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January 5, 2018

The Honorable Greg Walden  
Chairman  
House Committee on Energy and  
Commerce  
2185 Rayburn House Office Building  
Washington, DC 20515

The Honorable Bob Latta  
Chairman  
House Subcommittee on Digital  
Commerce and Consumer Protection  
2448 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen Walden and Latta:

On behalf of the 1.3 million members of the National Association of REALTORS® (NAR), I would like to submit for your consideration the attached statement from our association regarding Data Breach Legislation.

REALTORS® thank you for your diligent work on this important issue.

Sincerely,



Elizabeth Mendenhall  
2018 President, National Association of REALTORS®



## NATIONAL ASSOCIATION OF REALTORS® STATEMENT RE: DATA BREACH LEGISLATION

On behalf of the more than 1.3 million members of the National Association of REALTORS® (NAR) we thank you for your work on data security issues. NAR recognizes the importance of protecting client data entrusted to them and supports common sense data privacy and security safeguards that are effective but do so in a manner that does not unduly burden our members' ability to efficiently run their businesses.

Real estate firms vary widely in size, but the overwhelming majority is composed of very small entities. 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 crafted without consideration of the size and sophistication of the regulated entities 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 thus making realistic compliance requirements an especially important consideration for our industry. For this reason, NAR believes that data breach legislation must be narrowly tailored to avoid overly burdening businesses, especially small businesses that lack the resources available to larger entities.

Additionally, NAR believes that to improve current law, data breach legislation must meet four basic principles:

- Establish Uniform Nationwide Law. One of the primary purposes of federal data breach legislation should be creating one strong national standard. As such, any federal bill needs to preempt the current data breach laws in 48 states and 4 federal jurisdictions. Simply creating a fifty third data breach law would not be beneficial to our members.
- Promote Reasonable Data Security Standards. Commercial businesses across the country are diverse in size, scope and operations. Given this, a data security law cannot be a prescriptive, one-size-fits-all exercise. The best way to provide that flexibility is to base data security requirements on a reasonableness standard.
- Maintain Appropriate FTC Enforcement Regime. Enforcement of data breach requirements should not be overly punitive. The FTC's current legal framework which requires it to bring an action to stop a business from violating the law prior to imposing fines makes sense unless the FTC has a rule setting forth the relevant legal framework. Businesses need to know what the law is before being fined.
- Ensure All Breached Entities Have Notice Obligations. Businesses in every affected industry sector should have an obligation to notify consumers when they suffer a breach of sensitive personal information that creates a risk of identity theft or financial harm.