ISSUE BRIEF

# Data Privacy

## BACKGROUND

Federal law establishes certain standards for financial institutions, including credit unions, to notify consumers how their personal information is being shared with vendors and other third parties. The legislative standards of today were established a quarter-century ago with the passage of the Gramm-Leach-Bliley Act (GLBA). Considering the value of personal data as an asset, Congress is starting to evaluate additional potential steps it could take to protect consumers' data. Although some foreign governments, including the European Union (EU), have already acted in this area, Congress has yet to establish a national data privacy standard. While Congress contemplates the best path forward, some states have taken matters into their own hands, with a number of states enacting their own privacy laws.

NAFCU has been actively engaging with Members of Congress on this issue and has a series of principles it believes Congress must recognize in any data privacy and protection legislation:

1. Recognize the strengths and efficiencies of existing federal data privacy legislation and regulation and fully exempt credit unions and other federally insured financial institutions from new federal data privacy standards.
2. Expressly preempt all state data privacy legislation and regulation.
3. Vest exclusive rulemaking and discretionary enforcement authorities in covered entities' respective primary regulators.
4. Require that all covered entities meet a robust information security standard.
5. Require that all covered entities use uniform, easily accessible data privacy disclosures.
6. Establish principles-based compliance safe harbors for covered entities taking reasonable steps to meet their data privacy responsibilities.

## LEGISLATIVE DEVELOPMENTS

Earlier this year, the House Financial Services Committee reported H.R. 1165, the *Data Privacy Act* (DPA) of 2023, by a party-line 26-21 vote. This legislation was sponsored by Committee Chairman Patrick McHenry (R-NC) and provides a comprehensive approach to data privacy. The DPA takes a federal preemptive approach toward state laws, something supported by NAFCU. It also takes the positive step of including data aggregators under the GLBA and leaves in place existing GLBA enforcement provisions. However, NAFCU is concerned that provisions in the bill could create significant new burdens on credit unions when it comes to data access and deletion, stemming from a lack of clarity in the legislation. It would also create a new opt-in requirement for information sharing in the GLBA that will likely create consumer confusion with new opt-out notice requirements in the DPA. NAFCU ultimately believes these issues should be addressed before the DPA advances in the House.

In the 117th Congress, the House Energy and Commerce Committee advanced the *American Data Protection and Privacy Act* (ADPPA), which was introduced by the top Republican and Democratic leaders of the Committee, Cathy McMorris Rodgers (R-WA) and Frank Pallone (D-NJ). NAFCU did not support the legislation as the ADPPA did not recognize the long-standing privacy requirements at financial institutions by providing a GLBA exemption. The legislation also provided a private right of action that would allow individuals or states' attorneys general 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. NAFCU opposes such an expansive private right of action. While the legislation has yet to be reintroduced in the 118th Congress, it is expected to be so later this year. The Senate has yet to act on any data privacy legislation.

## OUTLOOK AND ASK

Ultimately, NAFCU believes that Congress needs to establish a national data privacy standard that also addresses the issue of data security for consumers' personal and financial information. Such a standard should recognize what has been in place and working for consumers, credit unions, and others under existing laws such as the GLBA.

The GLBA has successfully served consumers, credit unions, and other covered financial institutions for nearly a quarter-century. Changes to the GLBA must be viewed with a cautionary eye. While some modernization of the GLBA for financial institutions may be in store, the system has generally been a success and should be a model for other areas. Making the system work best means expanding financial data protection requirements outside of just financial services. Retailers, merchants, and others that handle financial data should be subject to new requirements similar to those standards adopted for financial institutions. Moving legislation for one without the other threatens to do more harm than good for credit unions. We urge Congress to ensure a balance that recognizes the concerns of credit unions as it tackles the important issue of privacy reform.