



July 20, 2022

The Honorable Frank Pallone
Chairman, U.S. House Committee
on Energy and Commerce
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member, U.S. House Committee
on Energy and Commerce
Washington, DC 20515

The Honorable Jan Schakowsky
Chair, U.S. House Subcommittee
on Consumer Protection & Commerce
Washington, DC 20515

The Honorable Gus Bilirakis
Ranking Member, U.S. House Subcommittee
on Consumer Protection & Commerce
Washington, DC 20515

Dear Representatives Pallone, Rodgers, Schakowsky and Bilirakis:

The National Retail Federation appreciates your consideration of our views in your efforts to develop federal privacy legislation – H.R. 8152, the “American Data Privacy and Protection Act” (ADPPA) – scheduled to be marked up today in the Committee.

NRF, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

Federal privacy legislation is necessary to establish uniform, national standards that protect all Americans’ personal information wherever it is collected and used, regardless of the state where a consumer resides or a business is located. It is critically important for American commerce that Congress act to establish a clear framework that embodies [privacy principles](#) we strongly support, and we are thankful for the opportunity to continue to work with you on improvements to the legislation to achieve this result as it moves forward in the process.

We appreciate the opportunities we have had to collaborate with you and your staff on certain sections of the legislation during the committee process to date, including language that has been added in the most recent version to address our interests in preserving customer loyalty plans, which provide consumers with rewards and benefits, from unintended restrictions. We also appreciate your consideration of our suggested edits to ensure that the legislation provides sufficient privacy protections for consumer data regardless of who is handling it, and we trust that language will be added during the markup session to set forth the relative responsibilities between covered entities and service providers in ways that address most of our concerns.

We believe it is critically important to make further improvements to H.R. 8152 before it is considered on the floor of the U.S. House of Representatives. It is essential that businesses are

able to understand and comply with what would be the provisions of a new federal law affecting every consumer-serving American business before its adoption. In several sections of the bill, including some of its definitions, further revisions are needed to calibrate the Act's obligations and eliminate the overburdensome impact of certain new requirements that retailers may not be able to meet, especially novel provisions that are not derived from any state privacy law. For instance, the definition of "large data holder" may capture more than 1,800 retailers and regulate them in particularly burdensome ways designed to address the practices of large, data-centric technology companies and not Main Street retailers. We would like to work together to improve several provisions like these to ensure that the ADPPA's language correctly matches your intent.

We also would like to continue to work with you before floor consideration to address two provisions of H.R. 8152 that raise the greatest concerns within our industry: preemption and private rights of action. Our concerns with these issues were first raised in the letter of June 13, 2022, by the Main Street Privacy Coalition, of which NRF is a member. We recognize that these are difficult issues to resolve, but until they are we will be unable to support H.R. 8152 as drafted. We would appreciate your renewed efforts to address our concerns with these provisions that have not yet been addressed in the committee process to date:

- Preemption: We have offered edits to the preemption provision, consistent with U.S. Supreme Court and federal court precedents, which would use the form and language *necessary* in a preemption clause to provide the greatest likelihood that the ADPPA would effectively establish a strong, uniform, national standard for data privacy law. As of now, the bill's exceptions to preemption swallow the rule, having the net effect that state laws regulating the same subject matter will remain in effect even if this bill is enacted. We would like to work with you to correct this provision before a floor vote to ensure that the ADPPA, if enacted, truly establishes a single, nationwide law.
- Private Rights of Action: We acknowledge the current bipartisan agreement includes authorizing private rights of action; however, our members remain greatly concerned such litigation could have a disproportionate impact on the retail industry compared to other industries as a result of the ADPPA's exemptions for certain sectors. To date, no state privacy law has adopted private litigation as an enforcement mechanism to compel compliance with its *privacy* provisions because of the technical complexity in achieving mistake-free compliance. Rather, to effectively protect consumers, state laws apply government enforcement with notice-and-cure periods of 30 or 60 days, permitting businesses to learn of non-compliance first and to correct it quickly. If the ADPPA's purpose is to protect consumer privacy, then achieving robust compliance with its obligations through the most effective means should be its guiding principle.

We look forward to further working with you and your staff on H.R. 8152 this Congress.

Sincerely,



David French
Senior Vice President
Government Relations