

**Rep. Schakowsky**  
**Opening Statement**  
**CMT Hearing – Blackburn-Welch Data Bill**  
**March 18, 2015**

Thank you, Mr. Chairman, for holding today's important hearing on draft legislation released last week by Mrs. Blackburn and Mr. Welch to require data breach security and reporting.

I appreciate my colleagues' effort on this legislation, and I believe it has some positive elements – FTC penalty authority and a data security provision among them.

That being said, this bill needs significant amendment to achieve the goal of both simplifying compliance for businesses and enhancing protections for consumers.

The draft proposal would prevent states from enforcing their own laws related to data security and breach notification. It prevents all private rights of action on data breach and notification. As currently drafted, it would override all common law – including tort and contract law – as they apply to data. Those provisions would leave consumers with fewer protections than they currently have.

This proposal also weakens existing consumer protections under the Communications Act for customers of telecommunications, satellite, and cable companies. While I believe the FTC can and should be empowered to play a stronger role in protecting consumers' data, I don't believe that should come at a cost of eliminating existing FCC protections.

The bill would also only require consumers to be notified of a breach if it is determined that a breach has or will likely lead to financial harm. That would only

occur after the companies regulated under this bill have concluded investigations of breaches to determine the risks of financial harm to each of their customers or users – a process that could take months.

There are many types of harm that go beyond simply financial ones. For example, a data breach that revealed private communications might not have any measurable financial impact, but could cause embarrassment or shame.

The types of personal information covered by this bill are far too limited. The bill doesn't cover over-the-counter drug purchases or other health information not covered by HIPAA. By contrast, the data laws in Texas and Florida protect those types of information. The bill also does not cover metadata, which can be used to acquire sensitive personal information.

The bill also does not provide FTC rulemaking authority for defining personal information. That is a major weakness when we've seen the nature of personal information change significantly over time. For example, when the House passed the DATA Act in 2009, it did not include geolocation information as part of personal information. Today, I think we could all agree that geolocation information should be protected. That is why we need legislation that allows the FTC to adapt as the nature of personal information continues to evolve.

In closing, this bill is very broad in terms of preemption of state and other federal laws and narrow in terms of definitions of harm and personal information. I believe the bill should be narrow where it is now broad, and broad where it is now narrow. I look forward to hearing from our witnesses about their perspectives on this bill and to moving forward with a strong bill that adequately protects consumers. With that, I yield the remainder of my time to Mr. Kennedy.