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# POLITICO

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## Sparks fly at data breach markup

By Tony Romm

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The House Energy and Commerce subcommittee led by Rep. Mary Bono Mack (R-Calif.) overcame serious partisan feuds Wednesday to clear a bill that would require companies to boost their data security practices and notify consumers in the event of a breach.

The commerce subcommittee approved Bono Mack's bill on a voice vote and sent it to the full Energy and Commerce Committee for consideration. But the outcome followed a lengthy debate over the original bill and a series of changes to its scope that left some Democrats grumbling it did not go far enough to safeguard consumers' personal data.

Opening the hearing, Bono Mack stressed that the recent spate of attacks made it clear that it is "time for Congress to take decisive action."

"This constant assault on American consumers only reinforces my long-held belief that much more needs to be done to protect sensitive personal information," she noted in her opening statement.

But Rep. G.K. Butterfield (D-N.C.), ranking member on the subcommittee, decried that the bill as introduced "stopped short of delivering on that promise." He criticized Republicans for including in the proposal a weak definition of personal information, and omitting any special provisions targeting information brokers.

Joining him in the criticism was the full committee's ranking member, Rep. Henry Waxman (D-Calif.), who lamented early in the hearing that the "bill before us today is not the result of a bipartisan effort." He charged the bill is filled with "loopholes," and said it would only replace tougher state data laws with a weaker federal standard.

At one point, Rep. Bobby Rush (D-Ill.) even tried to replace the entire Republican proposal with a data breach bill he and others offered in the previous session of Congress that garnered bipartisan backing. Rush's effort came close to passing, even scoring support from some panel Republicans. But ultimately it fell short, paving the way for Bono Mack's bill to clear to full committee.

Bono Mack unveiled her legislation — the SAFE Data Act — after a series of high-profile cyberattacks that targeted Epsilon and Sony. The chairman held hearings specifically on those incidents, and unveiled a discussion draft in June designed to boost companies' data security and set a national breach notification standard.

In the days leading up to the marathon markup on Wednesday, the chairman circulated a new version of the bill that contained key tweaks meant to assuage industry and Democratic concerns. While industry is

expected to approve of some of those changes, many top subcommittee Democrats lambasted the legislation and the amendments their fellow Republicans offered on Wednesday.

The biggest flashpoint centered on the bill's treatment of personal information. Under the bill as written, consumers would only be notified in the event that their names, addresses or phone numbers were captured along with one or more unique identifiers, such as a Social Security number, financial account number or driver license number.

Democrats sought repeatedly Wednesday to expand that definition. Waxman, for one, hoped to include such elements as video and photos stored online. Butterfield proposed an amendment that would treat location information for kids as part of the protected category of data.

Subsequent Democratic amendments would have included book purchases, movie rentals, health-related Web searches and over-the-counter drug purchases as data protected under the bill.

But Republicans fended off those attempts. While Bono Mack expressed interest in evaluating the definition of personal information as debate continued to the full committee, her subcommittee left the current standard intact.

And the chairwoman stressed many of the debates should instead be a part of the Hill's broader initiatives on online privacy.

More than that, Republicans led by Reps. Marsha Blackburn Tennessee and Pete Olson of Texas secured passage of an amendment that would limit the FTC's ability to adapt later the definition of personal information.

As originally written, the FTC had some capacity to use the Administrative Procedures Act to address the definition of personal information if modification "is necessary because of changes in technology or practices" that posed challenges to the law, according to a GOP background memo.

Yet under the new language, the agency would have to use the more difficult Magnuson-Moss rulemaking process to expand that definition later. That later led Butterfield and Waxman to charge Republicans with using the bill to "hamstring" the FTC.

Democrats later tried to replace all of Bono Mack's legislation with the bill crafted with the help of Rush. The amendment failed by only one vote — 9 yeas and 10 nays — before the entire bill was reported favorably by the subcommittee.

"Yes we passed it out of the Congress a few times, to go nowhere," Bono Mack said prior to the vote on Rush's amendment. "Elections bring different people to the House with a different set of eyes, and different set of ideas, and a different set of constituents."

"It is a new time, a new bill," she continued, noting she still hoped to have "robust discussion" with Democrats to find bipartisan consensus in the coming weeks.

Bono Mack's bill still requires companies to put in place data security plans scaled to the amount of customers they serve and the sensitivity of the information they collect.

Moreover, the proposal sets the terms by which companies must inform law enforcement, the FTC and consumers in the event of a breach. Generally, companies that have been hacked must contact law enforcement within 48 hours of the incident. And those firms must notify consumers and the FTC no more than 48 hours after assessing who has been affected by the breach — though law enforcement can request a delay. Companies have about 45 days to complete that process.