



June 24, 2024

Chair Cathy McMorris Rodgers  
Ranking Member Frank Pallone  
House Committee on Energy and Commerce  
Washington, D.C. 20515

Re: Upcoming Markup of the American Privacy Rights Act (APRA)

Dear Chair McMorris Rodgers and Ranking Member Pallone,

Consumer Reports<sup>1</sup> writes to express serious concerns about the latest text of the APRA and to urge the Committee to either significantly strengthen its protections or to abandon work on the bill. Given the limited time remaining in the legislative session, we are concerned there is not a likely path to enactment and that advancing a watered down bill will set a bad precedent for future Congressional efforts to enact comprehensive privacy legislation.

Consumer Reports previously wrote to the committee that we support bipartisan negotiations to develop a consensus comprehensive privacy bill, but that we did not believe the bill's privacy protections were robust enough to justify the bill's preemption provisions that would undo important and evolving state and federal privacy laws.<sup>2</sup> For a preemptive federal privacy bill to benefit consumers across the board, it would need to be significantly stronger than the protections being enacted at the state level.<sup>3</sup> We were disappointed that APRA's protections were in many ways a step back from the bipartisan consensus of the ADPPA, and we are now concerned that several recent proposed amendments weaken the bill even further.

First, we object to the removal of APRA's civil rights protections. Strong protections against discrimination and algorithmic bias have been a staple of federal privacy bills in recent years, in

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<sup>1</sup> Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

<sup>2</sup> Consumer Reports Submits Letter to House Energy and Commerce Committee Regarding the Discussion Draft of the American Privacy Rights Act (APRA), (April 16, 2024), <https://advocacy.consumerreports.org/research/consumer-reports-submits-letter-to-house-energy-and-commerce-committee-regarding-the-discussion-draft-of-the-american-privacy-rights-act-apra/>

<sup>3</sup> Justin Brookman, Unclear Protections in the American Privacy Rights Act Not Worth Broad Preemption, Tech Policy Press, (April 11, 2024), <https://www.techpolicy.press/unclear-protections-in-the-american-privacy-rights-act-not-worth-broad-preemption/>

both bipartisan bills<sup>4</sup> as well as partisan bills put forward by Republicans<sup>5</sup> or Democrats<sup>6</sup> alike. State privacy laws are also increasingly incorporating strong civil rights protections based on language derived from ADPPA.<sup>7</sup> Data-driven discrimination is harming consumers on a frighteningly regular basis, and it should be clearly prohibited through a comprehensive privacy bill.

APRA's treatment of targeted advertising also still does not achieve the goal of providing default coverage that protects consumers from cross-site behavioral advertising. While we appreciate that the latest draft is more clear than previous versions, we nonetheless are disappointed by the explicit carveout of retargeting — the predominant form of online targeted advertising — from the bill's definition of sensitive data. This is another step back from the bipartisan consensus of the ADPPA which broadly prohibited cross-site targeted advertising, including retargeting. We also disapprove of new broad carveouts for on-device data that favor large technology companies and will make it more difficult for consumers to practically exercise their privacy rights.

We are keenly aware that Congress often looks to build on previous work when crafting new legislation; the ADPPA negotiations clearly played a key role in providing the framework for this legislation. We are concerned that advancing a weakened bill out of committee could hinder future efforts and narrow the horizons for future bipartisan negotiators in the likely event that this bill does not become law. State lawmakers also look to Congress when crafting protections in their own laws and approving a weakened privacy bill out of committee could embolden industry lobbyists to push for weaker protections in state laws compared to ADPPA.

Thank you again for your diligent efforts to bring new privacy and civil rights protections to American consumers. We recognize that it is a challenge to satisfy all stakeholders in these types of negotiations, but if the issues we identify cannot be resolved, the committee should not advance this legislation any further.

Sincerely,

Justin Brookman, Director, Technology Policy  
Matt Schwartz, Policy Analyst

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<sup>4</sup> E.g. Rep. Pallone, Rep. Rodgers, Rep. Schakowsky, Rep. Bilirakis, H.R. 8152, American Data Privacy and Protection Act, (117th Congress), <https://www.congress.gov/117/bills/hr8152/BILLS-117hr8152rh.pdf>

<sup>5</sup> E.g. Control Our Data Act, (117th Congress), <https://web.archive.org/web/20220601033730/https://republicans-energycommerce.house.gov/wp-content/uploads/2021/11/2021.11.02-Republican-CODA-Draft-.pdf>

<sup>6</sup> E.g. Sen. Cantwell, S. 2968, Consumer Online Privacy Rights Act, (116th Congress) <https://www.congress.gov/116/bills/s2968/BILLS-116s2968is.pdf>

<sup>7</sup> E.g. Maryland S.B. 541, Section 14-4607(A)(7) <https://mgaleg.maryland.gov/2024RS/bills/sb/sb0541E.pdf>; Vermont H. 121 Section 2419(b)(6)(A), <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0121/H-0121%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf>