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National Association of Federally-Insured Credit Unions

June 13, 2022

The Honorable Janice D. Schakowsky
Chairwoman
Committee on Energy and Commerce
Subcommittee on Consumer Protection
and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Gus M. Bilirakis
Ranking Member
Committee on Energy and Commerce
Subcommittee on Consumer Protection
and Commerce
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing, "Protecting America's Consumers: Bipartisan Legislation to Strengthen Data Privacy and Data Security"

Dear Chairwoman Schakowsky and Ranking Member Bilirakis:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) ahead of tomorrow's hearing, "Protecting America's Consumers: Bipartisan Legislation to strengthen Data Privacy and Data Security." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 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 harms in a meaningful way.

NAFCU looks forward to working with the Subcommittee and those in industry to address these concerns with consumer privacy. In particular, any federal privacy legislation must be operationally workable for small- and medium-sized businesses like credit unions. We would urge you to work collaboratively with

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other interested Committees in the House to find a package that can advance and receive bipartisan support.

On behalf of our nation's credit unions and their more than 130 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 Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at 703-842-2836 or jrelfe@nafcu.org.

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 Subcommittee on Consumer Protection and Commerce