

April 24, 2007

The Honorable Patrick Leahy
Chair
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Consumers Union, the non-profit publisher of *Consumer Reports*, and Consumer Federation of America are pleased to support S. 495, Personal Data Privacy and Security Act of 2007, as accompanied by a planned amendment from the Chairman to ensure that data of the type involved in the TJX breach will require a notice of security breach. This bipartisan measure is an important step in the ongoing fight to promote data privacy and reduce the incidence of identity theft against U.S. consumers and businesses.

A report to the FTC estimated that each year there are 10 million U.S. identity theft victims. Based on this number, we estimate that there are 19 new U.S. identity theft victims every minute. Since January 2005, security breaches have been announced involving over 150 million records containing sensitive information about individuals. S. 495 addresses these stark and unpleasant facts of financial life in a balanced and effective manner.

S. 495 is an important step to promote data privacy. It requires notice of security breaches, provides a new right for consumers to see and correct information held on them by data brokers, establishes a baseline obligation for business entities to safeguard sensitive personal information, and imposes additional protections when the federal government enters into large contracts with data brokers.

The bill's basic thrust that business entities and federal agencies should notify individuals of a breach of the security of their personal information could help provide an incentive for companies to keep consumers' information secure and allow consumers to know when their personal information has been compromised. This will allow consumers to take reasonable steps to prevent becoming victims of identity theft or other harm. For example, individuals who receive a notice of breach letter might monitor their credit closely, check their financial statements frequently, place a federal fraud alert on their credit files, and place a security freeze on their consumer credit files if they live in one of the 31 states or the District of Columbia that have enacted laws providing for the security freeze.

We also strongly favor the provisions of the measure that permit state Attorneys General to bring enforcement actions under Title III. Strong enforcement mechanisms promote compliance with the law, and state Attorneys General have been at the forefront of notice of data breach issues, responses and service to victims of identity theft, and state legislative responses to the issue of identity theft.

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We do wish to point out our concern about the bill's notice of security breach provision's limited exception to the obligation to give notice of a security breach based on a determination of the absence of "significant risk." Many U.S. consumers are now receiving notice without *any* risk exemption because large population state laws such as California, New York and Illinois tie the obligation to give notice to the type of information breached, without applying a risk standard. This lets consumers decide for themselves how to respond to a notice of breach after they receive it.

We believe that the strongest federal notice of breach standard would not include any reference to a risk exception. However, we do appreciate that, if an approach which considers risk is to be used, it should be structured similar to S. 495, so that notice will not be excused on the basis of insufficient information. This measure would be further strengthened by changing "significant" to "reasonable."

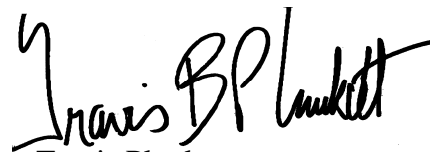
We also recommend that a technical change be made to clarify that preemption of state notice of breach laws is meant to apply only to those entities or agencies which are covered by that subtitle. This will preserve state laws that require notice by state and local government agencies and by other entities, if any, who are not covered by the federal notice requirement.

Our organizations are pleased to support S. 495, strong bipartisan legislation which will help to ensure that U.S. consumers enjoy more effective data privacy and security. We appreciate your continued leadership on this matter, in particular the Chairman's planned amendment on the TJX issue, which resolves a significant concern we have had about the measure, and look forward to working with you as this bill moves through the legislative process.

Sincerely,



Gail Hillebrand
Financial Services Campaign Leader
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Travis Plunkett
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cc: Members of the Senate Judiciary Committee