



NATIONAL
ASSOCIATION of
REALTORS®

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September 14, 2011

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
437 Russell Senate Office Building
Washington, DC 20515

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR) and more than 1,400 local REALTOR® associations, I wish to share NAR's thoughts on data breach notification as the Judiciary Committee prepares to mark up S. 1151, the Personal Data Privacy and Security Act of 2011 (Leahy, D-VT), S. 1408, the Data Breach Notification Act of 2011 (Feinstein, D-CA), and S. 1535, and the Personal Data Protection and Breach Accountability Act of 2011 (Blumenthal, D-CT) this week. These bills would require security policies and procedures to protect data containing personal information, and provide for nationwide notice in the event of a security breach.

While REALTORS® have long been supportive of efforts to protect consumers' sensitive personal information¹, NAR strongly believes that any new federal data security law must be carefully and narrowly tailored to minimize the regulatory burden such a law could place on vulnerable independent contractors and small businesses.

This belief is based on the unique nature of the real estate brokerage industry. Real estate firms vary widely in size, but the overwhelming majority of realty firms are very small entities. NAR's most recent surveys indicate that more than half of all realty firms have less than twenty-five agents and that the typical REALTOR® is affiliated with an independent realty firm with only one office. Further compounding the situation is the independent contractor status of the overwhelming majority of real estate sales professionals. Any new data security requirements will necessarily impact the individual real estate agent who is a legal business entity separate from the real estate company with which they are affiliated, as well as the realty firm. This unique industry structure will make compliance with regulatory burdens particularly onerous for the real estate sales industry.

NAR supports the preemption of state information security laws to create a national uniform standard. We believe that one national standard will help to reduce compliance burden for small businesses, especially those in markets that cross over state boundaries or in vacation and resort communities that attract clients from multiple states. Additionally, a single uniform national standard will enhance actual notice to consumers in the case of a data breach. However, we believe that notice requirements should be based on a significant risk of harm, not merely the fact that a breach has occurred.



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

¹ The Realtor® Code of Ethics and Standards of Practice explicitly acknowledge a Realtor's® obligation to preserve the confidentiality of personal information provided by clients in the course of any agency or non-agency relationship - both during and after the termination of these business relationships. Protection of client personal information is an important part of the trusted relationship our members enjoy with their clients.

Implementation of a risk of harm safe harbor will reduce unnecessary compliance burdens on small businesses while at the same time minimize the risk that commerce is chilled by alarming consumers in cases where no risk of fraud or identity theft is likely.

We oppose the inclusion of a private right of action in any data breach legislation as an onerous remedy that could significantly harm the already fragile business climate that is struggling to maintain, much less create jobs.

Given the importance of this issue to consumers and businesses of all sizes, it is extremely important that Congress fully understand the ramifications of any proposed actions before they are implemented. What would be a reasonable standard of practice for a large firm would most certainly not necessarily be “reasonable” for a small employer, an independent contractor or a self-employed person with much more limited human, financial or technical resources at its disposal. For this reason, it is important that any legislation provide a range of options for notice and compliance that take into account the range in capacity that is inherent in the nation’s business entities.

We thank you for your work on this important consumer issue to date and look forward to working with you and your staffs to advance legislation that will both protect consumers and create an environment where all businesses, innovation and job creation can flourish.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Phipps". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO, SFR
2011 President, National Association of REALTORS®

Cc: Members, Senate Committee on the Judiciary