



June 22, 2022

The Honorable Janice D. Schakowsky
Chair
Subcommittee on Consumer Protection and
Commerce
House Committee on Energy and
Commerce
2367 Rayburn House Office Building,
Washington, DC 20515

The Honorable Gus M. Bilirakis
Ranking Member
Subcommittee on Consumer Protection and
Commerce
House Committee on Energy and
Commerce
2227 Rayburn House Office Building
Washington, DC 20515

Dear Chair Schakowsky and Ranking Member Bilirakis:

On behalf of the more than 80,000 combined members of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA)¹, we applaud the bipartisan, bicameral work done to release the discussion draft, The American Data Privacy and Protection Act.

Apartment owners and operators, and their service providers, rely heavily on highly sensitive, personal data about apartment applicants, residents and employees to run their day-to-day business. Therefore, they are actively engaged in these issues. Given the sensitivity of the information that apartment 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. In fact, apartment firms are committing tremendous resources to this cause.

As the Subcommittee considers the American Data Privacy and Protection Act and continues to improve the legislation, NMHC and NAA would like to express support for provisions that would provide for:

- **Federal Preemption:** The data privacy discussion draft outlines a federal preemption for most existing state data privacy and security laws. We believe a clear federal preemption is necessary to provide clarity for apartment firms. The current patchwork of state laws creates a significant compliance burden for apartment firms and leaves consumers vulnerable to myriad of mistakes and unintended consequences. This is particularly true given the constantly evolving nature of state data privacy and security laws.
- **Flexible and Scalable National Standard:** The discussion draft reflects a need to take into consideration the data collected and the size of the company. We believe that any enforcement regime must provide for a flexible and scalable national standard for data

¹ For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, finance and suppliers partners/service providers. NMHC represents the principal officers of over 1,500 firms that own, develop, manage and finance apartments. As a federation of more than 145 state and local affiliates, NAA encompasses over 73,000 members representing nearly 9 million apartment homes globally. The apartment industry today plays a critical role in housing this nation's households by providing apartment homes to 40.1 million residents, contributing \$3.4 trillion annually to the economy while supporting 17.5 million jobs.

security, privacy and breach notification that takes into account the needs and available resources of small businesses, as well as large firms and the sensitivity of the data in question.

- **The Ability to Continue to Perform Essential Business Functions:** The discussion draft encourages data collection minimization and also rightfully acknowledges that entities may have an essential business need to engage with consumer data. Apartment 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 apartment residents and employees through prospective resident screening while also ensuring compliance with regulatory requirements such as reporting under the Fair Housing Act.
- **Reasonable Time Frame to Respond to Consumers:** The discussion draft directs the Federal Trade Commission (FTC) to promulgate regulations for compliance by covered entities. Given the complexities of verifying a consumer's request and responding accurately, apartment firms need sufficient time to carry out any request, with the option for an extension if necessary.
- **Third-Party/Service Provider Responsibilities:** The discussion draft makes an important distinction between covered entities, service providers and third parties. We believe that service providers must hold responsibility for their own security and privacy safeguards. Liability for any third-party/service provider security lapse or privacy violation must not shift to apartment firms or other primary consumer relationship holders. Often, businesses of all sizes are faced with the reality of being forced to accept boilerplate contractual language when contracting with a service provider or supplier. For example, while one large company may have the market share and financial leverage to negotiate and demand certain security protocols, 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 party that is collecting, using and retaining sensitive information—not with apartment companies or other firms that rely on third-party services.
- **Assignment of Financial and Legal Liability:** The discussion draft establishes the need to differentiate between a covered entity, their service provider or a third-party data collector. We 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. NMHC and NAA encourage apartment operators to ensure that service provider contracts include strong and specific language governing data security, incident response and breach notification. Unfortunately, this can often be a significant challenge, especially for smaller property owners. For this reason, the law should be clear on this point.
- **Consumer Notification:** The discussion draft includes provisions to ensure that covered entities communicate changes to privacy policies to individuals. We respectfully request that any service provider be required to first notify their customer and the apartment firm of any privacy policy change or violation, as well as of any data security incident. Ultimately, the reputational risk caused by a third party/service provider data breach or privacy violation falls to the apartment firm. For that reason, apartment operators should maintain control over communication with their residents and should have the option to notify the consumer of the breach or privacy violation if they so choose.
- **Clarity in FTC's Role in Rulemaking and Enforcement:** The discussion draft designates that enforcement will be carried out by the FTC. Should the Commission take on the role as regulator of data privacy and security laws, the scope of their rulemaking and enforcement role should be clarified to allow for entities to have a reasonable amount of time to respond to FTC and consumer inquiries. Additionally, entities that must comply



with new data privacy and security regulations stemming from this legislation will need education, flexibility and the right to cure when the FTC notifies the entity of a possible violation before any enforcement action is taken.

We thank you for the opportunity to present the views of the apartment industry as you continue deliberations to enhance consumer privacy and data security standards. NMHC and NAA stand ready to work with Congress to create a federal data privacy and protection standard that recognizes the unique nature and needs of the apartment 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