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ONE HUNDRED TWELFTH CONGRESS

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Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Discussion Draft of H.R. __, the "Secure and Fortify Electronic Data Act" ("SAFE Data Act")
Subcommittee on Commerce, Manufacturing, and Trade
June 15, 2011

Madam Chairman, as I have said at our previous hearings, data security is not a partisan issue. It is something that all of us should care about. Last year, there were over 597 data breaches that affected over 12.3 million records.

Last Congress, this Committee worked together to pass with bipartisan support a data security bill introduced by Rep. Rush. Our bill passed the House in December 2009. But it was not acted upon by the Senate.

The bill we are considering today is based on our bipartisan House bill from last Congress. It contains important provisions that require companies to secure consumers' personal data and notify them in the case of breaches. I commend Chairman Bono Mack for using last year's bipartisan bill as a starting point.

There are some new provisions in the Chair's draft that strengthen last Congress' bill. For example, the draft contains a potentially valuable new provision requiring companies to have plans to minimize the personal data they retain on individuals.

Unfortunately, there are many more changes that weaken last Congress' bill than strengthen it. This is a mistake – and one I hope we can fix as we consider this legislation.

For example, under the legislation before us, Sony still would not have to notify its customers about its recent security breach. It did not "restore the integrity of the data system" for at least 43 days after Sony discovered the breach and it still has not fully "assess[ed] the nature and scope of its breach." Notice is not required to the FTC and consumers under the draft until those steps have been completed. That's far too long. It does little good to notify consumers after their identities have already been stolen.

This bill deletes key provisions on information brokers, which are companies that aggregate personal data about individuals and make a profit selling that personal information. It adds unnecessary burdens to FTC's rulemaking process, making it more difficult for new pieces

of data to be deemed "personal." And there is significant ambiguity regarding the scope of personal information that a company is required to protect.

Under this legislation, companies, including an aggregator of data, are exempted from the requirements to safeguard personal information any time that same data can be found in various local county government buildings. Furthermore, this draft creates an uneven playing field with potentially stronger data security and breach notification requirements for retailers than for nonbank financial institutions. There is no reason why financial institutions should be subject to smaller penalties for violations than retailers.

Overall, this draft is not balanced. It gives businesses too many protections and consumers not enough. It preempts strong state laws and replaces them with a weak federal one.

I hope these deficiencies in the bill can be fixed. I want to work with you to pass as effective a bill as possible, and I am looking forward to the promised stakeholder process.

We have a chance to pass meaningful legislation that actually could have a positive effect on everyone. Let's not pass up this opportunity.