CBA | CONSUMER BANKERS ASSOCIATION
The Voice of the Retail Banking Industry

American Bankers Association

August 5, 2014

John B. Morris
Associate Administrator and Director of Internet Policy
Department of Commerce
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Big Data Developments – Docket No. 140514424-4424-01

Dear Mr. Morris:

The Consumer Bankers Association ("CBA")[1] and the American Bankers Association ("ABA")[2] appreciates the opportunity to comment on the notice issued by the Department of Commerce's National Telecommunications and Information Administration ("NTIA") asking for input on "big data" developments, benefits, and risks.

Background

In accordance with President Obama's January request, Counselor to the President John Podesta lead a working group ("the Working Group") of top government officials, including Secretary of Commerce Penny Pritzker, Secretary of Energy Ernest Moniz, Office of Science & Technology Policy Director John Holdren, and National Economic Council Director Jeffrey Zients, that conducted a 90-day review to examine how "big data" affects citizens' daily lives and impacts the relationships between government, citizens, businesses, and consumers. On May 1, 2014, the Working Group published its findings in *Big Data: Seizing Opportunities, Preserving Values* ("the Report")[3] that weighed the benefits of big data against potential privacy and discrimination concerns.

Among other recommendations, the Report instructed the Department of Commerce to request comments on "how the Consumer Privacy Bill of Rights could support the innovations of big data while at the same time responding to its risks, and how a responsible use framework, as

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[1] The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.
[2] American Bankers Association is the voice of the nation's $14 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend nearly $8 trillion in loans.
[3] The White House: *Big Data: Seizing Opportunities, Preserving Values* (May 2014) http://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_5.1.14_final_print.pdf.

articulated in Chapter 5, could be embraced within the framework established by the Consumer Privacy Bill of Rights."[4] In response, NTIA released the notice that prompted this comment.

CBA, ABA, and our members support the use of big data in the financial sector and recognize its real benefits, ranging from eradicating fraud to providing customers with better, cheaper services to creating efficiencies in the marketplace. Looking ahead, we are anxious to see how big data evolves and grasp the benefits that have yet to be fully understood. Decades ago, we could not comprehend the society-altering advantages that would result from the invention of the Internet. Today, the Internet is an integral part of our daily lives, completely changing the way we live, work, and communicate. Learning from past technological advances, we urge regulators to allow big data to develop organically and not to stifle innovation before its full potential is realized. Further, we feel consumers are adequately protected by the current legal framework that is woven together by federal law, state law, guidances, and industry best practices.

Big Data Benefits Consumers and Society at Large

Though the concept is constantly evolving, the Working Group defined "big data" as "large, diverse, complex, longitudinal, and/or distributed datasets generated from instruments, sensors, Internet transactions, email, video, click streams, and/or all other digital sources available today and in the future."[5]

According to the Working Group, big data "can derive value from large datasets in ways that were previously impossible – indeed, big data can generate insights that researchers didn't even think to seek….Used well, big data analysis can boost economic productivity, drive improved consumer and government services, thwart terrorists, and save lives."[6] In terms of the financial sector, the Working Group noted:

> Banks are using big data techniques to improve fraud detection…. For consumers, big data is fueling an expansion of products and services that impact their daily lives. It is enabling cybersecurity experts to protect systems – from credit card readers to electricity grids – by harnessing vast amounts of network and application data and using it to identify anomalies and threats. It is also enabling some of the nearly 29 percent of Americans who are "unbanked" or "underbanked" to qualify for a line of credit by using a wider range of non-traditional information – such as rent payments, utilities, mobile-phone subscriptions, insurance, child care, and tuition – to establish creditworthiness.[7]

With regards to fraud protection, big data helps financial institutions to minimize fraudulent transactions, detect check fraud, and employ consumer authentication. Information

[4] *Id*. at pg. 61.
[5] *Id*. at pg. 3 (quoting National Science Foundation, Solicitation 12-499: Core Techniques and Technologies for Advancing Big Data Science & Engineering (BIGDATA) (2012) http://www.nsf.gov/pubs/2012/nsf12499/nsf12499.htm.
[6] *Id*. at pg. 5.
[7] *Id*. at pg. 39-40.

sharing between affiliates is crucial to yield the most comprehensive overview of the industry and thwart illegal behavior. In terms of overall benefits, big data allows consumers to receive greater access to financial products, improved customer service, more reliable and instructive credit scores, and less unnecessary marketing. Moreover, big data promotes innovation and research and development, while driving efficiency.

