

Rep. Jan Schakowsky
Opening Statement – Full Committee Markup
April 14th, 2015

Thank you, Mr. Chairman, for holding tomorrow's markup on three bills.

I support H.R. 906, which would enhance efficiency standards for grid-connected water heaters.

I strongly oppose the Improving Coal Combustion Residuals Regulation Act, which will weaken environmental and public health protections against a dangerous toxin.

But I would like to focus my remarks on the third bill we will consider tomorrow, the Data Security and Breach Notification Act. I have serious concerns with the bill that I believe must be addressed before it moves out of this Committee.

Over the past decade, almost one billion records with personal information have been compromised. The trend is becoming all too common, with another major breach impacting more than 10 million Americans reported at Premera Blue Cross just last month.

We all agree that we should enhance protections against data breach and provide consumers with relevant information in the event of a breach. Unfortunately, this bill misses the mark on both fronts.

I appreciate some of the improvements this bill would make to existing law – including providing the FTC with penalty authority and adding nonprofits to the definition of covered entity. I have heard we may see amendments tomorrow that further improve the bill since the Subcommittee markup.

Those changes could include allowing states to enforce existing standards regarding health information and providing the FTC with limited authority to hold telecommunications, satellite, and cable providers accountable for protecting personal information. Those are necessary improvements. But even if added to the bill, they are not sufficient. If this bill is enacted, consumers will be worse off than they are today.

But the major concerns raised at the subcommittee markup last month are still unresolved.

First, everyone in this room should understand that this bill would eliminate existing consumer protections enforced by states around this country. If you live in Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Guam, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Vermont, the Virgin Islands, Washington, or Wyoming, this bill would prevent you from being notified about breaches for which your state currently requires notification.

If you live in Arkansas, California, Florida, Missouri, North Dakota, Puerto Rico, Texas, Nebraska, North Carolina, or Wisconsin, the types of personal information that must be protected are weaker in this bill than in your states.

Even state consumer protection statutes that allow Attorneys General to prosecute failure to protect consumer data would be undermined by this bill.

At the federal level, safeguards enforced by the FCC would be lost in the move to the FTC. Those include requirements to secure data regarding viewing habits, phone records, and partial Social Security numbers. The bill sets weak data security standards that don't cover information like location information or metadata. It also prevents the FTC from amending data security requirements as technology and threats evolve. The limited protections in this bill will be inadequate from the moment it is enacted – and there is no hope to strengthen those standards through the rulemaking process.

Finally, the harm trigger in this bill limits notification requirements to likely financial harm. If there is a threat of physical violence or other serious harms, there is no need to notify consumers. It also requires the same companies that fail to protect personal information to determine whether there is a risk of financial harm before notifying consumers – a process that could take months.

None of those issues is addressed in the bill we will consider tomorrow. I must add that while I have heard about a few improvements we hopefully will see

in the manager's amendment, I have also heard that it could take us further backward by capping civil penalties, further limiting the definition of personal information, and provide a avoidance of penalties for first offenses – like a get-out-of-jail-free card for those that fail to protect data.

Amendments will be offered tomorrow that would address all of the key concerns with this bill. Without those changes, the bill is a step backwards. I hope and expect that those improving amendments will receive the full support of this Committee so that we can send a truly comprehensive bill to the floor.

Again, I thank the Chairman for holding this markup, and I yield back the remainder of my time.