

**Responses of Maureen Ohlhausen, Co-Chair of 21st Century Privacy Coalition, to Questions for the Record from the April 17, 2024 Hearing Entitled “Legislative Solutions to Protect Kids Online and Ensure Americans’ Data Privacy Rights”**

**The Honorable Russ Fulcher**

**1. In terms of the FTC authority, are you more comfortable with the approach taken here as opposed to what Chair Khan is doing? Can you comment on the targeted prescriptive rulemakings in this draft?**

I appreciate that the American Privacy Rights Act (APRA) discussion draft provides the FTC with useful enforcement tools, including civil penalty authority, the ability to provide restitution to consumers harmed by violations, jurisdiction over common carriers, and limited APA rulemaking authority. I also appreciate that the discussion draft would terminate the FTC’s commercial surveillance proceeding, as I believe that Congress is the appropriate body to enact federal privacy rules. While I support empowering the FTC with more-effective enforcement tools to protect consumers from privacy harms, I believe such tools should be accompanied by appropriate guardrails to ensure that the FTC does not exceed its authority. Such guardrails include clear statutory directions for targeted rulemakings with goals specified by Congress and not vague grants of rulemaking authority.

**The Honorable Lisa Blunt Rochester**

**As the former Acting Chair of the FTC, you have extensive experience with regards to addressing harmful and deceptive practices. The use of dark patterns to collect data from unsuspecting consumers is a major concern of mine.**

**1. In APRA, how can we strengthen provisions around dark patterns and ensure the FTC is able to adequately address this threat?**

I believe the APRA discussion draft adequately addresses concerns about dark patterns being used to collect data from unsuspecting consumers. The draft contains strong consent requirements and makes clear that dark patterns cannot be used to obtain, infer, or facilitate such consent. The FTC is given ample authority to enforce these restrictions, including civil penalty authority and the ability to provide restitution to consumers harmed by violations.