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National Association of Federal Credit Unions | www.nafcu.org

July 17, 2013

The Honorable Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing and Trade
House Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing and Trade
House Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Re: The Importance of Data Security

Dear Chairman Terry and Ranking Member Schakowsky:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing our nation's federal credit unions, I write today in conjunction with tomorrow's hearing entitled, "Reporting Data Breaches: Is Federal Legislation Needed to Protect Consumers?" NAFCU member credit unions and their nearly 96 million credit union member-owners appreciate the subcommittee's focus on data security and breach notification.

The risk of a data breach continues to be a serious problem for both consumers and businesses. Every time consumers choose to use plastic cards for payments at a register or make online payments from their accounts, they unwittingly put themselves at risk. Many are not aware that their financial and personal identities could be stolen or that fraudulent charges could appear on their accounts, which can create issues with their credit scores and reputations. Consumers trust that entities collecting this type of information will, at the very least, make a minimal effort to protect them from such risks. Unfortunately, this is not always true.

Financial institutions, including credit unions, have been subject to standards on data security since the passage of *Gramm-Leach-Bliley*. However, retailers and many other entities that handle sensitive personal financial data are not subject to these same standards, and they become victims of data breaches and data theft all too often. Financial institutions bear a significant burden as the issuers of payment cards used by millions of consumers. Credit unions can suffer financial losses in re-establishing member safety after a data breach occurs. They are often forced to charge off fraud-related losses, many of which stem from a negligent entity's failure to protect sensitive financial and personal information or the illegal maintenance of such information in their systems. Moreover, as many cases of identity theft have been attributed to

data breaches, and as identity theft continues to rise, any entity that stores financial or personally identifiable information should be held to minimum standards for protecting such data.

In recent years, there have been several large-scale data breaches, such as the ones at Sony and Michael's Inc. The aftermath of these breaches demonstrates what we have been communicating to Congress all along: credit unions and other financial institutions – not retailers and other entities – are out front protecting consumers, picking up the pieces after a data breach occurs. It is the credit union or other financial institution that must notify its account holders, issue new cards, replenish stolen funds, change account numbers and accommodate increased customer service demands that inevitably follow a major data breach. The negligent entity that caused these expenses by failing to protect consumer data loses nothing and is often undisclosed to the consumer.

NAFCU urges you not to overlook the issue of national standards on data security as you consider the importance of breach notification, and we recommend provisions to protect consumers from breaches that compromise their financial and personally identifiable information. Data security is a common-sense bipartisan issue that must be addressed.

With that in mind, NAFCU specifically recommends the consideration of the following issues:

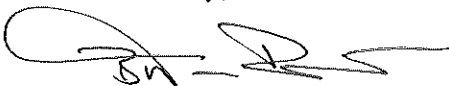
- **Payment of Breach Costs by Breached Entities:** NAFCU asks that credit union expenditures for breaches resulting from card use be reduced. A reasonable and equitable way of addressing this concern would be to require entities to be accountable for costs of data breaches that result on their end, especially when their own negligence is to blame.
- **National Standards for Safekeeping Information:** It is critical that sensitive personal information be safeguarded at all stages of transmission. Under Gramm-Leach-Bliley, credit unions and other financial institutions are required to meet certain criteria for safekeeping consumers' personal information. Unfortunately, there is no comprehensive regulatory structure akin to Gramm-Leach-Bliley that covers retailers, merchants and others who collect and hold sensitive information. NAFCU strongly supports the passage of legislation requiring any entity responsible for the storage of consumer data to meet standards similar to those imposed on financial institutions under the Gramm-Leach-Bliley Act.
- **Data Security Policy Disclosure:** Many consumers are unaware of the risks they are exposed to when they provide their personal information. NAFCU believes this problem can be alleviated by simply requiring merchants to post their data security policies at the point of sale if they take sensitive financial data. Such a disclosure requirement would come at little or no cost to the merchant but would provide an important benefit to the public at large.
- **Notification of the Account Servicer:** The account servicer or owner is in the unique position of being able to monitor for suspicious activity and prevent fraudulent transactions before they occur. NAFCU believes that it would make sense to include

entities such as financial institutions on the list of those to be informed of any compromised personally identifiable information when associated accounts are involved.

- **Disclosure of Breached Entity:** NAFCU believes that consumers should have the right to know which business entities have been breached. We urge Congress to mandate the disclosure of identities of companies and merchants whose data systems have been violated so consumers are aware of the ones that place their personal information at risk.
- **Enforcement of Prohibition on Data Retention:** NAFCU believes it is imperative to address the violation of existing agreements and law by merchants and retailers who retain payment card information electronically. Many entities do not respect this prohibition and store sensitive personal data in their systems, which can be breached easily in many cases.
- **Burden of Proof in Data Breach Cases:** In line with the responsibility for making consumers whole after they are harmed by a data breach, NAFCU believes that the evidentiary burden of proving a lack of fault should rest with the merchant or retailer who incurred the breach. These parties should have the duty to demonstrate that they took all necessary precautions to guard consumers' personal information but sustained a violation nonetheless. The law is currently vague on this issue, and NAFCU asks that this burden of proof be clarified in statute.

Thank you for your kind attention to this important matter. We appreciate the opportunity to voice our concerns and look forward to working with you as you examine this issue. Should you have any questions or need additional information, please do not hesitate to contact me or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204 or bthaler@nafcu.org.

Sincerely,



B. Dan Berger
Executive Vice President, Government Affairs

cc: Members of the Subcommittee on Commerce, Manufacturing and Trade