



February 27, 2023

The Honorable Patrick McHenry
Chairman
House Financial Services Committee
2129 Rayburn House Office Building,
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
4340 O'Neill House Office Building
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters:

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 Financial Services Committee for its continued work to establish a federal data privacy and protection standard.

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 Committee considers amending the Gramm-Leach-Bliley Act to better reflect the evolving technological landscape for firms directly involved in providing financial services to consumers, NMHC and NAA would like to take the opportunity to highlight the importance of these issues to our industry as well. While the apartment firms are not directly impacted by this legislation, it is important for members of the House Financial Services Committee to understand the scope of issues impacting operations of other entities within their jurisdiction—in our case owners, operators and developers of multifamily rental housing. Outlined below are NMHC and NAA's priorities in this space, many of which are included as part of either the Data Privacy Act of 2023

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 95,000 members, 141 affiliates, and more than 11.6 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.

or the American Data Privacy and Protection Act (ADPPA). We believe that these priorities should serve as a starting point for any federal data privacy and security measure:

- **Federal Preemption:** 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 a 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:** A data privacy and protection standard will benefit from taking into consideration the data collected and the size of the company. NMHC and NAA believe that any enforcement regime must provide for a flexible and scalable national standard for data 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:** Entities may have an essential business need to engage with consumer data and also should be mindful of data minimization. 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:** Any data privacy and protection enforcement should provide for adequate time for apartment firms to respond to inquiries. Given the complexities of verifying any privacy or protection 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:** There is 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.
- **Clarity in Regulatory Authority:** To provide clarity and certainty to apartment firms, a single federal agency should be responsible for data privacy and protection rulemaking and enforcement. Further, Congress should establish the scope of any federal regulator's authority. Entities that must comply with new data privacy and security regulations will need education, flexibility and the right to cure in the event of a possible violation.

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,



Sharon Wilson Géo
President
National Multifamily Housing Council



Robert Pinnegar
President & CEO
National Apartment Association