



Statement on Behalf of the Independent Insurance Agents & Brokers of America

Before the Committee on Financial Services Subcommittee on Financial Institutions and Monetary Policy United States House of Representatives

February 8, 2023

The Independent Insurance Agents & Brokers of America (IIABA) is the nation's oldest and largest national association of insurance agents and brokers. The hundreds of thousands of agents and insurance professionals we represent operate from more than 25,000 business locations and offer all types of insurance – property, casualty, life, health, employee benefit plans, and retirement products – from a wide variety of insurance companies.

It has been nearly 25 years since the enactment of the Gramm-Leach-Bliley Act (GLBA) and the establishment of comprehensive privacy requirements for financial institutions (including insurers and insurance agencies) that remain in place today. Among other things, GLBA required financial entities to disclose their information-sharing policies and procedures and to inform consumers of their ability to prevent the sharing of nonpublic personal information with certain nonaffiliated third parties. The historic law adopted a framework that appropriately empowered the various functional financial services regulators to implement and enforce the privacy protections and requirements outlined in the code.

Although the GLBA privacy framework has been successful and modest revisions have been made in the ensuing years, we recognize and appreciate the desire of subcommittee and committee members to more thoroughly revisit these issues and consider more robust modifications. Privacy is important to our members and the consumers they serve, and we welcome the opportunity to be part of the important public policy discussions of this issue that will occur in the weeks and months to come. Our members utilize the nonpublic personal information of customers to address their insurance needs and share it when necessary to provide products and services to those consumers, and we do not object to reasonable and thoughtfully crafted enhancements in this area.

As the subcommittee and full committee begin their work on privacy legislation, we are pleased to offer the following initial comments and suggestions:

Implementation of GLBA's Requirements in the Insurance Industry

GLBA adopted a framework in which the various functional financial services regulators implement and enforce the privacy requirements established by Congress. Any new federal privacy legislation and heightening of requirements for the financial services world should rely on the existing GLBA structure, which means state insurance regulators would remain responsible for the implementation of the law and the adoption of any needed sector-specific guidance within the insurance industry. This common-sense approach has worked well for many years, and there is no public policy rationale for abandoning it now.

Enforcement

The draft proposal shared with the public in advance of the hearing indicates that enforcement provisions are to be added at a future time, but there is no reason to significantly alter the law's existing enforcement mechanism. The various functional financial services regulators have implemented the GLBA privacy framework and enforced its requirements for more than two decades, and any amendments made to Title V should rely on and not unnecessarily replace this longstanding and successful enforcement approach.

Some have suggested fundamental changes to the existing GLBA framework that would make a financial institution strictly liable for the amount of any damages that arise if nonpublic personal information is obtained and used to gain unauthorized access to a consumer's account. Creating such a private right of action is unnecessary and counterproductive, and the effects possibly fall hardest on small and medium-sized enterprises that could be forced to close operations as a result. Enforcement of the privacy requirements contained in GLBA should remain in the hands of the appropriate functional regulators.

Scope of Information Subject to GLBA's Protections

GLBA's requirements and protections address the handling and use of "nonpublic personal information," and that term essentially applies today to information that can be used to identify an individual. Revisions to this very important definition should be considered carefully, and we would be concerned, for example, with any expansion that would include information that cannot be linked to particular individuals.

Consumer Ability to Opt Out of Information Sharing

GLBA prohibits a financial institution from sharing nonpublic personal information with most nonaffiliated third parties unless the consumer is given the opportunity to opt out of such disclosure. The statute also recognizes, however, that there are instances in which such sharing is necessary in order to provide a product or service requested by a consumer or for similar purposes, and it accordingly provides a series of narrow exceptions from the opt out requirement. As the subcommittee and full committee consider revisions to the law, we urge them to ensure that the privacy framework remains clear, objective, and workable and allows consumer data to be used and shared when necessary to provide requested financial products and services to consumers.

Impact on Small Businesses

IIABA urges the subcommittee and full committee to consider the unique impact that changes to the GLBA privacy framework and any related guidance adopted by regulators will have on small businesses, and we greatly appreciate that the discussion draft recognizes the need to consider the compliance burdens that fall on such institutions. The subcommittee and full committee may wish to also consider whether limited exemptions from certain new requirements should be available to small institutions. Additionally, we urge you to avoid prescriptive requirements

(such as mandates that privacy notices or other required disclosures be provided in specific formats) that could be especially costly and burdensome for small businesses.

Establishment of New Consumer Rights

The discussion draft would provide consumers with greater control over the information maintained by financial institutions, including the ability to gain access to nonpublic personal information and to demand its deletion. The proposed addition of these rights may seem innocuous and noncontroversial, but it is critically important that these provisions be crafted in a practical and workable manner that does not have unintended effects or improperly interfere with the delivery of financial products and services that have been requested by consumers.

With regard to the proposed right to access one's information, it would be incredibly challenging for a small financial institution to produce every data point that an entity possesses about a particular consumer (especially if the definition of "nonpublic personal information" is also expanded). A better solution may be for financial institutions to be required to disclose a "description" or "summary" of the information maintained. In addition, we also recommend that the proposed addition of Section 502A(a)(3) in the discussion draft be revised so that the referenced requirements would not apply pursuant to any exception described under section 502(e).

As the subcommittee and full committee consider the inclusion of a right to delete one's information, we respectfully suggest that such a right should not be absolute and note that financial institutions often have legitimate and extremely important reasons for maintaining consumer information. To best serve customers, a financial institution needs such information when it is providing a product or service to a consumer, and maintaining records is also necessary in order to respond to insurance claims or litigation that may subsequently arise. The discussion draft recognizes the need to maintain information in certain instances and appropriately provides that the right to delete would not apply when nonpublic information is being used for a purpose described in GLBA Section 502(e).