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February 27, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Re: Community Bank Perspective on Financial Data Privacy Act

Dear Chairman McHenry and Ranking Member Waters:

On behalf of the Independent Community Bankers of America and the nearly 50,000 community bank locations we represent, I write to offer the community bank perspective on the Financial Data Privacy Act. We thank you for beginning the process of reforming the laws that govern financial data privacy and recognizing the need for a uniform national standard that protects all consumers rather than the current patchwork of state laws. This effort is long overdue. While we support the goals and several provisions in the legislation, we look forward to working with you to address some community bank concerns as this important process moves forward.

The Act includes important provisions that will improve consumer privacy and accountability for data security for more entities that handle consumer data. These include:

- **Holding data aggregators responsible for ensuring the security of the consumer information they access and subjecting them to the same GLBA rules as traditional financial institutions.** ICBA supports privacy measures that hold all entities that handle nonpublic personal information to the same standards to which community banks and other financial institutions are held through the Gramm-Leach-Bliley Act (“GLBA”). The more entities that access and transfer bank data, the higher the probability of compromise. When a financial loss occurs through no fault of a community bank, a third party that has failed to secure consumer data must be held liable for any breach and resulting consumer harm. Too often, the breached entity evades accountability while community banks are left to mitigate damages to their customers.
- **Recognition of the burden on small financial institutions.** The bill directs agencies to take into account the compliance costs new privacy rules will impose on small institutions. ICBA strongly supports this provision and urges policymakers to consider the compliance burden imposed by additional disclosures and other new regulatory requirements.
- **A national privacy standard preempting the patchwork of state privacy laws.** The current patchwork of differing state privacy laws and requirements creates unnecessary cost and burden for community banks and other small businesses. A single national standard will ensure uniform

The Nation’s Voice for Community Banks.®

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consumer protection, simplify community bank compliance, and reduce inadvertent errors in the application of complex and sometimes conflicting laws.

- **Retention of current law enforcement.** ICBA appreciates that the Act preserves enforcement by a community bank's primary regulatory and does not include a private right of action of enforcement by state attorneys general.

Community Bank Concerns

Below we specify our outstanding concerns with the Act.

- **Addition of 501(c).** This provision would prohibit a financial institution from using any nonpublic information without the consent of the customer or consumer. This is a significant change from current law which requires notification and opt-out only from sharing data with third parties. 501(c) would create confusion among consumers and disrupt the efficient provision of financial services they rely on and have come to expect.
- **Deletion of data.** The Act would require community banks to give consumers the option to have their nonpublic personal information deleted. This is a far-reaching change fraught with unintended consequences for consumers who may not understand the implications. At a minimum, more exemptions are needed to make this provision workable and ensure that data necessary for the prevention of fraud, for example, are not inadvertently deleted.
- **Access to data aggregators.** The requirement that financial institutions offer access to data aggregators would entail a costly, wholesale reengineering of community bank systems. These efforts would come at the cost of efficient and effective service to consumers.
- **Unintended consequences of increased compliance expense.** Numerous provisions of the Act would create a substantial cumulative burden for community banks and other institutions in providing consumer notices and obtaining consent. While intended to increase consumer control over their data, the significant expense of compliance would ultimately reduce consumer access to critical financial services.

We urge you to carefully consider the concerns expressed above and look forward to further discussions of the details of this important bill.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

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