Economic Affairs Committee
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Remarks of Tracie Kenyon
President/CEO, Montana Credit Union Network

First, I want to express our appreciation for the opportunity to participate with the ID Theft working group. It's a difficult process, but many of the issues are being fleshed out. There has been considerable discussion about the importance of consumer awareness and education. For several years, we at the Montana Credit Union Network have been dedicated to using our resources to get the word out to consumers on all forms of fraud prevention, including identity theft. We do this through credit union member newsletters and local financial education trainings. We have established an Outreach Services Department in our organization that is dedicated to delivering consumer financial education to Montana citizens on an ever-expanding, ongoing basis. We feel this is part of the credit union mission as nonprofit, consumer-owned, financial cooperatives.

We are generally supportive of the security freeze concept. We will review all proposed bills with an eye toward any potential operational problems for credit unions and user-friendliness for consumers. Beyond that we are not taking a position on the details of the proposals.

One issue that we do want to focus on is communication and accountability for data breaches that compromise consumer private information and create the opportunity for large scale fraud and identity theft. We feel very strongly that there needs to be better internal controls and accountability for third party card processors and merchant card

processors. Credit unions and their member-owners can end up bearing the cost of a data breach by a third party processor. Millions in losses were caused last spring when a major merchant card processor in Texas suffered a data breach. A credit union in Pennsylvania recently had to absorb the cost of issuing 21,300 new credit cards after a security breach by a third part vendor. A March 8 article in the Wall Street Journal, which is posted to this committee's website, describes the magnitude of the card security problem in merchant card processing, saying that, and I quote, "only 17% of 231 large merchants have complied with card-industry guidelines ..."

Section 7 of House Bill 732 from last session (codified as section 30-14-1704, MCA) should be helpful. In addition to requiring notification of a data breach to the consumer, it also requires notification to the "owner" of information if the business having the data breach doesn't own the information. Presumably, this notification to owner would require a third party processor to notify the financial institution involved. The language is taken from California law. Our contacts at the California Credit Union League indicate they believe this language does require notification to the financial institution. However, they also indicate that there are some who disagree. Therefore, the language should be revised to better clarify who will be notified and the content of the notification. Guidelines established by our national affiliate, the Credit Union National Association, otherwise known as CUNA, suggest the notice should state:

*when the breach occurred

*identification of the third party in control of the compromised information at the time of the breach

*which accounts are affected; and

*details on the type of information compromised.

The CUNA guidelines also call for reimbursement of the consumer or financial institution by the breaching party for losses incurred. A specific statutory right to reimbursement, including attorney's fees, in a private civil action would have a deterrent effect on future breaches and encourage compliance with industry standards by merchants and third party processors. The effect would be better protection of consumers and greater efficiency in the consumer financial payment system.

We would therefore like to see these two accountability measures incorporated in any future legislation:

1) clarification of the notification to affected financial institutions in the event of a data breach; and
2) a specific statutory right of reimbursement.

We can provide language and would be very happy to help in the drafting of these amendments. Again, Mr. Chairman, we thank you for this opportunity. Our senior vice president and general counsel, Bob Pyfer, is on the conference call-in and would be happy to try to answer any questions you may have on this topic.