July 11, 2022

Chairman Frank Pallone
House Committee on Energy and Commerce
Washington, D.C. 20515

Ranking Member Cathy McMorris Rodgers
House Committee on Energy and Commerce
Washington, D.C. 20515

Dear Chairman Pallone and Ranking Member Rodgers:

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I am writing regarding H.R. 8152, The "American Data Privacy and Protection Act." ACA represents approximately 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies are small businesses. Women comprise 70% of the ethnically diverse debt collection workforce.

ACA members work with consumers to resolve their past debts, which in turn saves every American household more than $700 year after year. The accounts receivable management (ARM) industry's role serves a critical purpose in America's credit-based economy. Its efforts keep access to credit at the lowest possible cost. For example, in 2018 the ARM industry *returned over $90 billion* to creditors for goods and services they already provided to their customers.

Our industry's collections benefit all consumers by lowering the costs of goods and services, especially when rising prices are hurting Americans throughout our country. Our members utilize comprehensive compliance and high ethical standards to ensure consumers are treated fairly. ACA contributes to this by providing timely industry-sponsored education as well as compliance certifications.

In short, ACA members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector's Pledge that all consumers are treated with dignity and respect.

ACA members are also committed to ensuring data privacy. The existing privacy landscape for the ARM industry is robust, including sweeping and complex state legislation such as the California

Consumer Privacy Act of 2018 (CCPA). Other federal privacy laws in this area -- including the Health Insurance Portability and Accountability Act of 1996, the Fair Credit Reporting Act, the Gramm Leach Bliley Act (GLBA), and the Family Educational Rights and Privacy Act of 1974 are followed by ACA members.

Beyond these important data privacy laws, the ARM industry also operates under the Fair Debt Collection Practices Act (FDCPA), which protects consumer information and governs how it is such information is communicated to consumers and imposes appropriate limits on what can be disclosed to others. These protections were further strengthened recently through the implementation of Regulation F, issued by the Consumer Financial Protection Bureau in 2020, and in effect in November 2021.

Against this existing data privacy regulation backdrop, and as Congress considers H.R. 8152, and other potential data privacy legislation, we respectfully request that Congress move cautiously because to do otherwise, Congress could well enact new rules that are duplicative of and conflicting with existing regulation, all of which unnecessarily imposes additional burdens on already existing and exceedingly complex privacy standards.

Please know that our members already deliver their services diligently and carefully so as to protect private consumer data in compliance with existing and robust privacy regulations.

ACA references this background to provide the following thoughts on the legislation currently under consideration:

- ACA appreciates that the legislation is designed to preempt many state privacy laws because all Americans deserve to receive a uniform level of privacy protections. Nonetheless, we note that there are specific exceptions contemplated in this legislation that will result in an unnecessary and complicated patchwork of privacy protections, including:

    - State data breach laws – including California's private right of action for data breaches.
    - Employee and student privacy laws.
    - Facial recognition laws.
    - The Illinois Biometric Information Privacy Act and Genetic Information Privacy Act.
    - Fraud, identity theft, cyberstalking, and cyberbullying.
    - Public records laws.
    - Laws regarding credit reports, financial information, and financial regulations.

- The sheer breadth of these exceptions will, unfortunately, limit and undermine the effectiveness of the preemption provision under consideration. Without question, the legislation and preemption as they currently stand will confuse and complicate compliance in a number of states. Given these realities, ACA respectfully urges the sponsors to eliminate or, at a minimum, narrow these exceptions to the preemption provision (except in instances of criminal behavior).

- ACA appreciates that the legislation recognizes that ongoing compliance with the data security requirements of the GLBA covering financial institutions, or, alternatively with respect to medical matters, the Health Information Technology for Economic and Clinical Health Act, will be deemed as compliance with respect to the provisions of the legislation. This important recognition appropriately limits duplication and conflicts with the robust privacy requirements already in place in these areas.

- Most ACA members are small businesses. Irrespective of any fault (and typically, any damages), they are routinely targeted with frivolous litigation invoking the FDCPA because it contains a statutory damages provision, as well as an attorney's fee provision. The legislation under consideration will prompt similar litigation irrespective of fault or damages. Hence, ACA is concerned that the legislation includes a similar private right of action. Given the already-demonstrated volume of frivolous litigation concerning the FDCPA, we appreciate the inclusion of a right to cure in this legislation under consideration as it will lessen such frivolous suits.

- Additionally, we appreciate and support the appropriate restrictions associated with the private cause of action, including a four-year period before such actions can be brought. We also agree that the private actions should first start with a notification to the Federal Trade Commission and the appropriate state attorney general. It is appropriate that a private cause of action only be allowed if both the FTC and attorney general decline to pursue an action.

- Additionally, the legislation under consideration imposes a new requirement that would obligate third-party collection entities to register with the FTC and thereafter maintain additional records related to this registration. Unfortunately, this provision runs contrary to the actual relationship between creditors and third-party collection agencies. Collection agencies serve as an arm of the original creditor. In order to serve in this role, collection agencies utilize very robust privacy protections specifically designed to ensure consumer data is protected. Numerous regulations already governing this situation serve to protect consumer privacy. Adding yet another onerous restriction—to cover an area that is already covered—is precisely the type of duplicate, complex and unnecessary regulation that should be avoided.

As this legislation is considered, we appreciate this opportunity to visit with you as well as the opportunity to continue our dialogue about its goals and its impact on the ARM industry. Thank you for taking the time to consider and address the concerns of ACA's members.

Sincerely,

Scott Purcell
Chief Executive Officer