



March 15, 2019

Senator Mike Crapo  
Chairman  
Senate Committee on Banking, Housing and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Sherrod Brown  
Ranking Member  
Senate Committee on Banking, Housing and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

VIA Electronic Mail: [submissions@banking.senate.gov](mailto:submissions@banking.senate.gov)

Dear Chairman Crapo and Ranking Member Brown:

The American Property Casualty Insurance Association (APCIA) is pleased to respond to your invitation for feedback on the collection, use, and protection of sensitive information by financial regulators and private companies. APCIA is the preeminent national trade association representing property and casualty insurers doing business locally, nationally, and globally. Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of all sizes, structures, and regions of any national trade association.

### **Overview**

The regulatory and legislative examples provided below portray the following underlying principles that should be reflected in any regulation, legislation, or best practices considered by Congress in 2019: (1) uniform, consistent and exclusive regulatory or legislative regimes allow businesses to focus on consumers rather than compliance check-boxes; (2) any modernized, comprehensive framework focused on giving consumers more control must ultimately protect consumers foremost with clear, concise, and accurate disclosure requirements; (3) regulatory or statutory prohibitions must be clearly stated; (4) sensitivity or risk-based assessments of personal information should be a key factor in how a company deploys privacy protections; (5) requirements should carefully balance consumer and legitimate business needs to not stifle but encourage innovation; and (6) scalability, as appropriate, for small, medium and large companies.

### **Insurance Background**

Insurance is the transfer of the risk of future economic loss from the policyholder to the insurer. Each risk transferred to an insurer carries a cost so insurers assuming risks charge premiums to reflect that cost. The cost of the risk is determined by the level of risk being transferred. For example, insurers know that houses in rural areas are less vulnerable to crime than houses in urban areas, so rural homeowners tend to pay less than urban homeowners. For this reason, insurers need to collect data on their policyholders in order to assess the risk factors a particular policyholder or risk presents to the insurer. In this way, each policyholder is charged a premium that represents the true cost of the risk that policyholder is transferring to the insurer. The alternative is what is known as “community rating” where all policyholders pay the same premiums. Under that system low-risk policyholders subsidize high-risk policyholders, and no one pays the true cost of the risk they are transferring. Insurers and most policyholders believe that risk-based pricing is the fairest and most equitable approach to pricing insurance products, but it is dependent on insurers’ access to data that is predictive of the risk of loss. Comprehensive state regulations, including state and federal driver privacy protection laws, also assist in protecting the collection and use of data.

Information is also important to foster the development of innovative products and services that meet consumer demands and needs. For instance, the sharing of information permits necessary innovation in insurance, allowing for the development of more efficient processes and procedures that benefit consumers through overall costs and increased product offerings.

To be certain, the insurance industry appreciates the significant responsibility it has to maintain the privacy and security of information while balancing practical day-to-day business applications. As such, consumer privacy and data security are priority issues for the insurance industry and insurers devote considerable resources to protect data, information systems, and consumer trust.

Relatedly, the insurance industry has been subject to privacy statutes and regulations for over two decades. Insurers are “financial institutions” for the purpose of the Gramm-Leach-Bliley Act (GLBA) and all 50 states and the District of Columbia have adopted regulations implementing GLBA and/or have statutes consistent with and, in some instances, stricter than GLBA. The state laws and regulations are based on the National Association of Insurance Commissioners’ (NAIC) “Insurance Information and Privacy Protection Model Act” (IIPPA) and/or the “Privacy of Consumer Financial and Health Information Model Regulation” (PCFHI).

Increasingly, state legislators are considering, and adopting, comprehensive privacy laws that impact insurers. This recent evolution raises concerns that a complex patchwork of federal, state, and international privacy laws is slowly emerging. Patchwork concerns are intensified for the insurance industry and insurance consumers where there are comprehensive and insurance specific obligations within an individual state that, at times, are conflicting and inconsistent. As

a threshold matter, APCIA advocates for a uniform and consistent approach to privacy regulation that compliments existing requirements and promotes workable standards.

### **Specific Feedback**

It is from the above background that APCIA provides feedback on your specific inquiry as to what can be done through legislation, regulation, or the implementation of best practices. APCIA continues to work with our members on specific policy direction, but in the meantime provide examples below of current overarching regulatory approaches in our industry and how new state laws create difficult and unworkable obligations.

