

Consumer, Privacy Groups Oppose HR2396 (Trott) On Floor This Week

Americans for Financial Reform
Allied Progress
Center for Digital Democracy
Consumer Action
Consumer Federation of America
Consumer Watchdog
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
Privacy Times
Privacy Rights Clearinghouse
Public Citizen
Public Knowledge
Reinvestment Partners
U.S. PIRG

13 December 2017

Dear Representative,

We, the undersigned consumer, community, privacy and civil rights groups, write to **oppose HR 2396, the so-called Privacy Notification Technical Clarification Act (Trott)**, scheduled for floor action this week. While the bill may be modified by a manager's amendment, it would still be unacceptable as it would still benefit companies such as Wells Fargo, which has demonstrated various problems with auto lending, third party companies and misusing its customers' personal information.

How many of you have received calls or letters from constituents since the Equifax breach asking for more control and more protection of their personal information? HR2396 takes away consumer control.

The bill is not a clarification; it minimizes if not removes substantive required annual disclosures that inform consumers they have the right to opt-out of (say no to) the sharing by their banks of their non-public personal information with "nonaffiliated third parties that aren't selling financial products." This means you have a right to say no to sharing with marketing companies and data brokers.

The 1999 Gramm-Leach-Bliley Act (GLBA), which was enacted to allow banks to merge and affiliate with insurance and investment firms, was passed against a backdrop of unfair information sharing practices. So, Congress included bi-partisan provisions requiring banks and others to notify you annually of their sharing practices, although their sharing with their own affiliates or firms selling financial products did not grant you any rights to opt-out. When firms

shared with third non-financial (mainly marketing) firms the law gave you the right to say no. The annual privacy notices give you a warning that you can control some sharing of your information.

Previously-passed legislation (the End Privacy Notice Confusion Act embedded in 2015 transportation legislation known as the FAST Act) eliminated annual notices and provided regulatory relief only to those companies – generally community banks -- that had not changed their privacy regimes since their last disclosure **and**, importantly, **do not share** personal information with nonaffiliated third parties.¹ HR2396, however, by relaxing the privacy notice requirements for those that do share with unaffiliated third parties, would effectively incentivize those companies to broadly share with unaffiliated third parties, exactly the opposite policy goal of the much more narrow FAST Act change, despite a post-Equifax breach demand by consumers for more control, not less.

HR2396 would minimize if not eliminate annual notices even for firms that do share information with nonaffiliated third parties, effectively helping large Wall Street banks, as well as payday lenders and even fly-by-night financial firms, at the expense of consumers learning their privacy rights. While consumer and privacy organizations would prefer more robust privacy protections, it is certainly important that consumers be given annual notice of their rights to opt-out of information sharing by those financial institutions that are promiscuous with their non-public personal information.

If HR2396 becomes law, most consumers would only learn of their right to stop sharing of their personal information with non-affiliated third parties that are not financial firms when they initially set up a new account with a financial institution, but likely never again afterward. Proponents may claim that the bill requires more frequent notice through a billing statement option, but this option could be circumvented with a mere website post.

The FAST Act, in 2015, eliminated annual notices for firms that do not share information with these non-affiliated firms; the bill before the House, HR2396, eliminates it even for those that do.

We urge opposition to HR2396, which is not a technical clarification; this broadly drafted bill minimizes if not eliminates a clear annual warning even from a firm that is sharing your non-public information with nonaffiliated third parties selling non-financial products. It hides valuable information from you that you have the right to say no to this sharing. As a result, fewer consumers are likely to opt-out of the sharing, which could lead to consumer harm, including additional unwanted marketing, discriminatory, exclusionary, and manipulative marketing practices, including price discrimination, and higher risk of identity theft. The bill takes away consumer control over their personal financial information, at a time when consumers are calling for more control.

Please contact Ed Mierzewski, Consumer Program Director, U.S. PIRG, 202-461-3821 or edm@pirg.org if you have any questions.

¹ Note that the CFPB has already taken regulatory action to modify Regulation P to provide firms with alternate disclosure methods wherever possible. <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/privacy-consumer-financial-information-gramm-leach-bliley-act-glba-examination-procedures/>

Sincerely,

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