

March 12, 2009

The Honorable Charles E. Johnson  
Acting Secretary  
200 Independence Ave. S.W.  
Washington, D.C. 20201

**RE: Issuance of Guidance Required by Section 13402 of the American Recovery and Reinvestment Act of 2009**

Dear Acting Secretary Johnson:

On behalf of the members of the Software & Information Industry Association (SIIA), I am writing with urgent concern regarding Section 13402 ("Notification in the Case of Breach") of the American Recovery and Reinvestment Act of 2009.

Among the many changes affecting the treatment of health information found in the Act, Section 13402 requires the Secretary of Health and Human Services (HHS), within 60 days of its enactment, to issue guidance that specifies the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

We strongly urge the Department to:

- Issue the required guidance (even if in preliminary form) within the 60 day timeframe.
- Include in the guidance the variety of technologies and methodologies – including ways in which the health information can be obfuscated, encrypted, redacted or otherwise made unusable -- that can address the full cycle of information management, including data storage, transmission and analytics.
- Seek public input from stakeholders before issuing the guidance within the 60-day time frame, or at least before the guidance is issued as "final".

If this guidance is not produced within the 60-day time period, the consequences will be extremely disruptive to consumers, health care providers and vendors, as they will be required, in order to remain compliant with the Act, to use a "technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute [ANSI]."<sup>1</sup> Because many standards developing

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<sup>1</sup> Section 13402(h)(1)(B) of the American Recovery and Reinvestment Act of 2009.

organizations have not been accredited by ANSI, the potential for confusion and disruption for users, vendors and entities relying on existing products that achieve the stated aims of the Act but do not meet this particular requirement is enormous.

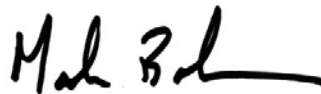
Our experience with recent regulatory efforts that have sought to produce proscriptive guidance, most notably in the state of Massachusetts, has demonstrated the essential need for getting input and receiving comments from a broad set of stakeholders with different business models and technology deployments and from experts in this area. Massachusetts has already had to produce at least two sets of amendments to its regulations, and delay their implementation of the regulations, because of the complexity of this issue and its proposals.

As the principal trade association of the software and digital information industry, the more than 500 members of SIIA develop and market software and electronic content for business, education, consumers and the Internet.<sup>2</sup> SIIA's members are software companies, ebusinesses, and information service companies, as well as many electronic commerce companies. As leaders in the global market for software and information products and services, SIIA's members include innovative companies that operate significantly in the Australian market. Our membership consists of some of the largest and oldest technology enterprises in the world, as well as many smaller and newer companies.

SIIA has been a leader in calling for coherent and meaningful national and regional frameworks for data security, including effective and meaningful security plans and, where appropriate, breach notification. Our efforts have focused, in all cases, on the ultimate goal of promoting meaningful security practices, as well as combating the pernicious effects of identity theft, which costs consumers, businesses and the economy billions of dollars each year.

We stand ready to assist the Department as it undertakes this critical, mandated responsibility, and recognize the short time frame that has been imposed under the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Bohannon".

Mark Bohannon  
General Counsel & SVP Public Policy

cc: Mr. Robinsue Frohboese, Acting Director, Office for Civil Rights, HHS  
Mr. Edwin Woo, Office of General Counsel, Civil Rights Division, HHS

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<sup>2</sup> Our website can be found at: [www.siiia.net](http://www.siiia.net)