April 7, 2025

The Honorable Brett Guthrie
Chairman
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Joyce
Vice Chairman
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Guthrie and Vice Chairman Joyce:

The National Multifamily Housing Council (NMHC), the National Apartment Association (NAA) and Real Estate Technology and Transformation Center (RETTC) commend your leadership in establishing the data privacy working group and continuing to develop comprehensive federal data privacy and security standards that protect consumers and American businesses. We appreciate the opportunity to provide insights on this effort through the data privacy working group's Request for Information (RFI).

The relationship between a resident and the housing provider may span years and involve the collection and use of various types of information. Consumer data contained in resident screening reports and held by housing operators and their service providers is crucial in accounting for rental history, tenure and payment data, which make up an important part of a resident's profile. These data points can also serve as tools to improve a resident's housing opportunities in the future. Rental housing owners and operators, and their service providers, rely heavily on highly sensitive, personal data about rental applicants, residents and employees to run their day-to-day business and effectively integrate new technologies into their operations. Given the sensitivity of the information that rental housing operators rely on and the ever-expanding cyber threat landscape we face, our industry has placed a high priority on strengthening defenses against vulnerabilities and protecting sensitive data and consumer privacy.

Rental housing providers use emerging technologies, like AI, to reshape business operations, improve housing affordability and benefit millions of American renters. Today, AI and related technologies in rental housing have led to significant gains in meeting resident expectation and demand. As with many sectors, the rental housing industry is also looking to leverage the opportunities of emerging technologies like AI while also ensuring robust data protection and compliance with existing consumer and housing federal, state and local laws including the Fair Housing Act and the Fair Credit Reporting Act.

To aid in those efforts and as discussed below, NMHC, NAA, and RETTC strongly support the establishment of a comprehensive federal data privacy framework. Further, we believe the creation of this framework must precede the imposition of any additional regulations on the use and development of AI technologies.

We greatly appreciate the opportunity to provide the following insights on the data privacy working group's RFI:

I. Roles and Responsibilities.

It is vital for any framework to differentiate between a covered entity, their service provider or a third-party data collector. NMHC, NAA, and RETTC support 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. While NMHC, NAA, and RETTC encourage rental housing operators to ensure that service provider contracts include strong and specific language governing data security, incident response and breach notification, this is not always feasible. Lack of statutory clarity on these subjects opens the door to skyrocketing breach insurance, compliance, and litigation costs, and clarity on this point is needed to promote positive pro-consumer outcomes.

II. Personal Information, Transparency and Consumer Rights

Rental housing firms must maintain the right to collect, use and retain sensitive information necessary for business operations. This is particularly important to ensure the safety and security of renters and employees through prospective resident screening while also ensuring compliance with existing regulatory requirements such as reporting under the Fair Housing Act.

Creating a private right of action that would allow consumers the right to sue companies for a privacy breach, while well-intended, could open the door to costly litigation that could negatively impact housing operations and ultimately housing affordability, even when the rental housing owner or operator has done everything possible to secure the privacy and data of its residents.

III. Existing Privacy Frameworks & Protections

NMHC, NAA, and RETTC believe a clear federal preemption is essential to provide clarity for rental housing firms. The current patchwork of state laws creates a significant compliance burden for rental housing firms and leaves consumers vulnerable to myriads of mistakes and unintended consequences. This is particularly true given the constantly evolving nature of state data privacy and security laws. A clear and full preemption of state law is an essential component of any meaningful federal privacy legislative effort, otherwise compliance with a continued patchwork of data privacy laws will continue to create significant compliance challenges.

IV. Artificial Intelligence

NMHC, NAA, and RETTC strongly believe that it is necessary to first establish a federal data privacy standard before further regulating this space. The current legal landscape provides strong protection against risks posed by AI, machine learning and algorithm-informed decision making. Housing policy and the relationship between housing providers and renters are guided strongly by robust state and local laws that include protections for both renters and housing providers alike. Additional consumer protections found under state privacy laws and regulations are also another important consideration.

At the federal level more specifically, various federal statutes already apply to AI applications with impacts on housing providers and renters. For example, the U.S. Department of Housing and Urban Development (HUD) and Department of Justice (DOJ) enforce the Fair Housing Act (FHA) and similar laws, and the Federal Trade Commission (FTC) has general authority to regulate potentially unfair and deceptive trade practices. Additionally, the Consumer Financial Protection Bureau (CFPB) has rulemaking and enforcement responsibility under the Fair Credit Reporting Act (FCRA). Each of these agencies has taken actions – ranging from joint statements to requests for public input and enforcement actions, among other efforts – under their existing authorities to ensure consumer protections are applied to AI and other emerging technologies.

VI. Accountability and Enforcement

It is important for any data privacy framework to consider the data collected and the size of the company upon enforcement. Any enforcement regime established under a federal privacy standard should provide adequate flexibility and scalability for firms of all sizes and account for the sensitivity of the data in question.

The data privacy working group should also exercise caution when delegating any responsibilities to the Federal Trade Commission (FTC), particularly regarding the promulgation of regulations for compliance by covered entities. Policymakers should ensure the FTC and other regulators do not implement overly burdensome and costly compliance requirements. For example, given the complexities of verifying any privacy or protection request and responding accurately, rental housing firms need sufficient time to carry out any request, including the option for an extension if necessary.

As policymakers consider AI and other developments in emerging technologies, any efforts to regulate these products and services should acknowledge the end-user as beyond the scope of liability. This is important to ensure that future regulations do not unnecessarily stifle innovation or undermine the pro-consumer and pro-housing benefits new technologies bring to bear. Further, incorporating safe harbors into future approaches is a proven method for providing the industry with the flexibility necessary to continue innovating as technologies evolve.

Conclusion

NMHC, NAA, and RETTC thank you for the opportunity to present the views of the rental housing industry as the data privacy working group examines the parameters of a comprehensive federal data privacy and security framework. Policymakers should look to foster innovation that will drive better housing outcomes, not stifle its potential. Instead, Congress should act swiftly to protect consumers, businesses, and national security from the growing cyber threat landscape. The most effective way to achieve both of these goals is through focusing on the development of a robust, flexible, and scalable federal data security and privacy standard.

We hope to continue working with Congress to ensure that data security and privacy legislation recognizes the unique nature and needs of the rental housing industry while ensuring the data that our members collect, use, and maintain is secure. If we can provide additional insight or be of any assistance during this process, please do not hesitate to contact us.

Sincerely,

Sharon Wilson Géno
President
National Multifamily Housing Council

Bob Pinnegar
President and Chief Executive Officer
National Apartment Association

Kevin Donnelly
Executive Director and Chief Advocacy Officer
Real Estate Technology and Transformation Center