



NATIONAL
ASSOCIATION *of*
REALTORS®

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July 24, 2012

Re: Data Breach Amendments to S. 3414 The CyberSecurity Act of 2012

Dear Senator:

On behalf of the more than 1 million members of the National Association of REALTORS® (NAR) and more than 1400 local REALTOR® associations, I wish to share NAR's thoughts on data breach notification as you consider amendments that may add data breach provisions to S. 3414, The Cybersecurity Act of 2012. Several bills that passed out of the Judiciary Committee and could become amendments to S. 3414 would require entities to create and implement 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 information; NAR strongly believes that any new federal data security requirements must be narrowly tailored to minimize the regulatory burden such a law could place on vulnerable independent contractors and small businesses that are just now beginning to experience a fragile economic recovery.

Real estate firms vary widely in size, but the overwhelming majority is composed of very small entities. NAR's most recent surveys indicate that more than half of all realty firms have less than twenty-five agents and the typical sales agent is affiliated with an independent realty firm with only one office. This unique industry structure can make compliance with regulatory burdens particularly onerous. Further compounding this concern 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.

NAR supports efforts to preempt state information security laws and create a national uniform standard, as is the intent of S. 1408, the Data Breach Notification Act of 2011. We believe that one national standard will help to reduce compliance burden for small businesses. In addition, 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" standard, rather than the "no significant risk of harm" standard contained in S. 1408. Implementation of a "significant" risk of harm safe harbor will reduce unnecessary compliance burden on small businesses and at the same time, minimize the risk that consumers are desensitized to the risk of fraud from over-notification in cases where no risk of fraud or identity theft is likely.



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A single data breach notification standard that is narrowly targeted to a significant risk of consumer harm provides consumers with the information they need without imposing undue regulatory burden on small businesses. For this reason we do not believe that additional requirements for data security standards are necessary at this time. However, should such data standards be considered, we urge the Senate to included language like that contained in S. 1207, the Data Security and Breach Notification Act of 2011 that takes into consideration –

“the size of, and the nature, scope, and complexity of the activities engaged in by such covered entity;” and
“the cost of implementing such safeguards.”

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 actions taken. We thank you for your work on these important security and consumer issues and look forward to working with you and your staffs to advance legislation that will both protect consumers and create an environment where businesses and innovation can flourish.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moe', with a long horizontal line extending to the right.

Maurice “Moe” Veissi
2012 President, National
Association of REALTORS®