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Senator Dianne Feinstein

of California

Feinstein Urges Treasury Investigation on Outsourcing Practices of American Banks March 3, 2004

Washington, DC – Concerned that sensitive personal information may be at risk when it is sent to other countries by American banks for processing, U.S. Senator Dianne Feinstein (D-Calif.) today urged the U.S. Comptroller of the Currency to investigate whether adequate safeguards are being used by the banks to ensure that consumers are being protected.

In a letter to the Comptroller of the Currency, John D. Hawke, Jr., Senator Feinstein wrote: **“I am greatly concerned that national banks are sending American citizens’ sensitive financial data abroad to third-party vendors without adequate privacy and security protections.”**

The letter to the Comptroller follows other recent actions by Senator Feinstein on this issue. These include letters to the CEOs of several major U.S. corporations, asking that these companies provide adequate safeguards for personal information at risk of legislation requiring them to do so. And last week, Feinstein wrote to the General Accounting Office requesting an investigation of the extent to which sensitive personal data about American citizens is outsourced abroad by private companies and Federal agencies.

“Financial institutions are increasingly using third party contractors for a range of core internal banking functions such as payroll processing, merchant processing, customer call centers, and mortgage servicing. A number of these contractors are based abroad. For example, financial institutions as varied as Bank of America, Citigroup, Equifax, and TransUnion are engaging in outsourcing consumers’ most sensitive data abroad,” Senator Feinstein wrote to the Comptroller.

The letter continues, “As the OCC has noted, American banks that transfer internal services to third parties still have the same risk management, security, privacy, and other consumer protection responsibilities as if the bank conducted the activities itself (See OCC Bulletin 2001-47). In other words, a bank cannot use outsourcing to sidestep its obligations under American data privacy and security laws.

Nevertheless, oversight of third-party vendors abroad poses unique regulatory challenges. First, overseas companies may be subject to conflicting privacy and security laws. Second, it is harder for OCC examiners to conduct on-site review of contractors based abroad. Third, American victims of identity theft perpetrated by criminals overseas may have few meaningful remedies to address their injuries.

I am particularly concerned about the enforcement of two aspects of Americans financial privacy laws.

First, under current banking regulations, any third party that receives a customer's nonpublic personal information to perform a banking service cannot use that information for any other purpose. Second, Gramm-Leach-Bliley requires banks to have adequate security standards to protect consumer data from theft or misuse. I am concerned about how these Federal requirements are being enforced abroad.

I would request that the OCC provide me with information on the following:

(A) Please identify the number of foreign third-party contractors which are provided nonpublic personal information by banks under your jurisdiction. Of these contractors, how many have been audited or reviewed by OCC examiners for the adequacy of their privacy and security practices?

(B) Would the OCC normally obtain information about foreign third-party contracts in the course of an OCC audit? If not, why not?

(C) Please identify the total number of enforcement actions initiated by the OCC after examiners found violations of American financial privacy and data security laws by third party contractors from abroad. In addition, please identify the number of enforcement actions against domestic third party contractors for the same type of violations.

(D) Please identify the number of OCC examiners currently assigned to review outsourcing of contracts abroad by national banks? How many examiners review domestic third-party contractors?

(E) OCC Bulletin 2001-47 directs banks to require third parties (including third parties from abroad) to "*fully disclose breaches in security resulting in unauthorized intrusions that may materially affect the bank or its customers.*" Pursuant to this OCC directive, please identify (i) the number of breaches in security reported to banks by third-party vendors from abroad, and (ii) the number of breaches reported by domestic third party vendors and by the banks themselves. How does the OCC follow-up on any report of breaches?"

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