



March 7, 2018

The Honorable Blaine Luetkemeyer
Chairman
House Committee on Financial Services
Subcommittee on Financial Institutions
and Consumer Credit
Washington, DC 20510

The Honorable William Lacy Clay
Ranking Member
House Committee on Financial Services
Subcommittee on Financial Institutions
and Consumer Credit
Washington, DC 20510

RE: Hearing on “Legislative Proposals to Reform the Current Data Security and Breach Notification Regulatory Regime”

Dear Chairman Luetkemeyer and Ranking Member Clay,

The National Association of Convenience Stores (“NACS”) represents the convenience and fuel retailing industry, which employs approximately 23 million workers who serve around 160 million customers per day at over 150,000 stores across the United States. The industry, however, is truly an industry of small businesses. Approximately 63 percent of convenience store owners operate a single store, and approximately 74 percent of our membership is composed of companies that operate ten stores or fewer.

NACS supports the enactment uniform data breach notification legislation requiring businesses in all industries to notify their customers of data breaches that could cause them financial harm if that legislation improves upon current law. To be effective, federal data security and breach notification legislation should apply nationwide, set reasonable data security standards, maintain an appropriate enforcement regime, and ensure that all breached entities have notification obligations, regardless of industry. We are concerned that the draft legislation released by Chairman Luetkemeyer and Representative Carolyn Maloney weakens current law by creating exemptions that will keep some industries’ data breaches secret from regulators and/or the public.

First and foremost, the draft bill does not impose notice requirements on some businesses. Rather, the draft bill carves out exceptions for a substantial number of financial institutions, as well as so-called “third parties” and “service providers.” In some cases, the draft bill would not only exempt such businesses from notice requirements; it would require other businesses to shoulder notice obligations for them. This is deeply unfair, and would ultimately undermine—rather than bolster—data security by reducing incentives for carved-out entities to protect their data. The fact that the draft legislation would preempt state notice laws with respect to carved-out businesses compounds this problem. This means the draft bill would substantially weaken current law. Data

breaches in some sectors – such as telecommunications – could run rampant and Americans would be completely unaware of that fact. That risk is heightened by the fact that the “service provider” definition in the draft bill is vague and many businesses might claim they qualify as “service providers” and avoid any obligation to investigate their data breaches or provide notice of them.

NACS shares many other concerns regarding the draft bill and detailed some of these concerns in a separate letter sent along with a coalition of industry groups. But, we wanted to emphasize this one area in a separate letter. If legislation locks in exemptions from data breach notification for certain industries, we are bound to weaken our national data security and be caught unaware by the insecurity of our data. We will have fraud without any idea from whence it came and be without the information to make improvements in the future. Secret breaches cannot be the result of good legislation.

Thank you for taking NACS’s views into account and your willingness to work with us to date. We urge you to continue working with interested groups on the draft bill to improve it before moving to a markup. We would be pleased to continue to work with you toward that end.

Sincerely,



Paige Anderson
Director, Government Relations
National Association of Convenience Stores

cc: Members of the U.S. House Committee on Financial Services