



**Testimony of Penny Lee
President and Chief Executive Officer
Financial Technology Association**

**Before the
U.S. House Financial Services Subcommittee on Financial Institutions and Monetary Policy
hearing on**

**"Revamping and Revitalizing Banking in the 21st Century"
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Chairman Barr, Ranking Member Foster, and members of the Subcommittee, thank you for the opportunity to testify today on modernizing U.S. financial data privacy requirements and other financial services expectations. My name is Penny Lee, and I am the President and Chief Executive Officer of the Financial Technology Association, a trade association representing industry leaders shaping the future of finance. FTA champions the power of technology-centered financial services and advocates for the modernization of financial regulation to support access, inclusion, and responsible innovation. Its members include consumer and business financial services providers, domestic and international payments companies, data aggregators, Buy Now Pay Later providers, earned wage access providers, AI-driven credit underwriting solutions, income verification providers, digital investment advisors, and low-cost investment platforms.

FTA believes that consumer choice, trust, and protection is the cornerstone of financial services and supports efforts to modernize financial institution data privacy expectations to create a clear, consistent, and uniform federal privacy standard that preempts the patchwork of state privacy laws while satisfying consumer needs and expectations, safeguarding consumer data, and comporting with broader societal objectives and other legal requirements. Modernizing financial data privacy expectations will ensure a level playing field amongst all financial services participants, enhance consumer rights and ensure that privacy and security expectations account for the digital age.

Introduction

Technology is changing how consumers interact with their finances, a notable departure from when the Gramm-Leach-Bliley Act (GLBA) was enacted in 1999. According to a recent Harris poll, eight in ten American consumers used fintech to manage their money in 2022, half of Americans use fintech apps to manage their finances daily, and nine in ten consumers (93%) say they benefit from using fintech tools. Ultimately, fintech saves people time (93%) and money (78%), helps them make better financial

decisions (73%), and reduces financial stress (71%).¹ When GLBA was enacted, consumers primarily conducted financial business in a bank branch; today, they expect to manage their finances on their mobile phone or via the internet. Therefore, it is crucial that the U.S. statutory and regulatory framework that applies to financial services keeps pace with these developments in a manner that is consumer-centered and risk-focused while encouraging innovation.

Privacy and the Future of Fintech

Financial technology firms are leveraging internet, cloud, and mobile technologies to offer customers access to credit, new payment options, savings, and financial advisory services that can significantly reduce costs, speed access to capital, improve transparency and convenience, enhance financial access and inclusion and support consumer empowerment. These firms are currently subject to numerous data collection, privacy, and security requirements. Some examples include the Fair Credit Reporting Act, which is focused on assessing creditworthiness and related matters, and the Bank Secrecy Act, which requires financial institutions to know their customer and monitor for suspicious activity.

FTA members comply with various privacy laws, including GLBA, which we believe applies to fintechs, including third-party data portals, thereby establishing a national framework for financial data privacy. Proper use of consumer financial data is the future and underpinning of a more fair, accessible, and empowering financial system capable of better serving all American consumers and small businesses. As GLBA was enacted before the advent of digital financial services, it is important for the statutory framework to keep pace with business and technology developments as well as consumer expectations.

With the above in mind, FTA strongly supports comprehensive federal data privacy legislation that safeguards consumer privacy expectations and provides consumers and industry with certainty regarding regulatory requirements. Furthermore, we believe it should enable pro-consumer innovation in financial services based on the seamless flow of consumer-permissioned data and create uniformity regarding such regulation at the national level. Federal legislation can also clarify and reinforce the role of various federal agencies (e.g., the Consumer Financial Protection Bureau and Federal Trade Commission) and states' role by preempting the various state privacy laws. Modernizing federal financial data privacy rights to account for present-day consumer expectations (e.g., providing the right to delete wherever the data is) and the digital nature of today's financial services is timely given the broader discussion on privacy rights occurring in the United States and around the globe.

