



March 28, 2006

The Honorable Joe Barton
Chairman
House Energy and Commerce Committee
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
House Energy and Commerce Committee
United States House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Barton and Ranking Member Dingell:

We understand that the “Data Accountability and Trust Act” (H.R. 4127) will be considered by your Committee on March 29, 2006, and that a Manager’s amendment to the bill has been circulated. The Financial Services Coordinating Council (FSCC) supports uniform national standards for notification to individuals whose personal information has been put at risk by a breach of security. However, in prior communications to the Committee, the FSCC has expressed serious concerns about this specific legislation. After reviewing the Manager’s amendment and the underlying text of H.R. 4127, as amended by the Commerce, Trade, and Consumer Protection Subcommittee on November 3, 2005, we continue to have serious concerns about H.R. 4127 and strongly believe that these concerns must be addressed prior to any consideration of this legislation on the House floor.

Many businesses are not subject to a clear legal and regulatory system that requires them to protect consumers’ sensitive personal information. This is not the case for the institutions we represent – the banking, securities, and insurance industries – which are already subject to the comprehensive privacy and data security requirements of the Gramm-Leach-Bliley Act (GLBA) and implementing regulations. Title V of the GLBA and its implementing regulations require financial institutions not only to limit the disclosure of customer information, but also to protect that information from unauthorized accesses or uses and, in the case of banking institutions, to notify customers when there is a breach of security with respect to sensitive information relating to those customers. These requirements have been established, and are enforced, by various “functional” regulators at the federal and state levels, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, the Securities and Exchange Commission, and state insurance authorities.

H.R. 4127, however, establishes an entirely new set of rules for dealing with data security and applies them to a broad range of business entities, including those subject to the

GLBA. The bill fails to explicitly recognize the stringent GLBA standards that are already in place for financial institutions, while leaving it to the subjective judgment of the Federal Trade Commission (FTC) to determine whether financial institutions should be subject to both the GLBA and this new law. By vesting this authority with the FTC – an agency with little or no experience in the regulation and supervision of financial institutions – H.R. 4127 likewise fails to recognize the experience and expertise of federal and state regulators in this area and the extensive regulatory process that has already led to the promulgation of rules and regulations relating to data protection for financial institutions as tasked by Congress in GLBA. Accordingly, we urge the Committee to exempt from H.R. 4127 financial institutions that are subject to Title V of the GLBA.

The FSCC also is concerned about other provisions in the base text of H.R. 4127 and the Manager’s amendment. For example, we are very concerned that H.R. 4127 does not fully preempt state law or regulations. While the proposed legislation seeks to establish a national standard, it explicitly protects state enforcement of “any State consumer protection law” and does not preempt any state law related to “fraud.” Such broad exceptions raise serious concerns that business entities will be subject to both federal and state law, undermining the goal of a nationwide standard.

Also, H.R. 4127 authorizes the Federal Trade Commission and the state attorneys general to enforce the data protection and notice requirements of the bill rather than, with respect to financial institutions, leaving oversight to the functional regulatory agencies. Such an enforcement mechanism is unnecessary since financial institutions are already subject to extensive oversight, including “cease and desist” orders, monetary penalties, and other sanctions by federal and state regulators for violations of the law covering data breaches.

Moreover, we are concerned that the amendment to the definition of “breach of security” in the Manager’s amendment significantly dilutes the harm trigger for notice adopted by the Subcommittee. This will result in expensive and counterproductive over-notification that will provide little, if any, benefit to consumers. We urge that the definition of “breach of security” adopted by the Subcommittee be retained. It is far better for institutions to devote resources to a risk-based notice system that alerts consumers when there is a real risk of harm.

Finally, the definition of “information broker,” as amended by the Manager’s amendment, does try to address concerns raised over whether affiliates within holding companies that handle centralized data bases for use by those holding companies fall within that definition. However, technical concerns continue to exist with this language, including whether third-party agents that act in the same capacity would remain within the definition, thus subjecting them to the sweeping responsibilities imposed by the bill on such brokers.

Congress should establish a uniform national standard that both recognizes existing law in this area and ensures that consumers receive the same information no matter where they live. Our members serve customers throughout the U.S. A patchwork of state notification laws will not serve our members’ customers or our national financial services system. The FSCC, and the undersigned organizations that it represents, urge you to

address the concerns reflected in this letter at the Committee markup. The FSCC strongly believes that these concerns must be addressed prior to any consideration of this legislation on the House floor. Thank you for considering our views on this important issue.

American Bankers Association

American Council of Life Insurers

American Insurance Association

Securities Industry Association

CC: Members of the House Energy and Commerce Committee.