Financial Institutions are Already Adequately Protecting Consumer Privacy

The financial sector is one of the most regulated industries and already adequately protects consumer privacy interests with regards to big data. Financial institutions are innovators in information security, which is exhibited by the sector's comparatively negligible amount of data breaches, accounting for just 3.7% of all data breaches in 2013.[8] Despite the low incident rate, our members are exceedingly concerned that their customers' information is safe – without this trust, the industry would not function effectively. To ensure these privacy interests are met, our members are currently subject to an amalgam of federal and state statutes and regulations,[9] while also voluntarily implementing guidances and industry best practices. Specifically, banks presently must adhere to the following laws that promote consumer protections and establish privacy safeguards:

1. The Gramm-Leach-Bliley Act ("GLBA")[10]
2. The Fair Credit Reporting Act ("FCRA")[11]
3. The Fair and Accurate Credit Transactions Act ("FACTA")[12]
4. The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act ("Dodd-Frank")[13]

GLBA is the preeminent privacy law that governs financial institutions' treatment of consumers' nonpublic personal information ("NPI"). Under GLBA, financial institutions are required to institute polices that ensure the security and confidentiality of consumer records. Among other provisions, GLBA 1) requires that financial institutions adopt privacy policies and periodically distribute policy notices to customers; 2) prohibits financial institutions from sharing NPI with unaffiliated third parties, unless notice and opt out requirements are satisfied; and 3) mandates stringent procedures that financial institutions must follow to safeguard NPI.[14]

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[8] Identity Theft Resource Center: *2013 Data Breach Category Summary* http://www.idtheftcenter.org/images/breach/2013/BreachStatsReportSummary2013.pdf.
[9] M. Maureen Murphy, Congressional Research Service: *Privacy Protection for Customer Financial Information* (July 14, 2014) http://fas.org/sgp/crs/misc/RS20185.pdf.
[10] 15 U.S.C. § 6801 et seq.
[11] 15 U.S.C. § 1681 et seq.
[12] Pub. L. No. 108-159 (Dec. 4, 2003).
[13] Pub. L. No. 111–203 (July 21, 2010).
[14] 16 C.F.R. 314 (requiring that financial institutions: 1) designate an employee or employees to coordinate an information security program; 2) identify reasonably foreseeable internal and external risks; 3) design and implement information safeguards to control risks through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; 4) oversee service providers; and 5) evaluate and adjust the information security program in light of the results of the testing and monitoring).

FCRA regulates the consumer reporting agencies, which supply consumer credit and employment history information to financial institutions, by outlining disclosure requirements and third-party affiliate sharing methods. Further safeguarding consumer information, FCRA also requires the proper disposal of such information, with accompanying regulations that provide detailed examples explaining how to implement compliant procedures.[15] The enactment of FACTA significantly expanded FCRA requirements by mandating, absent certain exceptions, affiliated companies may not share consumer information for marketing purposes unless the consumer is provided notice and an opportunity to opt-out. Moreover, FACTA instructs federal agencies to investigate companies' information sharing practices and report to Congress every three years. In 1999, the Office of the Comptroller of the Currency ("OCC") released an advisory letter that outlines "effective approaches for complying with notice requirements under the FCRA regarding the sharing of customer information among affiliated companies."[16] Similar instructive tools offer guidance to the industry and constructively supplement existing regulations.

In the same vein, the Federal Financial Institutions Examinations Council ("FFIEC") released a booklet[17] that provides financial institutions with useful guidance on how to properly implement an information security strategy that includes: "appropriate consideration of prevention, detection, and response mechanisms; implementation of the least permissions and least privileges concepts; layered controls that establish multiple control points between threats and organization assets, and policies that guide officers and employees in implementing the security program."[18] Resources like these provide financial institutions with valuable insight on how to comply with existing law, while not imposing burdensome or duplicative regulation.

Conclusion

The current framework effectively regulates information sharing and protects consumers' privacy interests. The advent of big data – an innovation that has been providing benefits to financial customers for many years – does not create new privacy concerns because it is fully contained within the scope of our comprehensive privacy laws. As the Working Group stated, "big data will become an historic driver of progress, helping our nation perpetuate the civic and economic dynamism that has long been its hallmark."[19] We look forward to being a part of that progress and urge the federal government to provide a flexible regulatory structure that promotes future innovation.

Again, we appreciate the opportunity to comment and would be happy to be a resource as you consider big data policy implications. If you have any questions, please do not hesitate to contact Kate Larson of CBA at 202-552-6366 or Nessa Feddis of ABA at 202-663-5433.

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[15] 16 C.F.R. 682 (detailing "reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal").
[16] OCC: *Fair Credit Reporting Act*, AL 99-3 at 1 (March 29, 1999).
[17] FFIEC, "IT Examination Handbook InfoBase" http://ithandbook.ffiec.gov/
[18] FFIEC, "IT Examination Handbook InfoBase: Information Security Strategy" http://ithandbook.ffiec.gov/it-booklets/information-security/information-security-strategy.aspx
[19] The Big Data Report at 1.

Respectfully submitted,

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