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April 7, 2025

The Honorable Brett Guthrie
Chairman
Energy and Commerce Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable John Joyce
Vice Chairman
Energy and Commerce Committee
United States House of Representatives
Washington, D.C. 20515

Subject: Response to Request for Information on a Federal Comprehensive Data Privacy and Security Law

Dear Chairman Guthrie and Vice Chairman Joyce,

The American Psychological Association Services, Inc. (APASI) appreciates the opportunity to provide feedback on the development of a federal comprehensive data privacy and security law. APA Services is the companion organization of the American Psychological Association, which is the nation's largest scientific and professional nonprofit organization representing the discipline and profession of psychology, as well as over 173,000 members and affiliates who are clinicians, researchers, educators, consultants, and students in psychological science. We commend your efforts to address this critical issue, which has profound implications for the psychological well-being of individuals and the health of our society.

Data privacy and security are not merely technical or legal matters; they are deeply intertwined with our lives and society. The collection, use, and potential misuse of personal data can impact individuals' sense of autonomy, control, and safety, affecting their decision-making, relationships, and even their physical and mental health. We urge you to consider the role psychology and psychological science play in creating effective data privacy and security legislation.

This letter provides feedback on the Request for Information (RFI) from a psychological perspective, drawing on relevant research and the APASI's previous engagements with policymakers on these issues. We believe that a strong federal law should be grounded in principles of:

- **Maximizing Transparency and User Control:** Individuals should have meaningful control over their data, supported by clear, understandable, and user-centered disclosures.



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- **Minimizing Harm:** The law should prioritize preventing harm associated with data breaches, misuse, manipulation, and discrimination.
- **Ensuring Accountability:** All entities handling personal data should be held accountable for protecting it and respecting individuals' rights.

Specific Feedback on the RFI:

I. Roles and Responsibilities

The APASI would emphasize the need for *functional* definitions, not just formal ones. The law should clearly delineate responsibilities, ensuring that *someone* is always accountable for the consumer's data and psychological well-being. Obligations should include:

- a. **Transparency:** Not just *what* data is collected, but *why* and *how* it will be used, presented in a way that is comprehensible to the average consumer.
- b. **Data Minimization:** Only collecting data that is strictly necessary for the stated purpose. This reduces the potential harm from breaches and misuse.
- c. **Purpose Limitation:** Using data *only* for the purpose for which it was collected, with strong restrictions on repurposing.
- d. **Security:** Implementing robust security measures, commensurate with the sensitivity of the data.
- e. **Accountability Mechanisms:** Internal and external audits, clear lines of reporting, and consequences for non-compliance.

While acknowledging the burden on small businesses, the APASI would caution against broad exemptions based solely on size. Vulnerability to data breaches and misuse is not solely determined by company size. A tiered approach, with basic protections applying to *all* entities handling personal data, and more stringent requirements for larger entities or those handling sensitive data, would be more appropriate. This aligns with a public health approach, prioritizing the protection of all populations.

II. Personal Information, Transparency, and Consumer Rights:

We advocate for a *broad* definition of "personal information" encompassing *any* information linkable to an individual, directly or indirectly, including inferences drawn from data. "Sensitive personal information" should explicitly include health information (physical and mental), financial information, demographic information related to protected characteristics, and any information that, if disclosed, could lead to discrimination or harm. Disclosures must be concise, clear, prominently displayed, contextual, proactive, and *user-centered designed*. The APASI has previously emphasized that "User-centered design is essential to support consumer decision-making and privacy self-management". Consumer protections should include rights to access, correction, deletion, data portability, objection, restriction of processing, rights related to automated decision-making, and a right to ensure that data is not being used for discriminatory purposes. Adequate transparency and enforcement mechanisms are essential to ensure appropriate compliance.



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Heightened protections for sensitive data, especially those data related to mental or physical health information, should include explicit consent, stricter security requirements, and even more stringent data minimization and purpose limitation. We also recommend that additional protections for children are expanded, in accordance with legislative proposals amending the Children's Online Privacy and Protection Act.

