



February 28, 2023

The Honorable Cathy McMorris Rodgers  
Chairman  
U.S. House Committee on Energy and  
Commerce  
Washington, D.C. 20515

The Honorable Frank Pallone  
Ranking Member  
U.S. House Committee on Energy and  
Commerce  
Washington, D.C. 20515

The Honorable Gus Bilirakis  
Chairman  
U.S. House Subcommittee on Innovation,  
Data, and Commerce  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member  
U.S. House Subcommittee on Innovation,  
Data, and Commerce  
Washington, D.C. 20515

**RE: Hearing on “Promoting U.S. Innovation and Individual Liberty through a National Standard for Data Privacy”**

Dear Chairman Rodgers, Ranking Member Pallone, Chairman Bilirakis, and Ranking Member Schakowsky:

We appreciate your hosting the hearing entitled, “Promoting U.S. Innovation and Individual Liberty Through a National Standard for Data Privacy” on March 1. As the first subcommittee hearing held by the Energy and Commerce Committee on data privacy in the 118<sup>th</sup> Congress, the Main Street Privacy Coalition (MSPC) wishes to introduce ourselves to the new committee members as we look forward to continuing to work collaboratively with you and your staff to enact a preemptive federal data privacy law that establishes a uniform national standard for data privacy that protects all American consumers and requires all businesses handling consumers’ personal information to protect that data and honor consumers’ rights requests with respect to it.

The MSPC is comprised of 19 national trade associations that together represent more than a million American businesses—a broad array of companies that line America’s Main Streets<sup>1</sup>. From retailers to Realtors®, hotels to home builders, grocery stores to restaurants, gas stations to travel plazas, self-storage to convenience stores, including franchise establishments, MSPC member companies interact with consumers day in and day out. Our members’ businesses can be found in every town, city, and state, providing jobs, supporting our economy, and serving Americans as a vital part of their communities.

Collectively, the industries that MSPC member associations represent directly employ approximately 34 million Americans and constitute over one-fifth of the U.S. economy by contributing \$4.5 trillion (or 21.8%) to the U.S. gross domestic product (GDP). Our success depends on maintaining *trusted* relationships with our customers and clients: trust that goods and

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<sup>1</sup> The Main Street Privacy Coalition website and member list may be accessed at: <https://mainstreetprivacy.com>.

services we provide are high quality and offered at competitive prices; and trust that information customers provide to us while we are serving them is kept secure and used responsibly. For these reasons, our associations are actively engaged in the discussions by policy makers surrounding data privacy protections in U.S. legislation and regulations.

MSPC firmly believes that consumers across the country should be empowered to control their personal data. Having data privacy and security laws that create clear protections for Americans while allowing our members' businesses to serve their customers in the ways they have come to rely upon is a key goal. Achieving that goal, however, has been elusive. One of the challenges central to this legislative effort is that the overwhelming focus on the data practices of so-called "big tech" companies in public policy debates can blind us to the fact that privacy law must also work for Main Street businesses interacting with consumers daily.

American businesses have no higher priority than earning and maintaining trusted relationships with their customers. To preserve those relationships, businesses must protect and responsibly use the personal information that customers share with them. As policymakers consider legislative and regulatory solutions to address data privacy concerns, our coalition urges adoption of federal privacy legislation that meets the following core principles:

- **Establishing Uniform Nationwide Rules and Enforcement for Data Privacy** – We should have a sensible, uniform federal framework for data privacy legislation that benefits consumers and businesses alike by ensuring that sensitive consumer information is protected in a consistent manner regardless of the state in which a consumer resides. Preempting state laws by enacting a set of nationwide rules for all businesses handling consumers' personal data is necessary to achieve the important, national public policy goal of establishing uniform consumer privacy protections.
- **Industry Neutrality and Equal Protection for Consumers Across Business Sectors** – Federal data privacy frameworks should apply requirements to all industries that handle personal data and not place a disproportionate burden on certain sectors of the economy while simultaneously alleviating other sectors from providing equal protection of consumer data. An equivalent data privacy standard should apply, regardless of whether a business directly collected data from a consumer or obtained it in a business-to-business transaction.
- **Direct Legal Obligations (Rather than Contractual Requirements Alone) for All Entities that Handle Consumer Data** – Effective consumer protection law cannot be achieved by relying on some businesses to regulate the conduct of other businesses through contracts alone. Data service providers and other third parties need direct statutory obligations to ensure they comply with the relevant privacy scheme, particularly those offering transmission, storage, analytical processing or other consumer data services for thousands of businesses.

