



POLICY & ACTION FROM CONSUMER REPORTS

March 18, 2015

The Honorable Michael C. Burgess, M.D.
2336 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jan Schakowsky
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Burgess and Schakowsky:

Consumers Union, the advocacy arm of Consumer Reports, writes you regarding today's Subcommittee on Commerce, Manufacturing, and Trade hearing on a discussion draft of the Data Security and Breach Notification Act of 2015. While we appreciate the Subcommittee's attention on commercial data breaches, we have several major concerns with the draft legislation.

First, in preempting state-level breach notification laws, the draft replaces generally broader, stronger notification standards with generally narrower, weaker ones. Several state breach notification laws, such as those in California, Florida, and Texas, include types of personal information not covered by this draft, and most states do not require a risk of financial harm as a prerequisite for notification. These states rightly recognize that consumers can be harmed by compromises affecting many types of data, including health and medical information.

Second, the draft's information security provision does not improve the level of protection of consumer data, and for some states, significantly reduces it. The draft's "reasonable security measures and practices" standard appears roughly equivalent to what the Federal Trade Commission (FTC) enforces under its existing authority; however, the actual protections afforded consumers by this standard are not articulated, and are likely to be determined by the courts. State laws protecting consumer data in more specific ways, like in Massachusetts and Nevada, would be invalidated, and no state could pass such a law later.

Lastly, the draft jeopardizes protections for consumer data held by telecommunications, cable, and satellite providers. Currently, for example, data related to telephone calls or viewing history are subject to strong data security and breach notification standards overseen by the Federal Communications Commission (FCC). Under this draft, such information would be subject to lesser standards under this bill enforced after-the-fact by FTC, or no standards at all.

The discussion draft before the Subcommittee does not represent a step forward for consumers, and our organization could not support it as currently written. We look forward to working with the Subcommittee to address the issues we have raised.

Sincerely,

Ellen Bloom
Senior Director, Federal Policy and
Washington Office

William C. Wallace
Policy Analyst