



The Cypress Group

March 15, 2019

The Honorable Mike Crapo, Chairman  
The Honorable Sherrod Brown, Ranking Member  
United States Senate Banking Committee  
538 Dirksen Office Building  
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown,

I write on behalf of the Insurance Coalition, a group of like-minded insurance companies who share a common interest in federal insurance regulation. We are writing in response to your request for feedback on data privacy, protection and collection.

### **Background and Core Principles**

The Insurance Coalition includes a diverse group of insurance companies in the property and casualty and life insurance industries, both small and large, and domestic and international. As such, we believe that we are well positioned to provide a unique perspective on this issue. As insurance companies, we value our relationship with our policyholders extremely highly and believe that trust is a critical component of our business model. Our policyholders deserve to understand how their data is being used, and financial institutions have a responsibility to protect consumer information from data breaches and other misuse.

Insurers are also uniquely positioned among financial institutions by virtue of our regulatory framework. As you know, insurance is primarily regulated at the state level. In addition to state laws and regulations and state department of insurance cybersecurity examinations, insurers are also subject to a myriad of overlapping regulations and examinations by other regulators, including the SEC and FINRA, among others.

As noted in greater detail below, we support federal legislation that would provide for robust consumer protections, increase harmonization among various regulators and, to the fullest extent possible, eliminate overlapping and duplicative standards. We also distinguish between data privacy (the right of consumers to control how their information is being used by third parties), data security (the obligations of financial institutions and other companies to secure consumer data) and data breach notification standards (the obligations of financial institutions and other companies to notify consumers in the event that their data has been improperly accessed).

In our view, the best way to achieve consumer protection is through strong federal preemptive laws that addresses each of these issues - data privacy, cybersecurity, and data breach notification requirements. In our view, such legislation should establish robust consumer protections standards via a federal preemptive “ceiling.”



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Our core principles in assessing any legislative framework are (1) such a framework should adequately inform consumers of the use of their data and protect consumers from its misuse; and (2) to promote uniformity of consumer protection and avoid a regulatory patchwork, such a framework should preempt state law and provide a “ceiling” rather than a “floor.”

### **Support for a federal data privacy, data security, and data breach notification standard**

Because the questions posed in your request for input are highly intertwined, our below response addresses several simultaneously and holistically. We will provide additional input and detail on individual questions as our policy-setting process continues.

First, regarding data breach notification and data security, we support the general approach in H.R. 6743, legislation introduced last Congress by Rep. Luetkemeyer. That legislation would amend the Gramm-Leach Bliley Act and would implement a federal preemptive standard – specifically, the data security and data breach notification standards in 2001 and 2005 intra-agency guidance promulgated by federal financial regulators. While we support this approach, we believe that there are other substantive standards that would also be effective in protecting consumers and we look forward to continued conversation. Additionally, any federal data breach notification standard should also take into account the obligations of financial institutions to (i) conduct a reasonable investigation to determine likelihood of consumer harm and (ii) work with law enforcement in the investigation of criminal data breaches, which can appropriately affect the timing of notification to consumers and regulators. To that end, providing companies with a reasonable period of time to conduct an investigation to determine scope of the security incident and a delay to their notification obligations for security incidents reported to law enforcement, would be helpful as you develop legislative proposals.

Second, regarding data privacy legislation – the Insurance Coalition supports a strong federal preemptive data privacy standard. Because this issue is being driven in part by international and state developments and has less of a history in terms of federal legislation, we would greatly appreciate the opportunity to provide ongoing input as the Senate Banking Committee considers federal legislation. Additionally, the Insurance Coalition is still working to develop specific ideas regarding the content of a federal preemptive standard that results in a consistent and uniform approach.

Having said that, we can identify important features of federal data privacy legislation. Such legislation should provide robust consumer protections and should include notification to consumers regarding the use of their data, much like what is currently required under the Gramm-Leach-Bliley Act. Relatedly, any federal data privacy legislation should accommodate necessary business practices such as gathering information for insurance underwriting and sharing customer information among affiliates and service providers. These uses of consumer data are core to the business model of insurance and aid consumers by ensuring we can communicate across a company in processing a claim or



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updating personal information across business lines for a customer who has purchased more than one insurance product, for example.

### **Conclusion**

We greatly appreciate the opportunity to comment on these critical consumer issues. We support federal preemptive legislation that provides a strong federal “ceiling” and look forward to working with you on these issues in the weeks and months ahead.

Sincerely,

A handwritten signature in black ink that reads "Bridget Hagan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Bridget Hagan