- **Preservation of Customer Rewards and Benefits** – Any federal data privacy framework should preserve the ability of consumers and businesses to voluntarily establish mutually beneficial business-customer relationships and set the terms of those relationships. Legislation should include safe harbors to ensure that consumers can purchase, or otherwise obtain, the goods and services they want by taking advantage of benefits, incentives, or enhanced services they earn from being loyal customers, even if other customers choose not to engage in such programs.
- **Transparency and Customer Choice** – Consumers deserve to know what categories of personal data businesses collect and how that data is generally used. These policies should be clearly disclosed in company privacy policies and readily accessible to consumers. These obligations should apply to all businesses handling consumers’ personal data, including service providers, third parties, and financial services businesses.
- **Accountability for Business’s Own Actions** – Privacy legislation should not include terms that could potentially expose businesses, including contractors and franchises, to liability for the actions or noncompliance of a business partner. Those business partners should be responsible for their own compliance and any resulting liability. In particular, consumer-facing businesses should not be unfairly saddled with liability if other types of businesses do not fulfill their own obligations under the regulation.
- **Data Security Standards** – A federal data privacy law should include a reasonable data security standard for all businesses handling consumer data, as well as a uniform process for businesses suffering a data security breach to notify affected individuals. Currently, consumer-facing industry sectors are required to comply with 54 state and U.S. territorial laws on data breach notification requirements, and nearly half of the states have enacted data security laws. However, financial institutions and service providers are often exempt from these state breach notice requirements. All businesses handling consumers’ data should be statutorily required to protect personal data and provide notice of their own security breaches when they occur.

We appreciate the Committee’s work with MSPC last year to address our concerns within the American Data Privacy and Protection Act (ADPPA) such as strengthening the obligations for service providers handling controllers’ customer information and preserving customer loyalty, rewards, and benefits programs. We would like to continue to work with the Committee this Congress to address MSPC’s remaining concerns by strengthening the preemption language to ensure consistent rules to protect privacy across the nation and by adding protections to ensure that good actors complying with the law do not face abusive lawsuits (and threats of lawsuits).

Finally, we note that the House Committee on Financial Services today marked up H.R. 1165, the “Data Privacy Act of 2023,” to update current privacy requirements for the financial sector regulated by the Gramm-Leach-Bliley Act. We shared our concerns in a [letter](#) to the Committee ahead of its markup addressing the inconsistencies between H.R. 1165 and the

ADPPA that create significant concerns for Main Street businesses. Ultimately, MSPC would like to work with both committees to ensure the bills reported by each are harmonized in a way that creates consistent rules across industry sectors and does not cause unwarranted liability on businesses in one sector for privacy practices that businesses in another sector control.

The guiding principle should be the American consumer herself, who expects her data to be protected by all businesses handling it in an equivalent way and that her privacy rights with respect to her data will be honored to the same extent by all of them. After all, the consumer's data is the same, and the protections should be the same regardless of who handles it.

Members of the MSPC – many of whom struggled to remain open to serve consumers during the COVID-19 pandemic and are facing historic pressures from the confluence of inflation, supply chain constraints, and labor shortages – look forward to collaborating with you to meet our shared goals of effectively protecting privacy in a uniform way that works for both consumers and Main Street businesses alike.

Sincerely,

Main Street Privacy Coalition

cc: Members of the U.S. House Committee on Energy and Commerce