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TESTIMONY REGARDING SB 619
Before the Senate Judiciary Committee

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Chair Prozanski, Vice-Chair Thatcher, and members of the committee, my name is Hal Scoggins. I am an attorney with Farleigh Wada Witt, outside counsel for Oregon Credit Unions and the GoWest Credit Union Association ("GWCUA"). Our firm also represents many individual credit unions throughout Oregon, Washington, Idaho, and across the U.S. I appreciate the opportunity to talk with you today about SB 619.

EVOLUTION OF SB 619

GWCUA appreciates the extensive efforts that the Oregon Department of Justice ("DOJ") has undertaken to obtain input from the wide variety of groups with an interest in SB 619. While not at the "main table," we participated in many hours of meetings related to the issue of data privacy. Early drafts of the bill would have imposed substantial unnecessary and inappropriate costs and burdens on credit unions, which ultimately would be passed on to their members. During the discussion process with DOJ, we expressed concerns about these issues, and we worked with the DOJ on reasonable resolutions for those concerns. The bill as introduced includes an exemption for financial institutions and their affiliates. The logical and practical support for such an exemption is discussed below.

Since the bill was introduced, the DOJ has signaled a need for further refinements, including changes to the financial institution exemption. A draft of these changes in the form provided with Ms. McCullough's testimony for this hearing was recently circulated. That draft would essentially nullified the financial institution exemption contained in the bill as introduced, and the GWCUA could not support such an amendment. In subsequent discussions with DOJ, we reached consensus on appropriate revisions to that amendment that would largely resolve our concerns. We understand that a forthcoming amendment that includes changes to the draft provided with Ms. McCullough's testimony will resolve those concerns. These changes will exempt financial institutions (as defined in ORS 706.008) from coverage of the new law.

A FINANCIAL INSTITUTION EXEMPTION IS GOOD POLICY

The protections provided by the federal Gramm Leach Bliley Act ("GLBA") regulations governing credit unions have done their job in protecting consumers. Credit unions must notify consumers in advance of the types of information that they will collect from the consumer and must provide examples of the ways in which it is collected. Credit unions must also disclose how they use that information. When information is shared for day-to-day operational purposes credit unions must obtain contractual assurance that the party with whom the information is shared restricts its use of the information to carrying out the duty it is performing for the credit union, and that it protects the information from breach or inadvertent disclosure. Credit unions cannot sell consumer information to third parties without allowing consumers to opt out of such sharing. And credit unions can only share consumer information for marketing purposes when they have entered into a joint marketing agreement with another financial service provider, who will limit its use of the information to fulfilling the joint marketing arrangement. The GLBA information security regulations require credit unions to maintain stringent data protection standards and to report data breaches to regulators and to consumers. And credit unions are regularly examined by their regulators on both their data protection and privacy practices and systems.

In addition, some of the new consumer rights granted under this bill are unnecessary or would be inapplicable to credit unions due to the nature of the services they provide and the regulations governing them. For example, consumers already have electronic access through online banking to most of the information that a credit union maintains about them. And a variety of regulations (including Truth in Lending, Electronic Funds Transfer Act, RESPA, and the Fair Credit Reporting Act already require credit unions to respond to inquiries and provided information in the credit union's possession about a member's accounts and services. And those same regulations and others (along with various state laws such as the Uniform Commercial Code) require credit unions to maintain such information for specified periods even after a member has closed their account. Thus, the "right to delete" would be inapplicable to most of the information a credit union maintains about a consumer until those time periods have passed.

Finally, both for the reasons outlined above, and because credit unions are non-profit cooperatives owned by the consumers in question and operated for their benefit, credit unions have not been the focus of privacy-related consumer complaints.

For the reasons outlined above, an exemption for depository financial institutions is sound policy – it allows the bill to achieve the objectives of its proponents without doing unnecessary collateral damage to credit unions and their members. This exemption is partially embodied in the markup that is provided with Ms. McCullough's testimony, although there are still some technical problems in that markup related to the distinction between this entity-level exemption and other activity-level exemptions, and the requirement for an organization to "prove up" its use within the scope of an exemption. Based on our conversations with DOJ on this point, we look forward to a revised amendment that will address these concerns.