

April 13, 2015

The Honorable Fred Upton,
Chairman
House Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, DC 20515-2206

The Honorable Frank Pallone, Jr.
Ranking Member
House Committee on Energy and Commerce
237 Cannon House Office Building
Washington, DC 20515-3006

Dear Chairman Upton and Ranking Member Pallone,

The undersigned associations, representing tens of thousands of Main Street American businesses including retailers, restaurants, convenience stores, gas stations, and Realtors[®], applaud efforts to bring forth data security breach notification legislation that would establish a uniform national disclosure standard for all businesses that suffer a breach of data security whenever they occur. The amendment introduced by Representative Pompeo adopted during the subcommittee markup strongly advances these goals. Unfortunately, it appears the Committee is now preparing to abandon the improvements it unanimously adopted.

Consumer notice of data breaches serves two fundamental purposes: 1) to inform affected individuals when there is a risk of real harm to them following a breach of sensitive personal information; and 2) to create greater incentives for all businesses handling consumers' sensitive personal information to improve their data security practices when faced with public disclosure of their security breaches. We strongly support the amendment offered by Representative Pompeo to require notice by breached third-party entities, which was supported by Rep. Welch and approved without objection by the Subcommittee on Commerce, Manufacturing, and Trade at its markup on March 25, 2015. The Pompeo amendment is a very significant step forward for the subcommittee's bill because it strengthened the protections for consumers by requiring many more businesses suffering breaches to provide consumer notice of their own data security breaches and the amendment ensured that notice responsibilities could not simply be pushed onto other businesses – ones that had not suffered a data breach. The Pompeo amendment was consistent with the testimony during the subcommittee hearings provided by multiple witnesses who strongly asserted that the breached business should bear the burden of providing notice to consumers. In adopting the Pompeo amendment, the subcommittee voted to ensure that nearly all businesses will be subject to the same data breach disclosure rules.

We were surprised to learn late Friday, however, that the Committee plans to bring up as the base bill for the final markup this week new and different language that replaces the text of the Pompeo amendment approved and reported by the subcommittee. In particular, the new draft bill restructures the data breach notification provisions of the reported bill and fundamentally changes much of the key elements contained in the Pompeo amendment. In our view, it is inappropriate to remove from the base text for the full Committee markup language that was approved by voice vote at the subcommittee markup. That is a counterproductive and unusual way for the Committee to proceed. We urge you and all members of the Energy and Commerce Committee to preserve the adopted Pompeo amendment text as it appeared in the bill as reported by the subcommittee, subject only to technical corrections offered by Representative Pompeo and the bill cosponsors that could be made as an amendment (or manager's amendment).

On behalf of our member companies, we strongly support the Pompeo notice provision as an essential element of any data breach legislation to be considered by Congress, as it is a driver of greater bipartisan support for a strong, uniform national standard.

Sincerely,

National Association of Convenience Stores (NACS)

National Association of Realtors (NAR)

National Grocers Association (NGA)

National Restaurant Association (NRA)

National Retail Federation (NRF)