

July 19, 2022

The Honorable Frank Pallone
Chairman
Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Pallone and Ranking Member McMorris Rodgers:

The American Financial Services Association (“AFSA”)¹ has long supported a federal privacy law that is durable and protects American consumers. However, AFSA has significant concerns with H.R. 8152- *the American Data Privacy and Protection Act* (ADPPA), will affect the ability of financial institutions to best serve their customers.

Firstly, regulated financial institutions are already subject to privacy and data security consumer protection requirements under Title V of the Gramm-Leach Bliley Act (GLBA). The GLBA established stringent data security requirements that financial institutions must comply with in order to safeguard the confidentiality and privacy of their customers. This includes the disclosure of how consumer information is collected or shared. Additionally, consumers are given the option to opt out of third-party data sharing.

The GLBA provides strong privacy and data security provisions that are either duplicated or inconsistent with provisions in the ADPPA. The ADPPA should be amended to include a provision which clearly exempts all GLBA regulated institutions. This will avoid unnecessary and conflicting requirements, which could lead to an interruption in the consumer data practices which are already in place.

Secondly, the ADPPA’s proposed enforcement system will lead to an increase in frivolous lawsuits and a myriad of interpretations of the law. The private right of action included in the ADPPA covers both compensatory damages and attorneys’ fees. This will only encourage an increase in trivial lawsuits or time-consuming class action suits. Furthermore, the private right of action enforcement allows for varied judicial review. AFSA appreciates the importance of a national privacy standards. Under private right of action, however, states will eventually have different privacy protections based on their judicial interpretations. To avoid further fracturing national privacy laws and encouraging time-consuming, inconsequential lawsuits, the enforcement provision of ADPPA should be amended.

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

Finally, AFSA is concerned that the ADPPA's preemption exemptions would dilute the purpose of a federal standard for data security. While the ADPPA includes preemptions for many state laws, the numerous exemptions also included will only serve to further entrench the current patchwork system. Having an overarching preemption of all state data privacy laws will make great strides in increasing consumer confidence in the financial system. AFSA recommends that the ADPPA be amended to include this direct preemption in order to finally clarify the current unorganized and often confusing data privacy system.

AFSA is highly supportive of legislation that creates a federal standard of consumer privacy protection. Such legislation should ensure that financial institutions that already comply with strong data privacy and security requirements under the GLBA have a clear exemption. This will avoid inconsistent requirements and ensure that there is no interruption in data privacy for consumers. It must also have an enforcement system that works with appropriate state or federal regulators and prevents the possibility of improper interpretations of the law. Finally, the legislation should supersede all existing state laws on privacy and data security to finally implement strong and universal protections for consumer privacy. We urge the Committee to address these concerns before moving forward with this legislation.

Thank you for the opportunity to comment, and please feel free to contact me at 202-776-7300 or cwinslow@afsamail.org with any questions.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association