

July 17, 2018

The Honorable Robert Latta  
Chairman, Subcommittee on Digital  
Commerce and Consumer Protection  
House Committee on Energy & Commerce  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member, Subcommittee on Digital  
Commerce and Consumer Protection  
House Committee on Energy & Commerce  
Washington, DC 20515

RE: Hearing on “Oversight of the Federal Trade Commission”

Dear Chairman Latta and Ranking Member Schakowsky,

The undersigned associations, representing over a million businesses in industries that directly serve American consumers, have a vested interest in the security of consumer data. Protection of that information and providing consumers with the information they need when problems arise is important to provide confidence to American consumers in this age of rapidly advancing digital technology.

We want to compliment this subcommittee for its commitment to examining this issue and inviting a broad cross-section of stakeholders to participate. The listening sessions led by Chairman Latta have been a productive exercise and we appreciate the time and effort that has gone into them. Those sessions have helped illuminate what the data bears out, that every industry sector – whether consumer-facing or business-to-business – suffers data security breaches that may put consumer data at risk. To protect consumers comprehensively, wherever breaches occur, Congress should ensure that any federal breach notification law applies to *all* affected industry sectors and leaves no holes in our system that would enable some industries to keep the fact of their breaches secret.

Under the breach legislation reported by the House Financial Services Committee last Congress, however, there were multiple exemptions that would have been problematic. For example, Equifax would have been exempt from the bill’s provisions along with banks, credit unions and other entities that qualify as “financial institutions” under the Gramm Leach Bliley Act (GLBA). In addition, telecommunications service providers, information technology companies, and other third parties that play a key role in handling vast amounts of information would have been able to shift onto other businesses the legal responsibility for providing notice to consumers when they suffer breaches. The absence of breach notice requirements for these businesses would have left millions of Americans unaware of, or confused about, their potential risks of financial harm and identity theft. The exemption of Equifax and other financial services companies from the requirements of that bill would have created particularly weak public policy given that the same bill provided those companies with preemption from the requirements of state laws.

Considering the widespread risk of data breaches afflicting all American industries and our governmental institutions, there are four key principles we support in federal data security and breach notification legislation:

1. **Establish Uniform Nationwide Law:** First, with the fifty-four inconsistent breach laws currently in effect in 50 states and 4 federal jurisdictions, there is no sound reason to enact federal legislation in this area unless it preempts the existing laws to establish a uniform, nationwide standard so that every business and consumer knows the singular rules of the road. One federal law applying to all breached entities would ensure clear, concise and consistent notices to all affected consumers regardless of where they live or where the breach occurs. Simply enacting a different, fifty-fifth law on this subject would not advance data security or consumer notification; it would only create more confusion.
2. **Promote Reasonable Data Security Standards:** Second, data security requirements in a federal law applicable to a broad array of U.S. businesses should be based on a standard of reasonableness. America's commercial businesses are remarkably diverse in size, scope and operations. A reasonable standard, consistent with federal consumer protection laws applicable to businesses of all types and sizes, would allow the right degree of flexibility while giving businesses the appropriate level of guidance they need to comply. Legislation taking this approach also would be consistent with the data security standard now used by the Federal Trade Commission (FTC) and nearly all state laws that include data security requirements in their breach notification statutes.
3. **Maintain Appropriate FTC Enforcement Regime:** Third, federal agencies should not be granted overly-punitive enforcement authority that exceeds current legal frameworks. For example, absent a completed rulemaking, the FTC must bring an action requiring a business to stop behavior that the FTC deems to be a violation of law. The FTC cannot seek civil penalties until it establishes what a violation is. That process gives businesses notice of the FTC's view of the law and is fair given the breadth of the FTC's discretion to determine what is legal.
4. **Ensure All Breached Entities Have Notice Obligations:** Finally, businesses in every affected industry sector should have an obligation to notify consumers when they suffer a breach of sensitive personal information that creates a risk of identity theft or financial harm. Informing the public of breaches can help consumers take steps to protect themselves from potential harm. Moreover, the prospect of public disclosure of breaches creates greater incentives for all businesses handling sensitive personal information to improve their data security practices. Creating exemptions for particular industry sectors or allowing breached entities to shift their notification burdens onto other businesses will weaken the effectiveness of the legislation, undermine consumer confidence, ignore the scope of the problem, and create loopholes that criminals can exploit.

The four principles above, which are supported by the undersigned organizations, are important to ensure that any data security and breach notification legislation advanced in

Congress does not overly burden businesses already victimized by a breach, does not impose unfair burdens on unbreached entities, and does not pick regulatory winners and losers among differing business sectors in the process. We urge you to exercise your leadership to find legislation that can meet these four principles. Additionally, any such process needs to include input from all affected industries and from businesses of all sizes. Otherwise, it risks imposing unfair or crippling burdens on some sectors but not others, which, unfortunately, has been the case with several past legislative proposals.

We appreciate your consideration of our views and we look forward to a continued constructive dialogue with you on these matters.

Sincerely,

American Hotel & Lodging Association  
International Franchise Association  
National Association of Convenience Stores  
National Association of Realtors  
National Association of Truck Stop Operators  
National Council of Chain Restaurants  
National Restaurant Association  
National Retail Federation  
Petroleum Marketers Association of America  
Society of Independent Gasoline Marketers of America  
US Travel Association

cc: Members of the U.S. House of Representatives