



March 6, 2023

Travis Hall  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue NW, Room 4725  
Washington, DC 20230

VIA ONLINE SUBMISSION

**RE:** Comments of Engine Advocacy in response to *Request for Comment on Privacy, Equity, and Civil Rights*, Docket no. NTIA-2023-0001

Dear Dr. Hall,

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Data-driven innovation plays a central role in technology development and entrepreneurship, and technology entrepreneurship likewise plays a central role in addressing historical inequities. Accordingly, Engine appreciates the opportunity to submit these comments as NTIA collects information about the intersection of privacy, equity and civil rights.

Our comments provide general information about startups and the intersection of privacy, equity and civil rights and mostly speak to Question 1 of the Request for Comment.

**I. Underrepresented founders are innovating to solve historical inequities.**

At its core, innovation is about identifying and solving a problem for a user, customer, or client. Many underrepresented startup founders—women, people of color, immigrants, and LGBTQ+ individuals—encounter problems specific to their communities that are not solved, or perhaps are even ignored, by existing products on the market, so they innovate to create solutions. These startup founders are often seeking to correct historical inequities faced by their communities and are innovating in critical areas like health, finance, and business services. Any federal privacy framework must account for the needed work these founders and their companies are undertaking, preserve their ability to innovate, and support their chances of success.

Take, for instance, Noula Health, a New York City-based company solving poor quality of care encountered by women and Spanish-speaking patients. The company offers basic at-home hormone

testing and one-on-one coaching with health professionals at a relatively low cost. As the company explains on its website:

“Noula was born out of a shared frustration with a healthcare system that has failed us repeatedly and in different ways. The more we talked to friends and family the more obvious it became that every woman and person with a uterus has experienced feeling dismissed, ignored, or disbelieved by our doctors. Instead of receiving care, we stopped trusting our providers, and worse, we started doubting ourselves.”<sup>1</sup>

And as founder Noelle Acosta told Engine,<sup>2</sup> one of the company’s goals is to reach users who belong to groups that are traditionally underserved by the medical industry, especially Spanish-speaking patients, which is why the company is planning to launch its service in Spanish. According to studies, Latina women suffer disproportionately in key reproductive health measures, including higher rates of maternal mortality and higher mortality rates from breast and cervical cancer, and they are less likely to receive regular mammograms and pap tests.<sup>3</sup> With the overlapping audiences of women and birthing people and Spanish-speakers, Noula has plans to reach their target users with online ads. “All of our growth is user-generated word of mouth from people looking for information about how to better take care of their bodies. And as we grow, we will be investing in online ads to reach users who may be looking online for that information,” Acosta told Engine.<sup>4</sup>

Startups like Noula need to be able to reach the users in the specific communities where their product is needed, and a federal privacy framework must account for this. Finding and attracting potential users is arguably the most important step to growing a company. The ability of new, innovative companies to target their niche products and services to specific communities helps fill crucial gaps in the market that larger incumbent companies either under-invest in or don’t invest in at all.

Many underrepresented individuals, including entrepreneurs or potential entrepreneurs have long been shut out of traditional paths to finance. Fortunately, startups like Camino Financial are using novel data-driven AI models to give overlooked entrepreneurs access to the capital they need to build and grow their businesses.<sup>5</sup> A big segment of Camino Financial’s clients are shut out from most opportunities to access credit because they don’t have a credit score, so the company built a credit model that works for this population to ensure they have access to the capital they need and deserve. As Co-Founder Kenneth Salas explains:

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<sup>1</sup> See About, Noula, <https://noula.com/about>.

<sup>2</sup> #StartupsEverywhere Profile: Noelle Acosta, Founder & CEO, Noula Health, Engine (Oct. 28, 2022), <https://www.engine.is/news/startupseverywhere-newyork-ny-noulahealth>.

<sup>3</sup> See, e.g., Blanca Ramos et. al, *Latina Women: Health and Healthcare Disparities*, 258-271 *Social Work in Public Health* 25:3-4 (2010), <https://www.tandfonline.com/doi/full/10.1080/19371910903240605>.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> #StartupsEverywhere Profile: Kenneth Salas, Co-Founder & COO, Camino Financial, Engine (May 20, 2022), <https://www.engine.is/news/startupseverywhere-losangeles-ca-caminofinancial>.

“Twenty-eight percent of our borrowers do not have a credit score, such as a FICO score, and 50 percent of our historic borrowers were undocumented, but they are taxpayers with a tax identification number. Overall, our borrowers have about \$2,000 in their cash balance when they get a loan from us and our average loan size is \$20,000. We're leveraging what they have in their bank account by 10 times because we've built an AI system that can make a very accurate mathematical guess on what the real income of their business is based on information provided in our application and larger data sets we've built over time.

