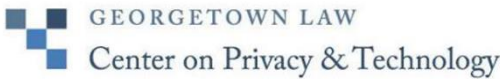




Cyber Collective.



September 23, 2021

The Honorable Chuck Schumer, Majority Leader
The Honorable Mitch McConnell, Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi, Speaker
The Honorable Kevin McCarthy, Minority Leader
Washington, D.C. 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, and Minority Leader McCarthy,

The undersigned civil rights, civil liberties, and consumer protection organizations sincerely thank you for your work to ensure better protections for consumer data privacy and security. To that end, we urge you to, as proposed by the House Committee on Energy and Commerce, allocate at least \$1 billion in the Build Back Better Act to create a new division in the Federal Trade Commission (FTC) to protect data privacy and prevent security abuses.¹ For far too long, Congress has failed to sufficiently fund the FTC to do the massive job with which it is tasked. The agency is overdue for an influx of resources to help it play catch-up to the modern economy.

The FTC is vastly underfunded and understaffed, particularly in comparison to the large, well-funded entities that it is tasked with regulating. Currently, the FTC only has 1,100 full-time employees (FTEs) to pursue both its competition and consumer protection missions.² This number has been roughly flat over the past twelve years, and represents a substantial decrease from 1,746 FTEs in 1979. Put another way, since that time, the economy has grown nearly three times while the FTC's capacity has decreased 37 percent. In contrast, in 2020, Facebook alone had total revenues of nearly \$86 billion and nearly 60,000 employees.³

This increased funding for the FTC is especially important because it will enable the Commission to protect people of color and low-income communities from identity theft, fraud,

¹ Committee on Energy and Commerce, Budget Reconciliation Legislative Recommendations Relating to FTC Privacy Enforcement, https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Subtitle%20O_FTC%20Privacy%20Enforcement.pdf.

² *FTC Appropriation and Full-Time Equivalent (FTC) History*, FED. TRADE COMM'N (last visited Apr. 16, 2021), <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>.

³ *Facebook Reports Fourth Quarter and Full Year 2020 Results*, FACEBOOK (Jan. 27, 2021), <https://investor.fb.com/investor-news/press-release-details/2021/Facebook-Reports-Fourth-Quarter-and-Full-Year-2020-Results/default.aspx>.

scams, and exploitation. Privacy rights help prevent people from being treated unfairly based on who they are—privacy rights are civil rights.⁴ Unfair and deceptive data practices disproportionately harm people of color and low income communities. In an Internet-driven economy, equal opportunity depends on fair data practices. As the FTC recently wrote, “apparently ‘neutral’ technology can produce troubling outcomes—including discrimination by race and other legally protected classes.”⁵

For years, advocates have called on legislators to adopt a federal privacy law, but there is still no comprehensive federal law that governs the collection, use, and sharing of consumer data, even as industry’s data collection and monetization practices have become ever more invasive. Nor is there a federal law that specifically requires businesses to keep that data secure from hackers, despite myriad breaches, including a recent breach at T-Mobile involving the Social Security numbers of millions of consumers.⁶ These breaches can lead to identity fraud, which cost consumers an estimated \$13 billion in 2020 alone.⁷ This lack of a federal privacy law has become particularly glaring as the European Union has established its own comprehensive data protection framework, the GDPR, and states such as California and Colorado have adopted baseline privacy protections for their residents.

While the FTC can take action against privacy and security violations under its authority to address unfair and deceptive acts and practices, it lacks the authority to issue civil penalties for first-time violations, and the courts have knocked down its ability to prevent wrongdoers from profiting from their fraudulent acts and to repay the victims under its 13(b) authority.⁹ Advocates have previously urged you to strengthen the FTC’s authority in these areas, making clear that these restrictions clearly hamper the FTC’s enforcement.¹⁰

This funding will be crucial in enabling the FTC to meet its responsibilities to protect consumer privacy. Recognizing the need for federal guidelines to rein in data collection, use, and sharing—and the need to give the FTC the authority to issue civil penalties for first-time violations—a recent executive order encouraged the FTC to pursue a rulemaking to address “unfair data collection and surveillance practices that may damage competition, consumer

⁴ See *Am. for Prosperity Found. v. Bonta*, 141 S.Ct. 2373, 2382 (2021) (discussing *NAACP v. Alabama*, 357 U.S. 449 (1958)).

