



June 14, 2022

The Honorable Janice Schakowsky
Chair
House Energy & Commerce Subcommittee on
Consumer Protection and Commerce
United States House of Representatives
2367 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gus Bilirakis
Ranking Member
House Energy & Commerce Subcommittee on
Consumer Protection and Commerce
United States House of Representatives
2354 Rayburn House Office Building
Washington, D.C. 20515

**Re: House Energy & Commerce Subcommittee on Consumer Protection and Commerce
Hearing, “Protecting America's Consumers: Bipartisan Legislation to Strengthen Data Privacy
and Security”**

Dear Chair Schakowsky and Ranking Member Bilirakis:

On behalf of the National Restaurant Association, we thank you for the opportunity to submit our views regarding the draft bipartisan bill, “American Data Privacy and Protection Act” (ADPPA). We ask that this letter be entered into the record of the June 14, 2022, hearing, “Bipartisan Legislation to Strengthen Data Privacy and Security.”

Founded in 1919, the National Restaurant Association (“The Association”) is the leading business association for the restaurant and foodservice industry, representing national and small restaurant businesses. As the nation’s second-largest private sector employer, with nearly one million locations across the country, the restaurant industry is a vital driver of the U.S. economy.

While 90% of restaurants across the country have less than 50 total staff, restaurants of all cuisines and sizes routinely safeguard their most valuable assets. Whether it is putting cash and receipts in a register or safe, maintaining the highest standards when selecting, storing, and preparing food, or providing a safe environment for customers and employees alike, security is a priority for restaurant operators. Securing our customers’ personal information is no different—as the backbone of communities throughout America, restaurant operators build their business on trusted relationships with their guests, and they rely on robust data privacy and security practices to strengthen that trust in today’s digital economy.

Our industry firmly believes that consumers across the country should be empowered to control their data. We are therefore strong advocates for a preemptive federal data privacy law that creates a single, uniform standard as opposed to a patchwork of state laws that are confusing and burdensome for businesses and consumers alike. While we appreciate the ADPPA’s attempt to establish a federally preemptive framework, the Association is concerned that the bill as drafted includes far too many carveouts for other relevant state-level privacy laws, consumer protection laws, and laws that govern both employee and biometric data, among others. These carveouts essentially nullify the bill’s preemption provision and would require businesses to continue complying with the multitude of federal and state laws that already exist today.

In addition to its problematic preemption language, the Association is disappointed to see a private right of action included in the ADPPA. In its current form, the bill would allow persons or classes of persons to bring a civil action in federal court seeking compensatory damages, injunctive relief, declaratory relief, and reasonable attorney’s fees and litigation costs. While this provision has been couched as a “limited” private right of action, we have significant concerns that this language would enable trial lawyers to act as privacy “trolls” that create class action lawsuits for alleged violations that may not have actually occurred. We have

experienced this trolling practice in other spaces like patents and ADA-related lawsuits. These actions do not improve consumer protection but do often penalize the operations targeted. In these cases, larger restaurant chains are generally forced to settle, and smaller operations are often put out of business. While the bill includes a 4-year delayed implementation for the private right of action and a 45-day notice and cure period, the Association fears that a federal data privacy law enforced by a private right of action to any degree will only result in restaurants and other consumer-facing businesses being forced to fight never-ending lawsuits.

In a world where business is supported and grown through technology, virtually every industry sector—whether consumer-facing or business-to-business—handles significant volumes of consumer information. The Association believes that any federal data privacy legislation should include statutory obligations for all players within the digital ecosystem so that no consumer is left unprotected. Restaurants are often a first point of collection for consumer data based on agreements where consumers are aware they are providing data to improve convenience and their dining experience. However, restaurants should not be held liable for potential data privacy violations committed by their downstream business partners. Therefore, the Association urges the Committee to better align the ADPPA’s service provider and third-party requirements with those found in data privacy laws enacted in Virginia, Colorado, and Connecticut. Doing so would not only help small businesses across the country by requiring service providers and third parties to meet their obligations or otherwise be in violation of the law; more importantly, it would ensure that there are no privacy loopholes that leave consumers unprotected when their personal data is handled by any business, regardless of where they live.

Finally, the Association appreciates the ADPPA’s intent to preserve customer loyalty programs, but we feel that the legislation in its current form does not adequately achieve this goal. Loyalty programs are a critical and ever-growing facet of the restaurant business model. As such, the industry is already “privacy protective” by establishing and maintaining these loyalty programs on an opt-in basis. We agree with the Committee that customers should not be discriminated against for choosing to exercise one of their privacy rights, but as drafted, this provision would inhibit the ability of consumers and businesses to voluntarily establish mutually beneficial business-customer relationships and set the terms of those relationships. Therefore, we once again encourage the Committee to consider aligning the ADPPA’s loyalty program provision with the language and framing found in the Virginia, Colorado, and Connecticut data privacy laws. Otherwise, restaurants and other entities may be forced to significantly modify or altogether get rid of their loyalty programs, which would prevent our customers from enjoying the discounts and other benefits they already and expressly choose to enjoy today.

In sum, the Association appreciates the Committee’s leadership on data privacy legislation but urge that our significant concerns enumerated above be addressed before the ADPPA is formally introduced. Restaurants stand ready to work collaboratively with Members of this Committee to establish a federal data privacy framework that will protect consumers and hold all businesses accountable for safeguarding personal information.

Sincerely,



Brennan Duckett
Director, Technology & Innovation Policy