



The Honorable Cathy McMorris Rodgers
Chairwoman
House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
House Committee on Energy & Commerce
2322 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gus Bilirakis
Chairman
Subcommittee on Innovation, Data, & Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Innovation, Data, &
Commerce
2322 Rayburn House Office Building
Washington, D.C. 20515

April 16, 2024

Dear Chairwoman McMorris Rodgers, Ranking Member Pallone, Chairman Bilirakis, and Ranking Member Schakowsky:

The undersigned insurance trade associations commend the Energy and Commerce Committee for its interest in pursuing comprehensive legislation that will protect the privacy of consumers and establish a national data privacy standard. The insurance industry has a long history of protecting the privacy interests of its consumers and believes that all industries should do so. We commend the committee's recognition of the importance of small business and applaud the exemption included in the draft. There are many sectors of the American economy that are currently subject to little or no nationwide privacy regulation and it is appropriate for the Congress to consider the extent to which consumers in those sectors could benefit from thoughtful and reasonable regulation.

While the committee's consideration of the American Privacy Rights Act (APRA) discussion draft can foster a constructive discussion of many key privacy issues, we have significant concerns about the practical impact the legislation will have on both consumers and businesses. For this reason, the undersigned organizations representing a majority of the property/casualty insurers, reinsurers, agents, and brokers urge the committee to move cautiously and deliberately in its path forward.

The financial services industry, including the insurance industry, was the first sector of the economy to come under comprehensive nationwide privacy regulation. When the Gramm-Leach-Bliley Act (GLBA) was enacted more than 20 years ago, it established a regulatory framework for protecting the privacy of nonpublic personal information of financial services consumers. That framework is appropriately and effectively enforced for insurers, reinsurers, agents, and brokers by state insurance regulators. While privacy is not an industry-specific issue, state insurance regulators are familiar with the insurance industry and the unique aspects of the sector, how privacy laws impact that model, and the potential unintended consequences for insurance consumers that could result from privacy regulation that is not



appropriately tailored to their needs. It was in recognition of this treatment and expertise that Congress wisely delegated enforcement of the GLBA Title V privacy provisions to state insurance regulators.

Consumer complaints are taken very seriously in the insurance industry and regulatory community. Every state insurance department has a market conduct program that examines and monitors insurers' business practices, including privacy compliance, with any issues resolved promptly in the course of regulatory market conduct examinations. A key tenet of the state-based system of insurance is consumer protection, and compliance with the regulatory framework is strictly enforced by the nearly 11,000 individuals employed by state insurance departments across the country.

For this reason, state legislatures that have recently enacted privacy laws of general applicability have included a form of GLBA exemption. State policymakers have taken this approach because they are primarily focused on businesses and sectors of the economy that are not yet subject to a meaningful privacy framework and because they know insurance regulators, working under the GLBA framework, are actively protecting insurance consumers. In short, state legislatures have decided not to fix what is not broken. We encourage the committee to follow their wise example and clearly exempt insurers, agents, and brokers from the scope of the APRA. We welcome the opportunity to work with the committee in crafting an exemption for entities subject to GLBA that will ensure that the existing, successful insurance privacy regulatory system is not disturbed and that insurance providers are not inadvertently subjected to multiple privacy frameworks.

We are also alarmed about the presence in the bill of a broad and expanded private right of action as well as the elimination of arbitration. In our experience, private rights of action often turn out to be less valuable to consumers than intended. The United States already suffers from being an overly litigious society, and this provision threatens to exacerbate the problem for consumers. The costs of the U.S. tort system to businesses and families currently amounts to approximately \$450 billion per year, which equates to thousands of dollars on an annual per-person basis and over two percent of Gross Domestic Product. This costs consumers, and plaintiffs, much more than it protects them. A private right of action in the APRA will contribute to the already rapidly increasing claims costs for insurers, which in turn could have downstream effects on the economy through higher prices. We believe it is much better for the government to enforce privacy laws; this would mean consistent interpretation and implementation leading to a more stable privacy landscape for businesses and consumers. For this reason, we oppose the passage of any federal privacy bill that contains a broad private right of action such as the one in the APRA.

In addition, we would be remiss if we did not address the thoughtful privacy-related work of the House Financial Services Committee. Chairman Patrick McHenry's Data Privacy Act, H.R. 1165, advanced out of that committee in February 2023. It modernizes GLBA and is largely workable for the insurance industry and, most importantly, for consumers. It contains meaningful preemption, retains enforcement responsibility for the insurance industry in the capable hands of functional state regulators, and excludes a harmful private right of action. We urge the Energy and Commerce Committee to collaborate with



Chair McHenry to appropriately account for his committee's work in this space and any jurisdictional matters.

While there are other aspects of the draft APRA that trouble us, the two we have highlighted above are of the most immediate concern to insurers, agents, and brokers. Again, we commend the committee for its interest in this important issue, and we pledge to be of assistance to help make the bill achieve its intended goal in an appropriately targeted way.

Sincerely,

National Association of Mutual Insurance Companies (NAMIC)

American Property Casualty Insurance Association (APCIA)

Independent Insurance Agents & Brokers of America (Big "I")

Reinsurance Association of America (RAA)

The Council of Insurance Agents & Brokers (CIAB)