



**Consumer Groups’ Statement for the Record
to the Subcommittee on Financial Institutions and Monetary Policy
of the U.S. House of Representatives Committee on Financial Services
regarding “Revamping and Revitalizing Banking in the 21st Century”
February 8, 2023**

Chair McHenry, Ranking Member Waters, and Members of the Committee on Financial Services:

Thank you for the opportunity to submit a written statement regarding the hearing entitled “Revamping and Revitalizing Banking in the 21st Century.” The National Consumer Law Center (on behalf of its low-income clients), Consumer Action, Consumer Federation of America, and U.S. PIRG have significant concerns about the Financial Data Privacy bill discussion draft, which is one of the bills being discussed today and would amend the Gramm-Leach-Bliley Act (GLBA). While claiming to strengthen GLBA and increase consumer protections, this bill actually would result in fewer rights for consumers, because it would deprive them of important – and enforceable – rights under state law.

The Financial Data Privacy bill deprives consumers of important rights by preempting stronger state laws. The bill rewrites Section 507 of GLBA to preempt any state or municipal law that regulates financial institutions with respect to (1) the collection and disclosure of nonpublic personal information and (2) data breach notifications. Thus, this provision would nullify laws such as the California Financial Information Privacy Act,¹ which unlike GLBA requires ***opt-in***, not opt-out, for sharing with nonaffiliated third parties, as well as the Illinois Biometric Information Privacy Act’s applicability to financial institutions.² The bill would also override state data breach notification laws, which all 50 states have adopted, with respect to financial institutions.

¹ Cal. Fin. Code §§ 4050 to 4060. The California Consumer Privacy Act also has data security provisions that are applicable to financial institutions and privately enforceable. Cal. Civ. Code § 1798.150

² 740 Ill. Comp. Stat. 14/1-14/99.

There are a number of states that have data breach notification laws that are stronger than GLBA. For example, the breach notification provisions issued under GLBA by the banking regulators do not require depository institutions to send a notification if they determine that misuse of the information is not “reasonably possible.”³ Several states do not have this exception in their breach notifications laws.⁴ More critically, the Federal Trade Commission’s Safeguards Rule issued under GLBA does not even require the non-depository institutions under its coverage to send breach notifications to consumers at all.⁵

Other stronger provisions of state laws include:

- California’s law has specific formatting and informational requirements.⁶
- Several state laws require businesses to provide free credit monitoring if the breach involved a Social Security number.⁷
- Most importantly, many of these state laws allow consumers to seek redress in court if a business does not comply with the law’s requirements.⁸

This last right is especially important because one of GLBA’s fundamental problems is that it lacks a private remedy for consumers to enforce the Act when their rights are violated. Thus, for states with private remedies, this bill will strip consumers of their right to seek legal redress, leaving them powerless when financial institutions unlawfully share or sell their information.

Thank you for your consideration. If you have any questions about this statement, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

³ See Supplement A to 12 C.F.R. Appendix B to Part 30—Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (OCC version). There are parallel cites to the same Interagency Guidelines for the other banking regulators.

⁴ See, e.g., Cal. Civ. Code § 1798.82; Ga. Code Ann. § 10-1-912; 815 Ill. Comp. Stat. § 530/20, Mass. Gen. Laws ch. 93H, §3A.

⁵ FTC Safeguards Rule, 16 C.F.R. part 314. The FTC has recently proposed adding a requirement for the institutions under its jurisdiction to provide a notification to the Commission itself, but not to consumers. 86 Fed. Reg. 70062 (Dec. 9, 2021).

⁶ Cal. Civ. Code § 1798.82.

⁷ See, e.g. Del. Code Ann. tit. 6, § 12B-102; D.C. Code §§ 28-3851 to 28-3853; Mass. Gen. Laws ch. 93H, §3A; N.Y. Gen. Bus. Law § 899-aa; Tex. Bus. & Com. Code Ann. § 521.053.

⁸ See, e.g., Alaska Stat. § 45.48.080; Cal. Civ. Code § 1798.82; Haw. Rev. Stat. § 487N-3; 815 Ill. Comp. Stat. § 530/20; La. Stat. Ann. § 51:3075; Md. Code Ann., Com. Law § 14-3508; Mass. Gen. Laws ch. 93H, §3A; N.H. Rev. Stat. Ann. § 359-C:21; N.C. Gen. Stat. § 75-65; Or. Rev. Stat. § 646A.604; S.C. Code Ann. § 39-1-90; Tenn. Code Ann. § 47-18-2107; Wash. Rev. Code § 19.255.040. Cf. Va. Code Ann. § 18.2-186.6.