⁵ Elisa Jillson, *Aiming for Truth, Fairness, and Equity in Your Company’s Use of AI*, FED. TRADE COMM’N (April 19, 2021), <https://www.ftc.gov/news-events/blogs/business-blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>.

⁶ *T-Mobile Shares Updated Information Regarding Ongoing Investigation into Cyberattack*, T-MOBILE (Aug. 17, 2021), <https://www.t-mobile.com/news/network/additional-information-regarding-2021-cyberattack-investigation>.

⁷ *Total Identity Fraud Losses Soar to \$56 Billion in 2020*, Javelin (Mar. 23, 2021), <https://www.businesswire.com/news/home/20210323005370/en/Total-Identity-Fraud-Losses-Soar-to-56-Billion-in-2020>.

⁹ *AMG Capital Management, LLC et al. v. Fed. Trade Comm’n* (Apr. 22, 2021), https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf.

¹⁰ Testimony of Anna Laitin, Consumer Reports, Before the United States House of Representatives Committee on Energy & Commerce, Subcommittee on Consumer Protection and Commerce, Hearing on “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers” (April 27, 2021), <https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-LaitinA-20210427.pdf>.

autonomy, and consumer privacy.”¹¹ However, given the FTC’s current limited funding, the agency will be curtailed in its ability to engage in that rulemaking while also engaging in enforcement actions against companies that violate people’s privacy.

The FTC also needs funds to hire more technologists to fulfill its critical mission, as the FTC is expected to have the technical expertise and sophistication to meaningfully check the big tech companies that dominate the tech sector. In 2015, the Commission created the Office of Technology Research and Investigation as a way of levelling the playing field and empowering the FTC to better tackle abuses from technology companies.¹² Despite its wide-ranging mission, the FTC did not hire any new FTEs, so it was largely staffed by shifting personnel from other parts of the office. Even today, OTECH only has a handful of employees to support all five departments in the Bureau of Consumer Protection.

The federal government has stalled in reining in giant technology companies, even as these businesses have grown bigger and more powerful. Now, legislators have a prime opportunity to help empower the FTC to go after companies that freely collect and monetize consumer data without their knowledge or consent. We urge you to advance the \$1 billion proposal to protect data privacy and prevent security abuses.

Respectfully Submitted,

Access Now
American Civil Liberties Union
Asian Americans Advancing Justice – AAJC
Center for American Progress
Center for Democracy & Technology
Center for Digital Democracy
Center on Privacy & Technology at Georgetown Law
Common Cause
Common Sense
Consumer Action
Consumer Reports
Cyber Collective
Electronic Privacy Information Center (EPIC)
Fairplay
Free Press Action
Greenlining
Hispanic Technology & Telecommunications Partnership

¹¹ The White House, Executive Order on Promoting Competition in the American Economy (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

¹² *FTC Seeks Technologists for New Research, Investigations Office*, FED. TRADE COMM’N (Mar. 23, 2015), <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-seeks-technologists-new-research-investigations-office>.

Lawyers' Committee for Civil Rights Under Law
Media Alliance
National Hispanic Media Coalition
New America's Open Technology Institute
Privacy Rights Clearinghouse
Public Knowledge
Public Citizen
Ranking Digital Rights
Revolving Door Project

cc: The Honorable Maria Cantwell, Chair
The Honorable Roger Wicker, Ranking Member
U.S. Senate Committee on Commerce, Science, and Transportation
Members, United States Senate

The Honorable Frank Pallone, Jr., Chair
The Honorable Cathy McMorris Rodgers, Ranking Member
U.S. House Committee on Energy and Commerce
Members, United State House of Representatives