

June 3, 2009

The Honorable Bobby Rush
Chairman, Subcommittee on Commerce,
Trade, and Consumer Protection
House Committee on Energy and Commerce
Washington, DC 20515

The Honorable George Radanovich
Ranking Member, Subcommittee on Commerce,
Trade, and Consumer Protection
House Committee on Energy and Commerce
Washington, DC 20515

Dear Chairman Rush and Ranking Member Radanovich:

The undersigned organizations represent a broad spectrum of financial services providers, including banks, insurance companies, and securities firms, whose members have a strong interest in protecting our customers from identity theft and account fraud. We are writing to express our views on the Data Accountability and Trust Act (H.R. 2221), which is scheduled to be marked up by your Subcommittee on June 3, 2009.

H.R. 2221 would put in place data protection and notice requirements for a broad range of entities that acquire and use personal information about consumers. We support such requirements for businesses that are not already subject to clear legal and regulatory standards that require them to protect consumers' sensitive personal information and to provide notice in the event of a breach of that information. However, we have serious concerns that certain aspects of H.R. 2221 could result in duplicative and inconsistent regulation of financial services providers.

The institutions we represent – the banking, securities, and insurance industries – are already subject to the comprehensive privacy and data security requirements of the Gramm-Leach-Bliley Act (GLBA) and implementing regulations. Title V of the GLBA and its implementing regulations require financial institutions not only to limit the disclosure of customer information, but also to protect that information from unauthorized accesses or uses and, in the case of banking institutions, to notify customers when there is a breach of security with respect to sensitive information relating to those customers. 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. 2221 requires rulemaking on data protection and notice by the Federal Trade Commission (FTC), which is to be enforced by both the FTC and state Attorneys General. We ask that you clarify that this bill does not apply to financial services entities, including affiliates and subsidiaries, which already are covered by GLBA requirements. Otherwise, regulations would be enforced by both the FTC and state Attorneys General against financial institutions, and this would put in place duplicative and potentially inconsistent rules for dealing with data security for entities already subject to GLBA. Accordingly, we urge the Subcommittee to exempt from H.R. 2221 financial institutions that are subject to Title V of the GLBA.

We are also concerned about other provisions in H.R. 2221. For example, it does not fully preempt state law or regulations. While the proposed legislation seeks to establish a national standard, 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

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will be subject to both federal and state law, undermining the goal of a nationwide standard. We are also concerned that the definition of “information broker” may include financial institutions.

We appreciate your consideration of our views and look forward to working with you to address our concerns about H.R. 2221.

Sincerely,

American Bankers Association
American Council of Life Insurers
American Insurance Association
Consumer Bankers Association
Securities Industry and Financial Markets Association
The Financial Services Roundtable

Cc: Members of the Subcommittee