



March 15, 2019

The Honorable Mike Crapo
Chairman
U.S. Senate Committee on Banking,
Housing, & Urban Affairs
239 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
U.S. Senate Committee on Banking,
Housing, & Urban Affairs
713 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown,

The National Multifamily Housing Council (NMHC) and National Apartment Association (NAA) applaud the Committee for exploring issues surrounding the collection, use and protection of sensitive information by private companies, such as apartment firms. Rental housing owners and operators, and their third-party service providers, rely heavily on highly sensitive, personal data about apartment applicants, residents and employees to run their day-to-day business.

For more than 20 years, NMHC and NAA have partnered on behalf of America's apartment industry. Drawing on the knowledge and policy expertise of staff in Washington, D.C., as well as the advocacy power of more than 160 NAA state and local affiliated associations, NAA and NMHC provide a single voice for developers, owners and operators of multifamily rental housing. One-third of all Americans rent their housing, and 39 million of them live in an apartment home.

Given the amount of sensitive, personal and financial information that apartment operators rely on and the ever-expanding cyber-threat landscape we face, our industry has placed a high-priority on strengthening our defenses against vulnerabilities and protecting sensitive data and consumer privacy. In fact, apartment firms are committing tremendous resources to this cause and NMHC and NAA work continually to educate firms about best practices in this space.

As the Committee considers solutions to bolster consumer and data protection in the wake of continued high-profile data security and privacy breaches, NMHC and NAA would like to use this as an opportunity to express support for federal legislation that would provide for:

- A clear federal preemption of the existing patchwork of often conflicting and contradictory state data security, privacy and breach notification laws. For apartment firms that operate in multiple states or regions, it can make compliance costly and overly burdensome, which ultimately affects housing affordability.
- A reasonable, flexible and scalable national standard for data security, privacy and breach notification. Specifically, when establishing compliance obligations, this standard must consider the needs and available resources of small businesses as well as large firms and the sensitivity of the data in question.

- An obligation for third-parties to maintain responsibility for their own security and privacy safeguards. Efforts to shift responsibility for third-party security lapses or privacy violations to apartment firms or other primary consumer relationship holders should be resisted. Often, businesses of all sizes are faced with the reality of being forced to accept boiler plate contractual language in exchange for services from third parties. For example, while one company may have the market share and financial leverage to negotiate and demand certain security protocols be adhered to in order to earn their business, the vast majority of American businesses do not. The responsibility for overseeing a third party's data security program and consumer privacy safeguards should remain with the third party and not with apartment companies or other firms that rely on these third-party services.
- A clear assignment of financial and legal liability to the entity that actually suffered the data breach or caused the consumer privacy violation, particularly in the case of third-party breaches or security incidents.
- A requirement that third-party service providers first notify their customers of any breach and allow them the option to notify the consumer of the breach or privacy violation if they so choose. Ultimately, the reputational risk of a data breach or a failure to safeguard a renter's privacy falls to the apartment firm. For that reason, apartment operators should maintain control over communication with their residents. While our industry encourages apartment operators to ensure strong contractual language exists that governs data security, incident response and breach notification responsibilities with service providers, the reality is this can be a significant challenge and the law should be clear on this point.

We thank you for the opportunity to present the views of the rental housing industry as you continue deliberations to enhance consumer privacy, data security and breach notification standards. NMHC and NAA stand ready to work with Congress to create a federal data, privacy and breach notification standard that recognizes the unique nature and needs of the rental housing industry while ensuring the data that our members collect, use and maintain is secure.

Sincerely,



Douglas M. Bibby
President
National Multifamily Housing Council



Robert Pinnegar
President & CEO
National Apartment Association