The intersection of human behavior and technology is experiencing rapid transformation as new forms of direct-to consumer software and wearable devices collect expanding amounts of data (European Parliamentary Research Service, 2024; Yuste et al., 2021; Yuste et al., 2017). For example, a smart watch may collect biometric data like heart rate and rhythm to draw inferences about a person's sleep quality and subsequent cognitive status, while a virtual reality system may collect information about eye movement and pupillary response to draw conclusions about a person's ability to remain focused on a particular task or their reaction to specific stimuli. Among newer technological developments, a specially designed headband or headphones might collect neurophysiological data (i.e., EEG) for use in a noninvasive brain-computer interface (Jones, 2024). A high-tech pair of glasses (Heath, 2024; Meta, 2024; Stein, 2024) might collect eye gaze and pupillary responses to gather information about (a) where a person's attention is focused (e.g., Salvi et al., 2015; Servais et al., 2023a, 2023b) in order to present specific stimuli on an augmented reality screen on the glasses or via sound, or (b) how a person's mind reacts to specific stimuli presented in the glasses (Castillon et al., 2024; Chartier et al., 2024; Nahari et al., 2019). Decades of research in cognitive psychology and cognitive neuroscience suggest that these data, when taken together, can provide insights into a person's mental state (Bixler & D'mello, 2016; D'mello et al., 2013), neural and cognitive processes (Annerer-Walcher et al., 2020; Haji-Abolhassani & Clark, 2014; Hutt et al., 2024; Mills et al., 2021), psychological health (Akshay et al., 2023; Asha et al., 2024; Jyotsna et al., 2023; Kröger et al., 2020), and subconscious and unexpressed thoughts or intentions (Bednarik et al., 2012; Konkoly et al., 2024; Salvi et al., 2015; Servais et al., 2023a, 2023b); they can even determine a person's identity (Kröger et al., 2020). These data can also be used to inform models of artificial intelligence (AI) and the various technologies that use AI (Asha et al., 2024), including in ways that can enable AI to close the loop between measured neural data and interventions into neural and cognitive processes (Abiri et al., 2019; Horowitz et al., 2023; Molina-Cantero et al., 2021), potentially altering a person's mental state before they are even aware that the intervention is happening (Cassano & Vahedifard, 2022; Kim et al., 2024; McKendrick et al., 2015; Stewen, 2023). While the interface between these types of data and AI has enormous potential to benefit humanity and improve human quality of life, APASI believes this type of data is highly sensitive and individuals should have a basic right to their mental privacy.

Legislation in this area should safeguard against the uninformed collection and potential misuse of the person's biometric and neural information commonly used to infer underlying cognitive processes or as markers directly leading to a mental or behavioral health status or diagnosis. This type of data, able to be measured from wearable technology, may include brain electroencephalography (EEG), pupillometry, eye movement and eye gaze patterns, galvanic skin responses, and heart rate measurements, though is not limited to these examples. Any type of data measurable from wearable or portable devices that can be used to infer mental states,



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events or processes that would traditionally be considered private to the person (i.e., subject to the person's discretion to disclose through speaking, language, or other form of intentional communication) would fall into this category of protection. People should have the right to control their neural and cognitive data and the information about their mental states and processes that can be derived from it, as well as to consciously choose which aspects of their mental world or existence they would like to disclose to others (Paz, 2021).

III. Existing Privacy Frameworks & Protections:

The establishment of a federal data privacy law necessitates the articulation of a stringent baseline of protection, designed to mitigate the current fragmentation and ensure consistent individual rights across all jurisdictions. This federal standard should function as a foundational floor, explicitly permitting states to implement supplementary, more rigorous protections as deemed necessary. Critical to the efficacy of this legislative initiative is the meticulous harmonization with existing sectoral privacy regulations, including the Health Insurance Portability and Accountability Act (HIPAA), the Fair Credit Reporting Act (FCRA), the Gramm-Leach-Bliley Act (GLBA), and the Children's Online Privacy Protection Act (COPPA). This harmonization must prioritize the **augmentation, rather than the diminution**, of prevailing data protection standards, with particular emphasis on safeguarding sensitive health information and data related to individuals under the age of 18. Furthermore, the development of this federal framework should be informed by a comprehensive review and integration of established data privacy standards and best practices, both domestically and internationally. This approach ensures that the resultant legislation not only addresses extant national concerns but also aligns with evolving global norms, thereby fostering a more secure and ethically responsible data ecosystem. The overarching objective is to enact a unified federal law that elevates the collective standard of data privacy, provides regulatory clarity for commercial entities, and, most importantly, reinforces individual rights within an increasingly data-centric society. This legislative endeavor must be grounded in empirical evidence, legal precedent, and ethical considerations, reflecting a commitment to scholarly rigor and societal well-being.

IV. Data Security:

Data security is a human issue, not just a technical one. Requirements should include a risk-based approach, regular audits, employee training (as human error is a major cause of breaches), incident response plans, and prompt, transparent data breach notification designed to minimize anxiety and empower consumers. Secure data disposal should also be mandated. These requirements must be paired with adequate reporting and enforcement mechanisms to ensure that those covered by the provisions are taking necessary steps to comply. This should include, but not be limited to, adequate funding for endorsement authorities and funding for agencies to hire and contract for expert staff.

V. Artificial Intelligence:

The APASI strongly supports regulating AI and automated decision-making, recognizing the potential for harmful negative implications of the use and expansion of these technologies. The



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law should require transparency, explainability, human oversight (especially in high-stakes situations), bias mitigation, and a right to contest decisions made by automated systems. Proactive and ongoing impact assessments of the psychological and societal impacts of AI systems are crucial, including through adequate funding and access for research. Algorithmic accountability is a psychological and societal issue, not just a technical one.

