wants to pursue her own approach. This legislation was marked up and passed by the House Energy and Commerce Committee on July 20, 2022, by a 53-2 vote. While the bill received strong bipartisan support at markup, the legislation does not include input from other Committees that may have perspectives, such as the House Financial Services Committee, and is expected to face changes before being considered in the full House of Representatives.

CREDIT UNION CONCERNS WITH THE LEGISLATION

While NAFCU supports a national data security and privacy standard, we believe the American Data Protection and Privacy Act in its current form has issues that need to be addressed for credit unions.

- › Gramm-Leach-Bliley Act (GLBA) Exemption. Through the GLBA, Congress defined robust federal data privacy and information security standards for the financial services industries and provided the NCUA and other federal financial regulators the means with which to create and maintain strong privacy and data safeguards. The ADPPA does not recognize the long-standing requirements by providing a GLBA exemption. Congress should recognize the strength and successes of the GLBA and other time-tested federal sectoral data privacy regulation, and the value of regulator-led regulation, by wholly exempting credit unions and other already closely-regulated entities.
- › Private Right of Action. This legislation provides a private right of action that will allow individuals or states' attorneys generals to sue covered entities over potential violations, allowing courts to determine the law. This means that different judicial interpretations will allow a consumer in California to have different privacy protections than a consumer in South Carolina, and credit unions will find themselves immediately and unnecessarily exposed to new and substantial compliance and legal risks.
- › Preemption of State Laws. The ADDPA preempts many state laws but then subsequently provides exceptions that undermine the preemption. This will perpetuate a patchwork of state and federal data privacy legislation and regulation, and Congress must leverage comprehensive federal data privacy legislation to expressly preempt all state data privacy legislation and regulation.

OUTLOOK AND ASK

While we support the concept of a national privacy standard, NAFCU opposes the current form of the ADPPA due to these concerns and urges lawmakers to seek changes to the legislation to address the concerns of credit unions before moving the legislation forward.