

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**Opening Statement of Rep. Henry A. Waxman**  
**Ranking Member, Committee on Energy and Commerce**  
**Markup on H.R. \_\_, the Secure and Fortify Electronic Data Act of 2011, or SAFE Data Act**  
**Subcommittee on Commerce, Manufacturing, and Trade**  
**July 20, 2011**

Madam Chairman, I am disappointed that the bill before us today is not the result of a bipartisan effort. At our hearing in June, I urged that we work together on a bipartisan basis to produce a bill that all members of the Committee and all members of the House could support.

That is exactly what we did last Congress: we worked together to write a bipartisan data security bill that every member of the Committee supported and that passed the House on a voice vote.

But today we have taken that bipartisan compromise and filled it with loopholes that sacrifice data security and privacy. Because of these significant changes, I cannot support the current version.

Perhaps the biggest loophole is the bill's definition of "personal information." Under the current version of the bill, most personal information stored online or in company databases is not protected. There is no protection for personal e-mails; no protection for personal photographs and videos stored on-line; no protection for records of book, video, and other consumer purchases; no protection for records of purchases of over-the-counter drugs, including pregnancy tests; no protection for payroll records.

There is not even protection for information recorded in smart phones about the location of children.

In fact, even if your bank or financial account is hacked and your account number is disclosed, there is no protection unless your personal password and your name, address, or phone number is also stolen. A Social Security number or a credit card number is not personal information under this bill unless it is combined with other information.

At the same time that the definition of "personal information" in last year's bill has been narrowed beyond recognition, the bill retains the provisions that preempt state laws. That is a dangerous combination. I supported preemption last Congress in exchange for a strong federal

law. This bill eliminates scores of state consumer protections without putting equivalent or stronger federal protections in their place.

The narrow definition of “personal information” could also undermine the Federal Trade Commission’s current efforts to curb data security breaches. Since 2001, FTC has brought dozens of enforcement cases against businesses that failed to protect consumers’ personal information. Only a handful of those cases would be able to be brought based on the definition of “personal information” in this bill. The cases that the FTC brought to protect other information – including payroll information, employment histories, health information, mortgage information, email addresses, income histories, book and music purchases, and tax returns – could be blocked under this legislation.

The net result is that a bill that is supposed to be enhancing data security and consumer privacy would actually seriously undermine it.

There are other holes in this bill. This bill deletes key provisions from the bipartisan effort on information brokers, which are companies that aggregate personal data about individuals and make a profit selling that personal information.

In addition, data aggregators and other companies are exempted from the requirements to safeguard personal information any time the data could be obtained from a state or local government.

Moreover, this new version also creates a new gap in coverage that was not contained in the June draft proposal. This bill contains a section that is entitled “conforming amendment,” but is actually a give-away to the cable industry. The conforming amendment exempts cable operators from complying with current Cable Act privacy requirements to protect records of what their consumers watch.

Madame Chairman, this bill is not balanced. It preempts strong state laws and replaces them with a weak federal one. It threatens the FTC’s existing authorities. And it is filled with loopholes.

I hope you will rethink your approach and embrace our offer to work together to pass strong legislation that is a step forward – not backward – and will have bipartisan support.