Unified standards for AI development and deployment should center the principles below to ensure efficient, and effective results from these new technologies. Policymakers and employers alike should be aware of the risks and benefits inherent to developing and using AI and relying on AI for decision making. To maximize the efficiency and effectiveness of AI, and minimize damages to labor markets, workplaces, and employees, APASI believes that artificial intelligence standards should include:

1. **Human-in-the-loop requirements** – People must remain a central part of technologies involving artificial intelligence, including in the development, deployment, and evaluation stages.
2. **Center Ethics & Experience** – Those developing, testing, and deploying new AI technologies must draw from a range of experiences to adequately prepare for and guard against harmful implications of these new tools. Companies must endeavor to embed this diversity and reduce unconscious and conscious discrimination in both the development of AI tools and their deployment.
3. **More research** – Science focused on the development and deployment of artificial intelligence is a relatively new area of study and much more needs to be done to ensure effective development of these technologies and to understand the impact of these technologies on human behavior.
4. **Equitable and fair deployment**– Deployment of AI tools is often done without proper consideration of ethics and efficacy. AI must be properly tested prior to widespread deployment and the use of these technologies must be limited to applications where it is safe and effective, minimizing unknown, unintended, and inequitable impacts.
5. **Privacy** – The data collection being fueled by the increased deployment of AI tools is leading to increased risks for individual data privacy. Companies must be required to redouble their efforts to protect data and ensure privacy around data collected by AI technologies. Companies must also be more transparent related to user data practices and data used for AI training.
6. **Copyright & Intellectual Property Rights** – Current AI tools and programs exist in violation of copyright and intellectual property standards required of other similarly situated technologies, more must be done to ensure compliance with current standards, and new standards must be created where necessary.
7. **Transparency** – The prevalence of AI tools is often unknown by the end user, fueling misunderstandings and misconceptions about the technologies; companies should take steps to increase transparency around the presence of these tools to ensure individuals are aware of the role AI might play in impacting their experience in real world and online environments.
8. **Digital literacy training** – It is essential that new avenues of education be paired with the deployment of new technologies. Users should be informed about the way new AI



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technologies work, how they might impact their lives, and how best to interact with these platforms to minimize negative impacts.

VI. Accountability & Enforcement:

APASI believes that strong enforcement mechanisms are essential for any federal data privacy legislation to be effective in protecting individuals' sensitive information, including psychological data. To ensure meaningful compliance and accountability, the APASI recommends the following key principles:

- **Clear Authority and Resources for the FTC:** The Federal Trade Commission (FTC) should be granted explicit and comprehensive authority to enforce federal data privacy legislation. This includes the power to issue rules, conduct investigations, seek injunctions, and impose substantial penalties for violations. Furthermore, Congress must provide the FTC with sufficient and dedicated funding to effectively carry out its enforcement responsibilities. The APASI emphasizes that data privacy protection should be considered a core consumer protection issue, warranting commensurate resources.
- **Enforcement Power for State Attorneys General:** State Attorneys General play a vital role in protecting their residents' interests and should be empowered to enforce federal data privacy legislation. This would create a multi-layered enforcement system and allow for more localized and responsive action. The APASI believes that state-level enforcement is crucial for addressing the diverse needs and concerns of different communities.
- **Careful Consideration of Safe Harbor Provisions:** The APASI recognizes the potential benefits of safe harbor provisions in encouraging industry self-regulation and compliance. However, any such provisions must be structured carefully to avoid undermining the legislation's core protections. Safe harbor provisions should only be granted to entities that can demonstrate ongoing and verifiable compliance with rigorous standards set forth by Congress. These standards should be sufficiently detailed and comprehensive, and compliance should be subject to independent audits and regular reporting requirements. The APASI cautions against broad or easily obtainable safe harbor provisions that could incentivize a "check-the-box" approach to privacy compliance, rather than a genuine commitment to protecting individuals' rights.

VII. Additional Information:

The APASI recommends provisions to support research on the psychological and societal impacts of data privacy and security. Public education campaigns are also needed to raise awareness and empower consumers. We reiterate the need to explicitly consider the unique vulnerabilities of children, older adults, individuals with mental health conditions, and those with limited digital literacy in all aspects of the legislation.

Additional research might further address the role of algorithms on users' experiences. This requires access to data for independent researchers to understand how algorithms work (Epps-Darling, Bouyer, & Cramer., 2020; Bravo, Jefferies, Epps, & Hill., 2019). Companies employing



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algorithms to display content to users should take steps to provide explanations on how these technologies work and how they might drive or reward certain types of posts or behavior. Data from algorithms, along with internal research, should also be made public to allow researchers and policymakers to achieve a greater understanding of the impacts of data and technology on users, particularly children. Federal agencies should prioritize research into the impacts of these technologies and provide private researchers with grants and other support to ensure findings relating to these platforms are made broadly available.

Conclusion:

The APASI believes that a comprehensive federal data privacy and security law, informed by psychological science, is essential for protecting individuals and fostering responsible innovation. We urge you to prioritize minimizing harm, maximizing transparency and user control, and ensuring accountability. We are available to provide further consultation and expertise as you develop this crucial legislation. We believe that the implementation of these recommendations will aid in the protection of individuals, per our organizational mission. Please feel free to reach out to Corbin Evans (Deputy Chief, Science and Technology) at CEvans@APA.org for further information.

Sincerely,

Katherine B. McGuire
Chief Advocacy Officer
American Psychological Association Services, Inc.



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