



March 15, 2019

The Honorable Mike Crapo
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Sherrod Brown
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Ranking Member
Washington, D.C. 20515

Via submissions@banking.senate.gov

Dear Chairman Crapo and Ranking Member Brown:

Thank you for your efforts to gather information on the looming issues on data privacy and protection facing all American consumers. The recent well-deserved attention on data privacy and protection likely stems from (1) the recent spate of data breaches at large corporations, which has impacted the personal data of hundreds of millions of consumers, and (2) the rapid growth of the financial technology market that relies heavily on the availability and manipulation of consumers' private information.

Clear lessons have emerged. Corporations' voluntary data protection and privacy practices are insufficient to protect consumers from harm, provide very little to ensure accountability when harm occurs, and appear to lack tools to prevent future damage. It is also clear that consumers have little or no control over their personal data, including the use and security of their information. Moreover, state and federal government can and should do more to protect and empower consumers in the changing financial marketplace.

National Association of Consumer Advocates has joined with other consumer and privacy groups on a document that enumerates clear principles for privacy legislation that would help to safeguard consumers' information and ensure accountability and redress when their rights are violated.¹ We would like to highlight the following:

+ State and federal government should be actively engaged in protecting consumers after a data breach. "(L)egislation should empower state attorneys general and private citizens to pursue legal remedies, should prohibit forced arbitration, and importantly should not preempt states or

¹ Public Interest Privacy Legislation Principles,
https://newamericadotorg.s3.amazonaws.com/documents/Public_Interest_Privacy_Principles.pdf.

localities from passing laws that establish stronger protections that do not disadvantage marginalized communities.”²

+ Lawmakers should ensure that industry data practices are not only secure, but that they are also fair, transparent, and free of discriminatory effects on consumers and workers. Equal opportunity in housing, lending, health, and education, for example, should remain a crucial goal in the development of innovative products and services.

+ In the case of data breaches or other privacy violations, lawmakers should not exempt any key stakeholders from responsibility or liability for their roles in the privacy and financial technology ecosystem. Corporate entities, including banks and others who hold consumers’ data; entities that use their data to provide a service or product; and third parties who collect and circulate their data should all be held appropriately responsible for potential and future harm.

+ Consumers should have more control over their personal data, particularly in their transactions with banks, Fintech companies, and unknown third-parties such as data aggregators. Ideally, consumers should own their data. They should know how their personal data is being used and they should be able to consent to the collection of their data, as well as stop the collection, use, circulation, and storage of their data.³

+ Legislators should facilitate improved consumer awareness of the Fintech landscape, including the role of data aggregators, as well as their ties and responsibilities in the collection of consumers’ personal information.

+ The weak state of privacy protections calls for regulators’ vigorous enforcement of existing consumer laws, such as unfair deceptive acts and practices (UDAP) provisions available under the Federal Trade Commission Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Enforcement of consumer financial laws such as the Electronic Funds Transfer Act and the Fair Credit Reporting Act are also crucial to protecting against the misuse of consumers’ personal and financial data. Regulators should not exempt financial institutions from complying with these critical laws.

Although the issues within the Fintech and privacy landscape may appear complex, lawmakers should stick to a simple, straightforward principle: Ensuring that consumers’ rights and protections remain a top priority for all stakeholders.

Sincerely,

Christine Hines
Legislative Director
National Association of Consumer Advocates

² https://newamericadotorg.s3.amazonaws.com/documents/Public_Interest_Privacy_Principles.pdf.

³ Lael Brainard, *Where do Consumers Fit in the Fintech Stack*, Nov.16, 2017, <https://www.bis.org/review/r171127a.pdf>.