



April 19, 2023

The Honorable Cathy McMorris Rodgers  
Chair  
House Energy and Commerce Committee  
2188 Rayburn House Office Bldg.  
Washington, DC 20515-4705

The Honorable Frank Pallone  
Ranking Member  
House Energy and Commerce Committee  
2107 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable Morgan Griffith  
Chair  
House Energy and Commerce Subcommittee  
on Oversight and Investigations  
2202 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable Kathy Castor  
Ranking Member  
House Energy and Commerce Subcommittee  
on Oversight and Investigations  
2052 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Representatives McMorris Rodgers, Pallone, Griffith, and Castor:

Privacy for America is a coalition of trade organizations and companies representing a broad cross-section of the American economy. Our membership includes companies and trade associations in the advertising, travel, hospitality, media, financial services, data services, and market research industries, as well as many others. We have long supported the creation of a comprehensive, preemptive national standard for consumer privacy that applies across the marketplace. As the House Committee on Energy and Commerce's Subcommittee on Oversight and Investigations ("Subcommittee") explores the role that "data brokers" and data services companies play in the economy, it should take care not to create unreasonable barriers to effective and responsible uses of data. The final form of American Data Privacy and Protection Act ("ADPPA") at the conclusion of the last Congress did not strike the right balance between protecting consumers and allowing for a competitive and vibrant economy. In fact, it would have cut off the lifeblood of the American economy by stymieing vital data services provided to Main Street businesses seeking to support existing customer relationships and find new customers. Simultaneously, the proposal would have ceded control of this vital part of the economy to the Federal Trade Commission. These reasons, and more, are why we encourage you to adopt a privacy framework that works for both consumers and businesses.

We write to highlight several facts and principles that the Subcommittee should consider during this hearing and in its work going forward.

- **Responsible data-driven practices deliver over \$30,000 in value to consumers per year.** Studies have found that data-driven practices used by companies keep \$30,000 per year in the pockets of consumers thanks to free and discounted entertainment, information, and other services.<sup>1</sup> Congress should not impose a new \$30,000 tax on consumers by creating

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<sup>1</sup> J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 2 (2022), <https://www.privacyforamerica.com/wp-content/uploads/2022/11/Study-221115-Beales-and-Stivers-Information-Economy-Without-Data-Nov22-final.pdf>.



unreasonable restrictions on the data services companies that provide the backbone of many of the free and low-cost services that consumers desire.

- **Data-driven advertising creates opportunities for new, small, and growing businesses to access and thrive in the market.** Data-driven advertising, supported in large part by data services companies, fosters a competitive marketplace where small and mid-size businesses, as well as self-employed individuals, of which many are minority owned, can compete with the economy's largest players.<sup>2</sup> Companies of all sizes use data-driven advertising, but smaller firms and new market entrants depend on it for a significantly greater portion of their revenue. Losing access to the products provided by data services companies would disproportionately harm the ability of these small businesses to find and retain customers and compete against larger firms in the market.<sup>3</sup>
- **Unreasonable limits on data services companies will entrench existing firms in the marketplace.** The ability of small companies to access data through data services companies allows them to not rely on only one or two companies to reach potential and existing customers. Examples from Europe and Apple show that limiting the ability to access data through intermediaries creates concentration in markets and marks a turn away from the independent and open Internet.<sup>4</sup> Congress should take care to not repeat these mistakes and to allow competition to flourish through responsible data-driven practices.
- **Congress should focus on the use of data and potential harms when assessing privacy rules.** Protecting consumers equally across the country from harm is a bedrock purpose that a national privacy law would achieve. A harm reduction approach to privacy should not base its rules on whether data is provided by a first or third party, but rather whether that data will be used for a positive or harmful purpose. For example, advertising and marketing are productive and positive uses of data and allowing both first and third parties to efficiently use data for these purposes is economically and socially responsible. In addition, data used for audience measurement allows content creators to know their actual viewership and readership in relation to the marketplace, thus allowing for accurate programming and publishing decisions. Congress should not disrupt these efficient and beneficial data uses.<sup>5</sup>

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<sup>2</sup> Nora Esposito, *Small Business Facts, Spotlight on Minority-Owned Employer Businesses*, U.S. SMALL BUSINESS ADMINISTRATION (May 2019), <https://advocacy.sba.gov/wp-content/uploads/2019/05/Small-Business-Facts-Spotlight-on-Minority-Owned-Employer-Businesses.pdf>.

<sup>3</sup> J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 21 (2022), <https://www.privacyforamerica.com/wp-content/uploads/2022/11/Study-221115-Beales-and-Stivers-Information-Economy-Without-Data-Nov22-final.pdf>.

<sup>4</sup> J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 31 (2022), <https://www.privacyforamerica.com/wp-content/uploads/2022/11/Study-221115-Beales-and-Stivers-Information-Economy-Without-Data-Nov22-final.pdf>.

<sup>5</sup> J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 30 (2022), <https://www.privacyforamerica.com/wp-content/uploads/2022/11/Study-221115-Beales-and-Stivers-Information-Economy-Without-Data-Nov22-final.pdf>.



- **Congress should set the national standard.** The regulation of the modern data-driven economy should be a matter left to the democratically accountable legislative branch. Agencies like the Federal Trade Commission should act only when directly instructed to do so by Congress through specific authorities contained in legislation. A national standard for data collection and processing should be set once, through the clear authority granted to Congress by the American people and the Constitution.
- **Private companies should follow the law, not create their own.** When Congress speaks and sets a national framework for data practices, all companies should follow that law. No company, just because of its position in the marketplace as the intermediary between consumers and publishers, should be able to interfere in the legitimate, responsible data practices of others. This principle is especially true when those private actors do so to further their own financial goals to the detriment of their competitors. A federal law should prohibit such meddling.
- **The Privacy for America Framework provides a strong model approach for privacy legislation.** The Subcommittee can look to the Privacy for America *Principles For Privacy Legislation* (“Framework”) as an example of how to strike an appropriate balance for national data standards.<sup>6</sup> The Framework would designate certain uses of personal information as reasonable and others as *per se* unreasonable and thus prohibited.<sup>7</sup> As noted above, this harm and risk-based approach sets a reasonable and strong standard for all companies engaged in responsible data-driven activities, and would not create an unbalanced marketplace where only large entities could operate successfully. The Framework prioritizes consumer protection and reduces consumer burdens while simultaneously preserving beneficial uses of data and access to a vibrant online ecosystem.

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Thank you for your consideration of this letter on this important topic. We look forward to working with Congress as it continues to evaluate and develop productive approaches to preemptive, comprehensive, privacy legislation that will properly balance consumer protection and the vital, efficient, and effective data-driven practices required for a growing and dynamic economy.

Sincerely,  
Privacy for America

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<sup>6</sup> Privacy for America, *Principles for Privacy Legislation* (2019), <https://www.privacyforamerica.com/overview/principles-for-privacy-legislation/>.

<sup>7</sup> *Id.* at Part 1 §§ 1(Y), 3, & 6(G)(c).