***1) What could be done through legislation, regulation, or by implementing best practices that would give consumers more control over and enhance the protection of consumer financial data, and ensure that consumers are notified of breaches in a timely and consistent manner?***

Existing state breach notification requirements protect consumers with reasonable timing obligations for the notification of a breach. Nevertheless, the patchwork of state laws creates multiple overlapping and, at times, contradictory notification requirements. As such APCIA supports uniform and exclusive standards that allow businesses to appropriately focus on protecting consumers through the implementation of robust security measures and timely notification rather than conflicting compliance obligations that could create legal pitfalls. A single fully preemptive federal breach notification law would go a long way toward unifying the response process and ensuring a uniform ability to identify and adequately notify consumers in multiple states. Additionally, the insurance industry's unique state-based regulatory regime should be preserved in the enforcement mechanism. This approach would allow for a single standard to be enforced in a consistent, uniform, collaborative, and equitable manner by state insurance regulators.

***2) What could be done through legislation, regulation, or by implementing best practices to ensure that financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) provide adequate disclosure to citizens and consumers about the information that is being collected about them and for what purposes?***

By way of example, insurers currently provide notices of their information practices regarding topics such as: (1) the types of information collected; (2) the types of sources for information; (3) categories of affiliates and non-affiliates to which information is disclosed; (4) an explanation of consumer rights; and (5) practices for protecting the confidentiality and security of non-public personal information. These disclosures provide meaningful information that allows a consumer to make informed decisions. Alternatively, if a notice requirement identified the need for disclosure of each specific piece of information collected and each individual sharing

arrangement, this would become cumbersome and unmanageable from a consumer's perspective. At what point does a consumer become so overwhelmed with information that notices become meaningless? Also, as disclosure obligations are considered, it is important to keep in mind that there are additional consumer protection tools to help foster a balanced approach to U.S. privacy expectations and innovative product demands. For instance, because the insurance industry is a highly regulated industry, supplementary insurance specific state regulations help ensure consumer's privacy is protected.

***3) What could be done through legislation, regulation, or by implementing best practices to give citizens and consumers control over how financial regulators and private financial companies (including third-parties that share information with financial regulators and private financial companies) use consumer data?***

***4) What could be done through legislation, regulation, or by implementing best practices by credit bureaus to protect consumer data and to make sure that information contained in a credit file is accurate?***

***5) What could be done through legislation, regulation, or by implementing best practices so a consumer can easily identify and exercise control of data that is being (a) collected and shared by data brokers and other firms and (b) used as a factor in establishing a consumer's eligibility for credit, insurance, employment, or other purposes.***

Questions 3, 4, and 5 focus on issues of consumer control and access. These are concepts that the insurance industry is already familiar with and deploy to protect consumers today. For instance, the NAIC's IIPPA, a consumer-focused model law, "establishes a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reason for any adverse underwriting decision." Additionally, the NAIC's PCFHI model regulation focuses on clear, conspicuous, and accessible consumer notices that, among other issues, describe the conditions under which an insurance licensee discloses information. The PCFHI model regulation also provides methods for preventing or limiting a licensee's information sharing, to include the form of consumer opt-out notices and the method for exercising such rights. The PCFHI's combination of clear notices and disclosure guidance outlines a regulatory platform that allows consumers to make informed decisions about their individual information.

The IIPPA and PCFHI carefully balances consumer access and control with insurers' legitimate needs to, among other things, protect privileged information, prevent fraud, and engage in third-party sharing to complete consumer insurance transactions. To facilitate the prudent management of risk exposure, any statutory elements that provide consumers' control of their



data should include appropriate checks and balances focused on the legitimate needs of all parties to an insurance transaction.

Fundamentally, it is also important to remember this is a consumer issue and the scope and definitions should be narrowly tailored to meet that objective. For example, employee data and data related to a commercial transaction should be exempt.

The Chairman and Ranking Member's outreach is appreciated and reflects a commitment to working with private industry to achieve an outcome that appropriately and effectively balances protecting consumer privacy and trust while meeting consumer product expectations. These comments are just the beginning of this important discussion and APCIA looks forward to continuing to work with you on this matter and welcome any questions or follow-up that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Wes McClelland", is written over a light grey horizontal line.

Wes McClelland  
Vice President, Federal Affairs  
American Property Casualty Insurance Association