

June 23, 2022

The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer Protection &
Commerce
Washington, DC 20510

The Honorable Gus Bilirakis
Ranking Member
Subcommittee on Consumer Protection &
Commerce
Washington, DC 20510

Dear Chair Schakowsky and Ranking Member Bilirakis:

On behalf of the Electronic Transactions Association (ETA), we're pleased to share our views on H.R. 8152, a bill which we have concerns about if it were considered by the Subcommittee during the June 23, 2022 markup.

ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing approximately \$22.5 trillion annually in purchases worldwide and deploying payments innovation to merchants and consumers.

H.R. 8152, the American Data Privacy and Protection Act (ADPPA)

ETA and its members support U.S. and international efforts to strengthen privacy laws in ways that help the industry combat fraud and help consumers understand how their data is being used. As lawmakers and regulators explore additional ways to protect consumers, it is critical that the government coordinates with the payments industry to combat fraud and cybercrime so that all consumers have access to safe, convenient, and affordable payment options and other financial services.

A robust financial system is integral to the economy because it enables the fundamental functions of economic activity, including connecting borrowers with savers, facilitating investments, processing payments, and safekeeping financial assets. For the U.S. financial system to remain competitive in the global economy, the U.S. must continue to prioritize consumer protection, safety, and reliability, while also continuing to lead in innovation.

However, ETA has concerns with two provisions within the ADPPA: the uniform national standard and private right of action.

Uniform National Standard

The ADPPA would preempt state privacy laws except for a long list of excluded laws and topics, including the Illinois Biometrics Information Privacy Act, part of the California Privacy Rights Act, and broad topics such as facial recognition, data breach notification, and more. But the ADPPA would also exclude several states, such as Virginia, Utah, Colorado, and Connecticut, that have recently passed their own state privacy laws.

ETA believes the list of exclusions is lengthy, which fundamentally undermines the purpose of a uniform national standard (i.e., to have uniform laws to reduce compliance costs and simplify rules for consumers) especially on topics like data breach notification where every state already has a law and needs be much broader to be effective. By providing consumers and businesses with consistent protections through an established, uniform law, consumers and businesses will benefit. Enacting a federal uniform national standard will provide certainty and consistency to businesses and consumers alike without requiring them to navigate the patchwork of state laws. A uniform national standard — that is the ceiling — would also

reduce the complexity and costs associated with the compliance and enforcement issues resulting from a patchwork of laws.

Private Right of Action

The ADPPA includes strong enforcement measures, allowing the Federal Trade Commission (FTC) as well as state attorneys general to bring action against any data holders violating provisions in the Act. But the legislation also creates a limited private right of action. The ADPPA would allow individuals to bring civil actions seeking compensatory relief or injunctive relief against data holders starting four years after the act goes into effect.

While the drafters have clearly attempted to construct a narrow private right of action, the fact remains that the ADPPA could still leave open the door for expensive, frivolous lawsuits. Indeed, since the only lawsuits individuals would be proceeding with under the ADPPA are those that neither the FTC nor any attorney general decides to pursue, these are likely to be meritless.

To protect consumer rights and provide responsibility, ETA believes enforcement needs to be consistent and coordinated between the federal government and the state's regulatory body. There should be collaboration between the FTC and state attorneys general not only for enforcement but also to avoid duplicate or conflicting enforcement actions. This could also be accomplished by providing the FTC with limited rulemaking and civil penalty authority. However, a federal privacy law should not provide monetary relief in the form of a private right of action for privacy enforcement.

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The payments industry never rests — we are working tirelessly to fight fraud and protect consumers by developing new tools to prevent or identify fraud data analysis as well as by frequently introducing new fraud-fighting solutions. Privacy laws should continue to recognize these goals and the important role the payments industry plays in combating fraud. By working together, lawmakers, regulators, and industry participants can protect consumers while providing them with access to the safest and most convenient payments system in the world.

ETA would like to thank the Subcommittee for this opportunity to provide this statement for the record on this important topic and we look forward to working with you to address our concerns. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott, at stalbott@electran.org

Sincerely,



Jeff Patchen
Director of Government Affairs
Electronic Transactions Association

