

June 26, 2024

The Honorable Cathy McMorris Rodgers, Chair, House Committee on Energy & Commerce
The Honorable Frank Pallone, Jr., Ranking Member, House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Rodgers and Ranking Member Pallone:

The Consumer Data Industry Association (CDIA)¹ applauds the committee's ongoing effort to reach a consensus on a national, comprehensive, preemptive privacy law via the American Privacy Rights Act (APRA). The sponsors have made great strides to address earlier concerns of CDIA's consumer reporting agency members, but the bill still presents concerns that could negatively impact consumers and the American economy.

As we have shared with the APRA's sponsors and the subcommittee, our members are consumer reporting agencies (CRAs) providing information services to, and for, the American economy. We are fully regulated under federal and state privacy laws, starting with the federal Fair Credit Reporting Act (FCRA). This Act is the nation's first national privacy law, passed in 1970. Our comments reflect our deep history of privacy regulation and our members' role in connecting consumers to the American economy.

Our APRA concerns relate to two areas:

1. The bill's data broker requirements are unnecessary and potentially harmful to consumers, businesses, governments, and nonprofits.
2. The private rights of action do not accurately depict the business transactions between third parties and consumers.

1. The bill's data broker requirements (Sec. 12) are not necessary and potentially harmful to consumers, businesses, governments, and nonprofits.

There are many types of data brokers and consideration of each should be part of a fulsome debate. Information services companies, considered "data brokers" under the bill's definitions, are integral to American commerce in verifying identities, authenticating consumers and preventing fraud and identity theft.

¹ The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers' access to financial and other products suited to their unique needs.

These companies help prevent fraud against government agencies, nonprofits, businesses, and the consumer while also aiding with law enforcement investigations, risk management, and insurance beneficiary location. The national benefits provided by these companies would be harmed by the APRA's "do not collect" requirement for data brokers, substantially hindering commerce and interfering with the socially beneficial uses noted above.

We are pleased the APRA recognizes the value of fraud prevention with limited exemptions:

- For nonprofits "whose primary mission is to prevent, investigate, or deter fraud or to train anti-fraud professionals, or educate the public about fraud, including insurance fraud, securities fraud, and financial fraud..." Sec. 101(13)(C)(vi).
- "To prevent, detect, protect against, investigate, or respond to fraud, excluding the transfer of covered data for payment or other valuable consideration to a government entity." Sec. 102(d)(10)

Fraud prevention protects American consumers, but many would be unprotected by this exemption since the bulk of fraud prevention in the U.S. is done by for-profit companies. To fully protect consumers, the bill should exempt fraud prevention as seen in all state comprehensive privacy laws.

2. The private right of action (Sec. 117) doesn't accurately depict the business transactions between third parties and consumers.

CDIA's members are third parties and do not have direct relationships with consumers. While Section 20 offers a safe harbor for certain businesses, no such safe harbor is available for third parties who do not have direct consumer contact and, thus, the CDIA does not endorse a private right of action.

Summary

Thank you for your time and attention on these important matters, and I am happy to discuss our concerns in greater detail with you and your staff.

Sincerely,

Dan Smith
President & CEO

cc: The Honorable Mike Johnson, Speaker of the House of Representatives
The Honorable Steve Scalise, Majority Leader, House of Representatives