

Opening statement on data protection hearing  
Congressman Luis V. Gutierrez  
November 9, 2005

Good morning. I want to thank Chairman Bachus for calling this hearing on the important topic of financial data security.

In July, Chairwoman Kelly and I held a hearing entitled, "Credit Card Data Processing: How Secure Is It?" I think the answer to that question was pretty clearly, "not secure enough." That hearing, like today's, benefitted from the testimony of Mr. Evan Hendricks, whose quarter-century of expertise on privacy issues has proved invaluable to this committee, and I'm certain his observations will be helpful today.

I have had a long standing interest in this subject dating from our work on the Gramm-Leach-Bliley Act. In 2003, I served as a conferee on the FACT act, which dealt with similar issues. In March of this year, I coauthored a bill with Congresswoman Melissa Bean on this issue, and I am proud to be an original cosponsor of the bill subsequently introduced by Representatives Bean and Artur Davis. I believe that the Bean-Davis bill provides a much better answer to this problem than HR 3997, and I hope that when we proceed to markup, our final product more closely resembles the Bean-Davis legislation.

It is my hope that we report out a bill that would require companies to notify consumers whenever their personal or financial data information has been compromised. Our legislation should further assist identity-theft victims by also requiring credit bureaus to be notified and to place a fraud alert or freeze on all compromised accounts. Companies responsible for breaches should be required to cover all costs associated with credit freezes or fraud alerts for at least one year after the breach. The legislation should also create a private right of action so people have a remedy when they are damaged by breaches, and it should restrict the uses of Social Security numbers as identifiers.

Finally, what we enact should be a floor, rather than a ceiling, ensuring that states can continue to innovate in this area.

It is important to note that we would not even be here today if the California legislature had not passed its law requiring consumers to be notified about data breaches. Because California consumers were notified when breaches occurred, the press picked up the story, and we began to understand the scope of the problem. A number of other states have followed California's lead, including my home state of Illinois, which has a very strong law in place. I would find it hard to support any bill that preempts or is weaker than the standards set by Illinois. I urge my colleagues to avoid a case of fair weather federalism on this issue.

State legislatures have long functioned as "incubators of innovation" because they have been able to act quickly and creatively to respond to changes in the marketplace. Frequently, their excellent product proves its merit beyond its borders and becomes the basis for a change in federal law. I am deeply troubled that HR 3997 could stifle this innovation, and weaken existing state and federal protections.

Similarly, we must ensure that our final product allows state Attorneys General enforcement authority along with federal entities. Consumers would suffer from the removal of the state Attorneys General and other state "cops on the beat." Finally, it is an issue of accountability. Very few consumers would ever figure out what federal agency to call if they were victimized, but most consumers know (and vote for) his or her state Attorney General and can ensure that that officeholder is held accountable. I look forward to hearing the testimony of the witnesses and to working with my colleagues to craft strong legislation that still permits the states to provide additional protections. Thank you. I yield back the balance of my time.