



November 2, 2005

The Honorable Cliff Stearns
Chairman
Commerce, Trade &
Consumer Protection Subcommittee
House Energy & Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member
Commerce, Trade &
Consumer Protection Subcommittee
House Energy & Commerce Committee
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Stearns and Representative Schakowsky:

We understand that the “Data Accountability and Trust Act” (H.R. 4127) will be considered by your Subcommittee on Thursday, November 3. 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. As indicated in various comments to Committee staff on the draft legislation released on September 16, the members of the FSCC have serious concerns about this legislation.

Many businesses are not subject to a clear legal and regulatory system that requires them to protect consumers’ sensitive personal information. On the other hand, the institutions we represent -- the banking, securities and insurance industries -- are already subject to the data security requirements of the Gramm-Leach-Bliley Act (GLBA) and implementing regulations. 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 breaches and applies them to a broad range of business entities, including those subject to the GLBA. Specifically, the proposed legislation imposes new data protection and consumer notice requirements on all “persons,” which by the bill’s definitional terms includes “an individual, partnership, corporation, association, or public or private organization other than an agency.” This clearly covers financial services companies.

Similarly, the definition of “information broker” appears to include certain affiliates of GLBA regulated financial services companies, for example, affiliates that handle centralized data bases for holding company use. While such rules may be intended to cover traditional “data brokers” who aggregate information for purposes of sale to the

general public, the explicit language of the bill could easily be read to include data brokers that are already regulated by the GLBA and other laws.

In response to our comments, Committee staff has indicated that there is no intention to subject GLBA-regulated financial services companies and their affiliates to this legislation. We encourage the Subcommittee to adopt explicit language that reflects that intent, as we do not believe that this goal has been achieved by the current legislative language.

Importantly, we are also concerned that H.R. 4127 does not fully preempt state law or regulation. While the proposed legislation seeks to establish national standards, 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.

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

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: Chairman Joe Barton
The Honorable John Dingell
Members of the Commerce, Trade and Consumer Protection Subcommittee,
House Energy and Commerce Committee