

April 8, 2019

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room CC-5610 (Annex C)
Washington, DC 20580

Docket ID: FTC-2018-0098-0003

RE: Main Street Associations' Support for Consumer Data Privacy Principles

Dear Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson:

The undersigned associations represent over a million Main Street businesses in industries that directly serve their consumers, help support communities across the country, and that Americans know and interact with every day.

Our members have no higher priority than relationships with their customers. One key aspect of those relationships is respecting the personal information that customers share with businesses. Virtually every industry sector – whether consumer-facing or business-to-business – handles significant volumes of consumer information. To comprehensively protect Americans, any federal data privacy policy should apply to all industry sectors, and not contain any loopholes that leave consumers unprotected when their personal data is handled by a business. All of the companies involved in handling that chain of data should have legal obligations to properly guard it under privacy law, and the law should not solely rely on private contracts to create those legal obligations.

Considering that the protection of consumer data privacy is a priority issue for the Federal Trade Commission, and should be for all businesses and consumers across the nation, below are the key principles our associations collectively support in federal privacy regulation that would ensure a uniform, nationwide and consumer-centric data privacy regime:

1. 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 exempting 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; federal policy should provide consumer data with uniform legal protections across industries.
2. Direct Statutory Obligations for All Entities that Handle Consumer Data – Effective consumer protection regulations 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 relevant laws; particularly those offering transmission, storage, analytical processing or other consumer data services for thousands of small businesses.

3. 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. Federal policy should include safe harbors to ensure that consumers can purchase or otherwise obtain the goods and services they want by taking advantage of the benefits, incentives or enhanced services they earn from being loyal customers, even if other customers choose not to engage in such programs. For businesses to offer such programs, they must necessarily keep track of the business transactions of their customers who choose to enroll in such programs in order to offer rewards and allocate benefits.
4. 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 readily accessible to consumers to ensure that they can learn how customer data is collected and used by the business to provide goods or services.
5. Accountability for Business's Own Actions - Privacy regulation and enforcement should not expose businesses, including contractors and franchises, to liability for the actions or non-compliance 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 law.
6. Establishing Uniform Nationwide Rules and Enforcement for Data Privacy – There should be a sensible, uniform federal framework for data-privacy regulation 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 and enacting an alternative set of nationwide rules is necessary to achieve the important, national public policy goal of uniformity.
7. Data Security & Breach Notification – Federal data privacy policy should include a national and reasonable data security standard for businesses, as well as a uniform process for notifying customers about data breaches. Currently, many, but not all, industry sectors are required to comply with 54 different state and U.S. territorial laws on data breach notification requirements, and nearly half of the states have enacted data security laws. All businesses should be required to protect personal data and make notice of their own breaches to affected consumers.

The principles above, which are supported by the undersigned organizations, are important to ensure that any federal policy on data privacy protects consumers in a nationwide, uniform and consistent way. A federal policy should not pick regulatory winners and losers among differing business sectors. Additionally, it should not create loopholes that leave consumers vulnerable if their data is handled by a business sector left without legal requirements or with outdated requirements.

We urge you to consider these key principles as you develop federal data privacy policy and enforce it. Additionally, we urge you to continue to solicit input from all affected industries and from businesses of all sizes during the process. Otherwise, there is a risk of the federal government imposing unfair or crippling burdens on some sectors of the robust American consumer economy but not other sectors that should bear a similar responsibility for protecting the same consumer data.

We appreciate your consideration of our recommendations and we look forward to a constructive dialogue with you on these matters during the 116th Congress.

Sincerely,

American Hotel & Lodging Association
International Franchise Association
National Association of Convenience Stores
National Association of Home Builders
National Association of Realtors
National Association of Truck Stop Operators
National Council of Chain Restaurants
National Grocers Association
National Restaurant Association
National Retail Federation
Petroleum Marketers Association of America
Society of Independent Gasoline Marketers of America