Preemption is a key component of any privacy bill as multiple, differing state requirements are already creating consumer confusion related to individual data rights while posing complex compliance challenges, given that digital commerce seamlessly operates across state borders.² While only a few states

¹ See "Plaid's 2022 Consumer Survey: The Fintech Effect" (Oct. 18, 2022) *available at* <https://plaid.com/blog/fintech-effect-report-2022/> and "The Fintech Effect: Fintech's Mass Adoption Moment" (Oct. 12, 2021) *available at* <https://plaid.com/blog/report-the-fintech-effect-2021/>.

² According to ITIF, "State privacy laws could impose out-of-state costs of between \$98 billion and \$112 billion annually. Over a 10-year period, these out-of-state costs would exceed \$1 trillion. Small businesses would bear \$20–23 billion of this out-of-state burden annually." See Information Technology & Innovation Foundation, "The Looming Cost of a Patchwork of State Privacy Laws," (January 24, 2022) *available at* <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws/>.

have enacted privacy legislation, according to Technet³, 133 privacy bills have been introduced in 43 states since 2018, which, if enacted, could pose unique compliance challenges. However, all of the state privacy bills passed include exemptions for GLBA entities or covered data. Therefore, inclusion of preemption in a financial data privacy bill would simply be in line with what the states have already done. We believe Congress is best situated to rationalize the various statutes, modernize financial data privacy requirements, holistically protect consumers, and provide businesses with the certainty they need regarding privacy and data security requirements.

Furthermore, FTA believes that consumers are entitled to high levels of data stewardship from companies when sharing their personal financial information, whether sending money to a family member through an app or accessing digital investment advice. With this in mind, we recently published data privacy principles that reflect FTA members' values of promoting consumer trust and transparency and improving financial services. We also believe these principles should inform any federal legislation. They include (i) full transparency regarding how data is collected and used, (ii) consumer control of personal data, (iii) provider use of data for stated and transparent purposes, as would be consistent with data minimization principles, (iv) plain language disclosures, and (v) nondiscrimination.⁴

As consumer expectations and use of financial services have changed, it is important to assess whether current data privacy and security requirements address present-day needs. Open banking empowers consumers to have greater control and ownership of their data while allowing them to seek improved financial services and products. In practice, this means that one friend can seamlessly send another money for dinner by connecting their bank account to a payment app, a working mom can use personalized financial dashboards to manage her family's budget better, and a small business can seamlessly use traditional and non-traditional data to obtain credit. For the unbanked and underbanked, as well as others not well-served by traditional banking models, fintech innovators provide crucial services to ensure they can pay their bills on time, manage their finances, and save for the future.⁵

As you are aware, the CFPB recently released its "Outline of Proposals and Alternatives Under Consideration" related to its rulemaking to implement Section 1033 of the Dodd Frank Act, and we applaud the Bureau's commencement of the Section 1033 rulemaking process.⁶ In our letter, we recommend that the CFPB (i) focus on consumer-centric implementation; (ii) avoid anti-competitive behavior by those holding the data; and (iii) leverage existing frameworks and technologies, where

³ See Technet, "With Data Privacy Week Winding Down, TechNet Sets the Stage for Progress on Federal Privacy Legislation in 2023," (January 27, 2023), available at <https://www.technet.org/media/with-data-privacy-week-winding-down-technet-sets-the-stage-for-progress-on-federal-privacy-legislation-in-2023/>.

⁴ See Financial Technology Association, *FTA Privacy Principles for the Future of Finance*, available at <https://www.ftassociation.org/fta-privacy-principles-for-the-future-of-finance/>.

⁵ A different survey of consumers found that 77% would value having their financial institution offer them personalized financial advice based on open banking financial data; and 94% would want their financial institution to use financial data to advise them about a better deal on a product. See MX, *The Ultimate Guide to Open Banking*, available at <https://www.mx.com/assets/resources/ult-guides/ultimate-guide-to-open-banking.pdf>.

⁶ See Consumer Financial Protection Bureau, "Small Business Advisory Review Panel for Required Rulemaking on Personal Financial Data Rights – Outline of Proposal and Alternatives Under Consideration," (October 27, 2022) available at https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf.

possible.⁷ In line with our third recommendation, we argue that the GLBA is, and therefore should serve as the open banking data security framework and that compliance with this framework should satisfy any related security requirements under Section 1033 while avoiding confusion, duplication, or uncertainty resulting from additional requirements. Updating the statute should not impede this conclusion and should directly ensure a level playing field for all financial services participants. As the Committee's draft legislation continues to evolve, FTA looks forward to working collaboratively to improve the legislation and remains hopeful it will align with the foregoing principles.

