



February 8, 2023

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 2051

Dear Chairman McHenry, Ranking Member Waters and members of the Committee:

Consumer Reports is pleased to submit this statement regarding the House Financial Services Committee hearing titled “Revamping and Revitalizing Banking in the 21st Century,” and specifically the draft legislation on financial data privacy.

On its face, the draft legislation addresses important principles which we view as critical to the protection of nonpublic personal consumer information. Financial Services collect and manage a large array of consumer information to ensure the safe and convenient provision of financial services and transactions. With respect to this information, consumers should always have the right to access and limit information about themselves held or shared by the financial institution or any party who supports the provision of the services, with very limited exceptions. This is the underlying principle of state privacy laws such as the California Consumer Privacy Act, and should be a fundamental consumer right.

However, the bill as currently written does not go far enough to protect customer’s financial information, and also limits states’ ability to enact their own financial protections. Without significant modifications, this bill would do more harm than good for American consumers.

Consumers’ privacy should not be violated while exercising any right to access their data, consumers’ consent to share data should be voluntary and knowing, and only the data necessary to use a financial service should be collected. Perhaps most importantly, financial firms should only share data in a way that consumers would expect; and their disclosures to consumers about information collection and sharing should be accessible and provided in plain, easy to understand language. We are additionally supportive of the provisions which would facilitate easy ability for consumers to revoke the permissioned use of their data, allow users to see data held about them, opt out of data collection, the ability to request financial institutions stop sharing their data and/or delete their data; and, strict limits on third party sharing of consumer data.

Yet, in a world where financial transactions and services are digitized and consumer, commercial and retail transactions increasingly embed financial services, it is critical to go

beyond mere disclosure and notice provisions to ensure that consumers have meaningful opportunity to engage with their data, restrict the sharing of their data for uses that are not necessary to use the product or service, and delete their data. Consumer Reports recent evaluation of Peer to Peer Payments apps, for example, noted that consumer disclosures of handling of sensitive and nonpublic personal information is not easy to find and read. Without additional requirements, mere notice and disclosure does not effectively empower consumers to control their data and this data privacy bill would not expand beyond these requirements.

We will note that the Dodd Frank Act conferred authority on the CFPB over the management of consumer financial information and this authority should only be strengthened. Permitted data sharing can help consumers better manage their debt, budget their earnings, and save towards their goals. It can expand access to credit to many creditworthy Americans who are excluded by the credit reporting system's outdated mechanisms. It can also facilitate wealth building and enable the behaviors that contribute to financial well-being. The consumers who are likely to benefit most from permitted data sharing are those who traditionally have been excluded and underserved by the financial system and thus we would oppose any weakening of the CFPB's 1033 authority.

In the current environment, any transfer of sensitive data is under relentless attack by those who would seek to exploit or defraud vulnerable individuals. Any situation where consumer financial data is transmitted in the absence of specific rules and protections constitutes a harm to consumers as a group. Protecting the consumer requires equal and meaningful disclosure and oversight for all consumers of financial products and services, regardless of the size or stature of the provider. All financial data providers in this space should be regulated without exception.

Finally, while we appreciate that the bill makes some marginal improvements on GLBA's privacy framework, the price of broad state preemption is simply too high. The bill's new privacy rights still place too much burden on consumers to navigate confusing disclosures and exercise various opt-out rights one-by-one. This discredited notice-and-choice approach will do little to practically protect most consumer's personal information. This approach stands in stark contrast to the approach of the bipartisan American Data Privacy and Protection Act (ADPPA) which passed the Energy and Commerce Committee by a 53-2 vote last summer and prohibited most secondary use and sharing of personal data by default. While the draft includes a nod to the concept of "data minimization," it defines as permissible purposes simply whatever companies decide to include within their privacy policies. Companies' privacy policies reserve expansive and vague rights to use data however they see fit, and few consumers if any take the time to read and comprehend them.

Worse, while this bill does not fundamentally rein in unwanted data processing or practically empower consumers to do so themselves, it would then prohibit any state from enacting more fulsome protections. One saving grace of GLBA's privacy rules today is that they allow states to build on top of the federal law with stronger privacy protections for consumers. States have long been on the cutting edge of privacy protection, with many states in recent years adopting comprehensive privacy protections as Congress has struggled to enact its own protections. Consumer privacy will overall be worse off if this bill's incremental privacy improvements are paired with new state preemption provisions.

We strongly support the House Financial Services Committee's making the protection of consumers financial privacy and data a priority. Consumers increasingly share sensitive nonpublic personal information to financial service companies and consumers should have more agency over their own data. Legislation that requires financial institutions to notify consumers when their data has been collected and shared, and that seeks their permission in order to continue processing their data is important. Yet, such legislation should not limit states' ability to also go further and offer stronger protections to consumers.

We look forward to working with the Committee on this legislation and other ways to enfranchise consumers with stronger privacy rights and protections.

Sincerely,

Delicia Hand

Director, Financial Fairness

Justin Brookman

Director, Consumer Privacy & Technology