

August 21, 2020

The Honorable Jane Nelson
Co-Chair
Texas Privacy Protection Advisory Council
P.O. Box 12068
Capitol Station
Austin, TX 78711

The Honorable Giovanni Capriglione
Co-Chair
Texas Privacy Protection Advisory Council
Room E2.610
P.O. Box 2910
Austin, TX 78768

Re: Privacy Protection Advisory Council Request for Information

Dear Chairwoman Nelson and Chairman Capriglione:

On behalf of the American Financial Services Association (AFSA)¹ thank you for the opportunity to respond to the Privacy Protection Advisory Council's request for information. AFSA members understand the need to protect consumer data and believe that carefully considered public policy is an important tool in ensuring this. Clear regulations with well-defined terms—that also take into account the existing privacy framework for financial information—leave financial institutions in the best position to understand the regulatory landscape and, in turn, operate within full compliance of all applicable laws.

AFSA's 350+ member companies provide Texas consumers with many types of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, leases and payment cards. They serve the entire credit spectrum, from non-prime to super-prime consumers. AFSA members include companies of all sizes, ranging from large national banks to small independent financial institutions, with several companies even headquartered in Texas.

Federal Financial Privacy Laws

On top of the numerous licensing and other regulations that may govern them at the state level, financial institutions must also abide by myriad federal laws. While several of these federal laws govern the privacy of consumer financial information, the most comprehensive is the Gramm-Leach-Bliley Act (GLBA). The GLBA sets forth requirements regarding the treatment of nonpublic personal consumer information by financial institutions. Under the act, financial institutions are prohibited from disclosing this information to third parties unless the institution

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice.

makes the required opt-out disclosures and the consumer has not selected to opt-out of sharing this information. Implementing regulations from the Federal Trade Commission (FTC) further restrict the use of the information and require certain disclosures to consumers.

In addition to the GLBA, the Fair Credit Reporting Act (FCRA) provides strong consumer privacy protections. Among other requirements, under the FCRA, consumers have the choice of whether consumer report information can be shared by affiliated companies, and also whether that information can be used to send marketing solicitations. In both cases, consumers must receive notice and have the opportunity to opt out of the sharing or use unless a specific exception applies.

Given the extensive federal privacy protections for consumer financial information, additional state laws covering entities already subject to the GLBA and FCRA would be duplicative and unnecessarily create a significant compliance burden with limited consumer benefit. Any proposed state legislation should reflect this fact and, accordingly, exempt entities subject to the GLBA and FCRA from the bill's requirements.

Major State Privacy Laws

Over the past four years, several states enacted new rules for consumer privacy and data protection. The most significant of these rules were the New York Department of Financial Services (NYDFS) Cybersecurity Requirements for Financial Services Companies in 2017 and the California Consumer Protection Act (CCPA) in 2018. The NYDFS rules generally implemented required measures to protect data at financial institutions from external threats (e.g. hacking), while the CCPA sets requirements for the use and collection of consumer information by all companies; however, both sets of requirements were similarly problematic due to vague terms, overly burdensome requirements, and a one-size-fits-all approach that did not reflect the diverse industries doing business in each state or the existing system of laws already protecting sensitive financial information.

In addition, the CCPA was a hastily drafted compromise with an unrealistic timeframe for implementation and enforcement. For example, while the law took effect on January 1, 2020, implementing regulations were not finalized and approved until more than seven months later, on August 14, 2020. As Texas considers its own privacy framework, any changes should include a delayed effective date that allows for a robust rulemaking process with significant input from stakeholders and ample time for covered entities to implement any required changes.

Thank you for your consideration of our comments. If you have any questions or if AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



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American Financial Services Association
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