



February 27, 2023

The Honorable Patrick McHenry
Chairman
U.S. House Committee on
Financial Services

The Honorable Maxine Waters
Ranking Member
U.S. House Committee on
Financial Services

The Honorable Andy Barr
Chairman
Financial Services Subcommittee on
Financial Institutions and Monetary Policy
4340 O'Neill House Office Building
Washington, DC 20515

The Honorable Bill Foster
Ranking Member
Financial Services Subcommittee on
Financial Institutions and Monetary Policy
4340 O'Neill House Office Building
Washington, DC 20515

RE: Markup of H.R. 1165, the Data Privacy Act of 2023

Dear Chairman McHenry, Ranking Member Waters, Chairman Barr, and Ranking Member Foster:

The Main Street Privacy Coalition (“MSPC”) appreciates this opportunity to provide our thoughts on H.R. 1165, the “Data Privacy Act of 2023,” which is being marked up by the Committee on February 28.

The MSPC is comprised of a broad array of 19 national trade associations that together represent more than a million businesses – a broad array of companies that line America’s Main Streets. From retailers to Realtors®, hotels to home builders, grocery stores to restaurants, gas stations to travel plazas, and self-storage to convenience stores, including franchise establishments, MSPC member companies interact with consumers day in and day out. Our members’ businesses can be found in every town, city and state in our nation, providing jobs, supporting our economy and serving Americans as a vital part of their communities. Collectively, the industries that MSPC trade groups represent directly employ approximately 34 million Americans and constitute over one-fifth of the U.S. economy by contributing \$4.5 trillion (or 21.8%) to the U.S. gross domestic product.¹

Main Street businesses share information back and forth with financial services businesses millions of times per day. In order to make privacy legislation work for consumers and businesses, then, Main Street and the financial sector must have equivalent privacy rules. If they don’t, then a business may be required to take an action that it cannot complete because another business that controls that data or process is not subject to the same requirement. This would leave some businesses on the hook for liability for things they can’t do while also leaving consumers’ privacy less protected than they expect.

¹ Information on the MSPC including a full list of its members can be found at <https://mainstreetprivacy.com/about/>.

Differences between the Financial Data Privacy Bill and the American Data Privacy and Protection Act (ADPPA), which the Energy & Commerce Committee considered during the last Congress, risk creating those inconsistencies. For example, while the ADPPA requires businesses it covers to correct inaccuracies in the consumer data they have upon request, the Financial Data Privacy Bill does not. So, if a financial institution is needed to fully correct consumer data, the Main Street business could be sued under the ADPPA's current provisions even though it could not require the financial institution to correct the data. There are several other differences which should be resolved one way or the other to make the bills consistent.

Importantly, the ADPPA subjects Main Street businesses to the potential for litigation from anyone who thinks they might not be operating consistent with its requirements. The Financial Data Privacy Bill does not. Of course, this means that when consumers have privacy concerns, they will sue Main Street businesses – because that is who they are able to sue – regardless of who might have been ultimately responsible for the alleged privacy violation.

We would also note that the inclusion of commercial businesses in the bill's definition of "data aggregator" raises significant concerns. Millions of commercial businesses accept consumer financial information (such as credit and debit card numbers) in order to get paid for their goods and services. The current definition risks sweeping all of those businesses into the term "data aggregator" which could subject those millions of businesses to regulation under the Gramm Leach Bliley Act, and potentially take those businesses out of the jurisdiction of the Energy & Commerce Committee. While we do not think that is the intended result, we urge the Committee to amend the bill to revise the definition of data aggregator to ensure that Main Street businesses are not considered to be a data aggregator under the committee's Data Privacy Act.

We are pleased that this Committee and the Energy & Commerce Committees are making efforts to pass privacy legislation to establish uniform national standards. As the process moves forward, we want to work with both committees to ensure the bills are harmonized in a way that ensures they are consistent and do not cause unwarranted liability on any sector for privacy practices that another sector controls, and that consumer privacy is appropriately protected based upon the sensitivity of the data that different businesses collect and handle.

Thank you for your consideration of our views and we look forward to working with you throughout the legislative process.

Sincerely,

Main Street Privacy Coalition

cc: Members of the U.S. House of Representatives Committee on Financial Services