Fintech Regulatory Expectations⁸

More broadly, it is important to note that fintechs are subject to robust oversight by state and federal financial regulators. They comply with a range of laws designed to protect customers and ensure the safe and sound operations of financial institutions. In particular, they are subject to the same activities-based and entity-based regulatory frameworks that govern the entire U.S. financial services industry. Furthermore, to the extent that a fintech serves as a vendor or technology provider to a chartered bank or financial institution, the fintech is subject to third-party risk management requirements, which require the chartered institution to oversee their partners and ensure compliance with all applicable laws and regulations.

In many instances, non-bank fintechs that directly provide certain financial services to consumers and small businesses must secure state-based licenses. State regulators conduct examinations, impose capital and liquidity requirements, and define permissible investments. Generally, these licensed, non-bank fintech firms are also subject to the same consumer protection laws as banks.

However, it is important to note that while discussing financial regulation broadly, the U.S. is behind the rest of the world in several key respects. For example, the UK and Europe have adopted open banking frameworks, and many countries are ahead of the U.S. regarding access to central bank payment rails.⁹ In the U.S., regulators have left an opening for payment companies to obtain access, but it remains to be seen whether payment companies will be granted access in practice.¹⁰ We believe that access will lower

⁷ See Financial Technology Association, “FTA Comment on the CFPB’s Outline of Proposals and Alternatives Under Consideration Related to the Rulemaking on Personal Financial Data Rights,” (January 25, 2023) *available at* <https://www.ftassociation.org/wp-content/uploads/2023/01/FTA-1033-SBREFA-Comment-Letter-vF.pdf>.

⁸ For more information on fintech regulatory expectations see FTA’s 2022 report, “Fintech Regulation, Explained – Modernizing Financial Policy to Drive Inclusion and Innovation,” *available at* https://www.ftassociation.org/wp-content/uploads/2022/03/FTA_Fintech-Regulation-Explained_Compressed.pdf.

⁹ For example, the UK allows non-bank payment companies to directly access its Faster Payments Scheme and to obtain a settlement account at the Bank of England and the EU, Canada, Singapore, and Japan are all launching or announcing similar initiatives that contemplate fintech participation. *See* Bank of England, *First non-bank payment service provider (PSP) directly accesses UK payment system* (Apr. 18, 2018), *available at* <https://www.bankofengland.co.uk/news/2018/april/non-bank-psp-access-to-the-payments-systemannouncement>. *See also* Bank for International Settlements, Financial Stability Institute, *Policy responses to fintech: a cross-country overview* (Jan. 2020), *available at* <https://www.bis.org/fsi/publ/insights23.pdf>.

¹⁰ As a recent Treasury report noted, “The Federal Reserve has issued guidance on how non-bank firms might qualify, meaning that continued attention is warranted as such firms—utilizing direct access to payment rails—could have an impact on competition amongst payments providers as well as payments networks.” *See* U.S. Department of the Treasury Report to the White House Competition Council, *Assessing the Impact of New Entrant Non-bank Firms on Competition in Consumer Finance Markets*, (November 2022), p. 60, *available at* <https://home.treasury.gov/system/files/136/Assessing-the-Impact-of-New-Entrant-Nonbank-Firms.pdf>

customer costs, increase settlement speed, improve customer outcomes, and drive competition, based on members' experience in other countries. Ultimately, it is vital for the U.S. financial services framework to keep pace with developments abroad to maintain its competitive posture.

Conclusion

On behalf of FTA's 22 member companies, I appreciate the opportunity to engage with the Subcommittee today on modernizing federal financial data privacy requirements and other efforts. As described above, fintech innovations drive competition, access, and choice for consumers and small businesses, resulting in lower costs, enhanced convenience, and better financial outcomes. We believe that today's digital infrastructure enables consumers to plan and shape their financial tomorrow. To that end, we support policy efforts that prioritize regulatory frameworks that spur innovation while safeguarding consumers and look forward to working with the Subcommittee and other members of Congress on these issues.