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National Association of Federally-Insured Credit Unions

February 27, 2023

The Honorable Patrick McHenry
Chairman
House Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Committee Markup

Dear Chairman McHenry and Ranking Member Waters:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) regarding tomorrow's Committee markup of various measures. 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 appreciates the opportunity to share the perspective of credit unions on legislation being considered by the Committee.

H.R. 1165, the Financial Data Privacy Act

NAFCU appreciates the effort to take a financial services-based approach to modernizing the Gramm-Leach-Bliley Act (GLBA). We thank Chairman McHenry for his leadership on this important issue. Credit unions take data privacy and data protection seriously. NAFCU has long advocated for a comprehensive federal data privacy standard, and has published a [white paper](#) detailing its principles regarding this issue. NAFCU believes that any legislation updating the GLBA should balance consumer benefits with regulatory burdens.

While there are a number of positive aspects of the Financial Data Privacy Act (FDPA) that is before the Committee, we are concerned that certain provisions could lead to increased burdens on credit unions, even if unintended. Additionally, we believe that any effort at privacy reform must include new data protection requirements for those entities that handle the personally identifiable information (PII) of consumers, such as financial data, and are not subject to the same data protection standards that GLBA-covered institutions are. Even though those changes may be out of the jurisdiction of the Committee, it is important that any GLBA improvements are balanced with addressing these concerns before being enacted into law.

The FDPA takes a number of positive steps, such as bringing data aggregators under the scope of the GLBA. We are also pleased to see that Credit Union Service Organizations (CUSOs) are not considered data aggregators under this legislation (and thus subject to greater National Credit Union Administration (NCUA) oversight). We oppose any efforts to subject CUSOs to greater examination by the NCUA. NAFCU supports a strong and clear federal preemption of state laws.

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We appreciate the FDPA taking a federal preemption approach and would support it going even further. NAFCU urges you to oppose any amendments at markup that seek to weaken the federal preemption found in the FDPA.

We are also pleased that the legislation does not include a new federal private right of action and leaves in place existing GLBA enforcement provisions. We urge you to oppose any amendments that would create a private right of action that does not have a safe harbor for institutions such as credit unions.

While we do not oppose a consumer's right to have access to their data and to have their data deleted upon their request, we believe this must be done in such a way as to not overburden community financial institutions or allow abuses of this right. We are pleased to see the updated draft of the FDPA clarify that these requests must come from an individual directly and not a third party.

Similarly, NAFCU does not oppose a consumer's right to request termination of data sharing directly with their financial institution. To establish certainty, however, NAFCU requests that the FDPA clarify that rulemaking by the federal banking agencies, including the NCUA, be required to be finalized no later than one year from enactment of this legislation (to ensure regulatory clarity before the mandatory 2-year effective date) and should include a model form for financial institutions. Likewise, the legislation should clarify that the regulators will also provide a model form with respect to the collection of consumer account credentials requirements.

We do have particular concern that the FDPA adds a new section 501(c) to the GLBA that would appear to create a new *opt-in* requirement for the use of nonpublic personal information by financial institutions with their members or customers (who have presumably already had the chance to opt out of this). Coupled with the increased opt-out notices to consumers under the FDPA, this could add some significant new burdens on financial institutions. Even efforts to limit section 501(c) do not go far enough, and we would support its removal from the bill.

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 the Committee to ensure a balance that recognizes the concerns of credit unions as Congress tackles the important issue of privacy reform.

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We thank you for the opportunity to share our thoughts in advance of tomorrow's markup. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Associate Director of Legislative Affairs, at 703-842-2261.

Sincerely,

A handwritten signature in black ink that reads "Brad Thaler". The signature is written in a cursive, flowing style.

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Committee