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National Association of Federally-Insured Credit Unions

February 28, 2023

The Honorable Gus M. Bilirakis
Chairman
Committee on Energy and Commerce
Subcommittee on Innovation, Data,
and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Janice D. Schakowsky
Ranking Member
Committee on Energy and Commerce
Subcommittee on Innovation, Data,
and Commerce
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing, "Promoting U.S. Innovation and Individual Liberty through a National Standard for Data Privacy"

Dear Chairman Bilirakis and Ranking Member Schakowsky:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) ahead of Wednesday's hearing, "Promoting U.S. Innovation and Individual Liberty through a National Standard for Data Privacy." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial service products. NAFCU and our members welcome the Subcommittee's review of this important issue.

As NAFCU has previously communicated to Congress, we believe there is an urgent need for comprehensive federal data privacy legislation that protects consumer data, establishes data safeguards, and recognizes the standards that have been in place for over two decades with the Gramm-Leach-Bliley Act (GLBA). In 2019, recognizing the importance of data privacy and the ongoing privacy debate, NAFCU issued a series of data privacy principles that calls for a comprehensive federal cybersecurity standard, the harmonization of existing federal data privacy laws, and the preemption of state privacy laws. As the Subcommittee works to develop much-needed comprehensive federal data privacy legislation, NAFCU recommends you include the following elements as key aspects in any such proposal:

- **A comprehensive federal cybersecurity standard covering all entities that collect and store consumer information.** Uniformly strong cybersecurity is necessary to ensure Americans' data is adequately protected across the economy. Existing strong federal cybersecurity standards, like that contained in the GLBA, should be extended to the activities of all data collectors and processors exceeding certain reasonable thresholds.
- **Harmonization of existing federal laws and preemption of any state privacy law related to the privacy or security of personal information.** 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 data privacy risks to Americans—those risks posed by unregulated or inconsistently regulated entities that collect, control, and process vast amounts of our data. Comprehensive federal data

privacy legislation should responsibly build on the successes of robust, time-tested federal laws by extending the same high data privacy standards across the economy and ensuring that already well-regulated entities, like credit unions, may confidently operate within their existing federal frameworks without fear of being subject to more than 50 different data privacy and security standards.

- **Delegation of enforcement authority to the appropriate sectoral regulator.** The National Credit Union Administration (NCUA) should be federal credit unions' sole data privacy and cybersecurity regulator. Allowing the NCUA, which is well-versed in the unique nature of federal credit unions and their operations, to continue to examine and enforce any privacy and cybersecurity requirements is the most efficient option for both credit unions and American taxpayers. Exposing credit unions and other already well-regulated entities to suits by states' attorneys general and private rights of action will dramatically increase compliance costs without providing a corresponding increase in consumer protection.
- **A safe harbor for businesses that take reasonable measures to comply with the privacy standards.** Comprehensive federal data privacy legislation should adopt principles-based requirements based on an organization's specific operations and risk profile and include a safe harbor for organizations that design and implement appropriate measures.
- **Notice and disclosure requirements that are easily accessible to consumers and do not unduly burden regulated entities.** Providing multiple data privacy disclosures and opt-out mechanisms across multiple channels creates consumer confusion and unreasonable burdens for subject entities. A new privacy law should avoid conflicting or duplicative disclosure requirements by incorporating easy to understand language, like that consistent with the GLBA's disclosure requirements.
- **Scalable civil penalties for noncompliance imposed by the sectoral regulator that seek to prevent and remedy consumer injury.** Actual damages to consumers are too difficult to establish by evidence, and statutory damages for violations are incredibly ripe for frivolous lawsuits. Sectoral regulators alone should have the power to assess scalable civil penalties, which can then be used to remedy and prevent consumer harm in a meaningful way.

While NAFCU supports a national data security and privacy standard, we had some concerns about the American Data Protection and Privacy Act (ADPPA) that the Committee considered in the last Congress, including:

- *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 did 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.

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- *Private Right of Action.* This legislation provided a private right of action that would 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 would preempt many state laws but then subsequently provided exceptions that undermine the preemption. This would perpetuate a patchwork of state and federal data privacy legislation and regulation. We believe Congress must leverage comprehensive federal data privacy legislation to expressly preempt all state data privacy legislation and regulation.

As your colleagues on the House Financial Services Committee tackle the Financial Data Privacy Act of 2023 within its jurisdiction to improve the GLBA for financial services entities, we urge the Subcommittee to craft a workable GLBA expansion to cover those outside of financial services that may be handling consumer financial data. The GLBA has successfully served consumers, credit unions, and other covered financial institutions for nearly a quarter-century. Changes to the GLBA for those already covered by it 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. We urge the Subcommittee to work with your counterparts on the House Financial Services Committee to ensure a balance that recognizes existing law and the concerns of credit unions as Congress tackles the important issue of privacy reform.

NAFCU looks forward to continuing to work with you to address these concerns with consumer privacy. On behalf of our nation's credit unions and their more than 135 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 Amber Milenkevich, NAFCU's Senior Associate Director of Legislative Affairs, at 703-842-2238 or amilenkevich@nafcu.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Innovation, Data, and Commerce