



July 20, 2011

The Honorable Marsha Blackburn (R-TN-07)
The Honorable Pete Olson (R-TX-22)

Dear Representatives Blackburn and Olson,

On behalf of the Marketing Research Association (MRA), representing the survey and opinion research profession,¹ I write to wholeheartedly endorse your amendment to the Secure and Fortify Electronic (SAFE) Data Act, which would restrict the Federal Trade Commission (FTC) to their regular Magnusson-Moss rulemaking authority when it comes to modifying the definition of “personal information”.

The Act would cede an excessive amount of power to the FTC to radically expand that definition using Administrative Procedures Act (APA) rulemaking authority.² The Act’s definition, in Sec. 5(7), already includes the common standard data and combinations that could lead to criminal abuse of consumers and it is very difficult to go beyond that standard without sliding down a slippery slope where almost any piece of information could ultimately be included in the FTC's definition of “personal information”.

Indeed, during Q&A in the subcommittee’s June 15th hearing on the Act, FTC Commissioner Edith Ramirez indicated that the FTC would likely use that authority to expand the definition far beyond Congress’ intentions, saying, “I think that the touchstone here is information that can be uniquely tied to an individual... broader than the definition that is currently used in the draft bill.”

The draft’s definition of personal information is good on its own and should rightfully be set by Congress, which has Constitutional law-making responsibility, not an unelected and unaccountable regulatory body like the FTC.

Moreover, such radical expansion would result in more uncertainty for American employers, including survey and opinion research organizations, whose livelihood depends on the legitimate and accurate collection and analysis of information provided by consumers.

¹ The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers. Purchasers of opinion and survey research include the government (the world’s largest purchaser), media, political campaigns, and commercial and non-profit entities.

² Administrative Procedures Act (APA) rulemaking authority - section 553 of title 5, U.S. Code.

The FTC would still be able to modify the definition using its regular Magnuson-Moss rule-making authority and we feel that should be sufficient to grapple with any major modifications to the definition that might be necessary over time.

Thank you for your dedication in pursuing this important amendment. We stand ready to assist you.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Fienberg". The signature is fluid and cursive, with the first name "Howard" being more prominent than the last name "Fienberg".

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