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April 17, 2007

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I am writing to you on behalf of the American Bankers Association (ABA) to express our concerns about S. 495, the Personal Data Privacy and Security Act of 2007, which is scheduled to be marked up by your Committee on Thursday, April 19, 2007. For the reasons set forth below, we are opposed to S. 495 in its current form.

We support uniform national standards for notification to individuals whose personal information has been subject to a security breach. In fact, banks and other financial institutions are already subject to the data security requirements of the Gramm-Leach-Bliley Act (GLBA) and implementing regulations, which include notification requirements. These requirements are enforced by our "functional" regulators at the federal and state levels, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Securities and Exchange Commission, and state insurance authorities. However, there are many other entities, such as merchants and educational institutions, which are not subject to regulatory oversight and data protection and consumer notice requirements.

S. 495 is designed to put in place a uniform, national data breach standard. But, it does so in a way that would result in a duplicative and inconsistent system of federal and state regulation and enforcement that will have far-reaching and negative consequences for the financial services system and our customers. In particular, S. 495 acknowledges that financial institutions are subject to a comprehensive regulatory system by providing an exception in Title III, Subtitle A from the data security requirements for institutions already covered by GLBA's data security requirements. However, it does not provide an exception from the notice requirements in Subtitle B for institutions that comply with GLBA's notice requirements.

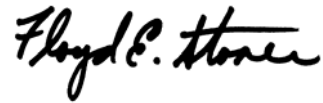
In addition, it is not clear that state laws dealing with notification of consumers and other entities would be preempted. For example, S. 495 states that it supersedes any other provision of federal or state law relating to notification of a security breach. However, it also permits states to promulgate additional laws in this area, which undermines the goal of having a uniform national law.

Moreover, instead of exclusive enforcement by the GLBA functional regulators, the requirements of S. 495 can be enforced by state attorneys general or the U.S. Attorney General. This additional enforcement mechanism is inconsistent with current law and unnecessary, since our regulators already have the authority to impose significant monetary penalties and take other enforcement action against violators.

We urge the Committee to work closely with the Senate Banking Committee in addressing these issues. As you know, the Banking Committee has broad jurisdiction over financial services firms and their regulatory structure, including the data security and notification requirements that have been in place since 2001 and that were updated to meet changing conditions in 2005.

Thank you for considering our views on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Floyd E. Stoner". The signature is written in a cursive, slightly slanted style.

Floyd E. Stoner

Cc: Members of the Senate Judiciary Committee