



March 1, 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 submits this statement for the record regarding the February 28, 2023 markup of H.R. 1165, the Data Privacy Act of 2023 in appreciation of the Chairman's making consumer data privacy a priority. Consumer Reports' vision for a Fair Digitized Financial System is one that enables consumers to spend, save, borrow, and invest safely, privately, and without discrimination or predation so they can achieve their financial goals.

In an increasingly digital world where consumers manage more and more of their financial transactions through digital means, consumer data is increasingly leveraged by companies in ways that are not necessary for consumers to use the service and not clearly disclosed to them. This puts consumers at increased risk for fraud and scams if consumer data is not appropriately safeguarded. Consumer Report's own recent review of Peer to Peer Payment app policies, for example, found that consumer privacy disclosures were across the board hard to locate and hard to read.¹ In today's superapp, mobile-first environment, notice and disclosure approaches to the management of personal information are outdated and not useful. Consumers readily click through to use a service, without meaningful appreciation of the amount of data they are sharing or how that data is utilized, including information that is not necessary to use the service.

While the Data Privacy Act of 2023 makes modest improvements to Gramm Leach Bliley by giving consumers the right to delete their information in certain circumstances, it would do so by placing the onus on consumers to take steps to protect their data and limit its collection and use. However, consumers are largely unaware of existing or new rights to manage their data, making notice and disclosure mechanisms largely ineffective to empower consumers to limit their data collection and use, and to delete their data. To allow companies to manufacture consumer consent and collect and use data is contrary to the articulated spirit of this proposal.

¹ Consumer Reports, CR Finds Potential Consumer Risks for Users of Apple Cash, Cash App, Venmo, and Zelle. (January 24, 2023)
<https://www.consumerreports.org/money/digital-payments/peer-to-peer-payment-apps-comparison-a5999129619/>

The Chairman emphasized in this week's Committee markup that this bill aims to drive towards a national standard on data privacy and that being subject to varied state laws is not good for consumers. Consumer Reports would like to see the Chairman work further to adopt a federal data minimization² approach as a national standard, such as what was adopted by the House Energy & Commerce Committee last Congress on the American Data Privacy and Protection Act ("ADPPA"). This approach includes a broad definition of consumer data, so as to include information that "identifies or is linked or reasonably linkable" to an individual. Additionally, it shifts the burden of limiting data collection, use and retention to only what is reasonably necessary to provide the product or service requested by the consumer and would strengthen consumer rights around their data, not weaken them.

Additionally worrisome is that this bill would gut important state preemption measures, unlike other existing federal privacy laws such as the GLBA, HIPAA, TCPA and FCRA. As written, the Data Privacy Act would nullify strong state laws such as the California Consumer Protection Law which goes further and allows consumers to opt into sharing of financial data, and also allows for enforcement of state privacy laws. This overly broad state preemption provision would also prevent state data breach notification requirements and potentially impact the reporting of personal financial information with respect to collection or disclosure of personal information such as medical debt, eviction records, and other credit reporting data.

We thank the House Financial Services Committee for making consumer financial privacy and data a priority. However, we continue to ask that the Chairman and Ranking member work in a bipartisan way to ensure that this bill delivers meaningful privacy protections and rights to consumers. We ask that this letter be entered into the record and look forward to working with the Committee on these matters.

Sincerely,

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Justin Brookman

Director, Financial Fairness

Director, Consumer Privacy & Technology

² EPIC and Consumer Reports, *How the FTC Can Mandate Data Minimization Through a Section 5 Unfairness Rulemaking*, (Jan. 26, 2022), https://advocacy.consumerreports.org/press_release/consumer-reports-and-epic-release-paper-calling-on-the-federal-trade-commission-to-pursue-a-privacy-rulemaking/.