“We use Plaid to download the last six months of an applicant's transaction data, and we now have about 18 million rows of this data in our AI system. All of this data enables our model to see the borrower in a more holistic picture and make loans to entrepreneurs that other institutions turn away. Going forward, we want to try to develop a member score for our existing accounts so we can better serve them and even lower their rates.

“Our AI models enable a willingness to bet against the traditional ways of evaluating a borrower's ability to pay. We find this approach works well in making sure that we're serving both of these segments as well as we can and controlling for potential bias.”<sup>6</sup>

Startups like Camino Financial are building innovative algorithms that counteract and correct historical biases, and federal privacy rules must preserve their ability to do this important work. Access to and integration of data from multiple sources is at the core of their product and success. Salas emphasized the importance of access to data to “help inform models that achieve more equitable outcomes.”<sup>7</sup> Similar models could be used to help correct biases in other areas of lending, housing,<sup>8</sup> health, or employment, and with smart policies to mitigate risks,<sup>9</sup> are the types of innovations that we should want to advance.

## **II. Startups care deeply about the privacy of their users.**

The vast majority of startups respect the privacy of their users and recognize the need to build trust among them, and many startups often leverage this as a competitive advantage. Underrepresented founders are especially conscious of how they use and secure their customers' data and take significant steps to accurately communicate this with their customers. They take these steps because it is the right thing to do, but also in part because they know firsthand the experiences of their communities that have been too often marginalized or exploited.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See e.g., Steve Gaenzler, *Will AI solve the problem of appraisal bias?*, HousingWire (May 20, 2021), <https://www.housingwire.com/articles/appraisal-bias-ai-solution/>; Brian Brackeen, Twitter (Aug. 18, 2022), <https://twitter.com/BrianBrackeen/status/1560315857724743680?s=20&t=tYZbOXmhZUkSbEa2t8MOPQ> (discussing a desire to invest in AI appraisal startups to mitigate human bias in home appraisal).

<sup>9</sup> See generally *infra*, at IV.

Consider, for example, the focus of Free From Market, a Kansas City-based startup working to expand food access to those who need it most. Founder Emily Brown started the company following personal experiences with food insecurity and needing specific foods to support the healthcare of family members. Bringing these experiences to bear also inform the company's approach to data privacy:

“We take compliance and data privacy policy very seriously, and we believe that our platform needs to protect our users and be a safe place for them to engage. As an early-stage company dealing with healthcare data in the social determinants of the health space, we have a lot of various regulations to adhere to, and we approach them with a serious lens. We focus on obtaining consent from our users and ensuring that they are in control of how their data is shared.”<sup>10</sup>

Discussing other areas of the law, Brown notes how “existing rules can get in the way of innovative, needed solutions for marginalized communities.”<sup>11</sup> Policymakers should be sure that data privacy does not become one of these areas as well. To that end, a federal data privacy standard that policymakers have been exploring to bring certainty to the regulatory landscape “could be helpful for us as a startup,” Brown says.<sup>12</sup>

In protecting their data and complying with the law, startups must expend significant resources. What's more, in the current data privacy landscape with varying obligations from state to state, startups often must undertake duplicative compliance activities, adding to the strain on their limited resources.

In addition to solving unique problems facing their communities, underrepresented founders unfortunately encounter several barriers in their entrepreneurial journeys, especially with regard to capital access. Hardly any venture capital goes to underrepresented founders, and when it does, they receive less funding and have to give up more equity.<sup>13</sup> Underrepresented founders also tend to lack access to generational wealth and start their ventures with fewer resources.<sup>14</sup> As NTIA considers equity implications of privacy and explores elements for a federal privacy law, the resources of startups and their ability to comply should be kept in mind—especially so underrepresented founders addressing critical needs in their communities don't encounter compliance burdens that are too steep to overcome.

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<sup>10</sup> #StartupsEverywhere Profile: Emily Brown, Co-Founder & CEO, Free From Market, Engine (Mar. 3, 2023), <https://www.engine.is/news/startupseverywhere-kansascity-mo-freefrommarket>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *Capital Access and Founders of Color*, Engine

<https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/601972a9523cbf6f0ca52288/1612280489760/Capital+Access+and+Founders+of+Color.pdf>.

<sup>14</sup> *Id.*

### III. Startups need a federal privacy law.

Presently, startups are encountering a fragmented and shifting landscape of state data privacy laws that sows confusion, creates duplicative costs, and simultaneously leaves some of their users uncovered. In announcing this Request for Comment, NTIA Administrator Alan Davidson called for a federal standard for privacy, saying “privacy rights shouldn’t change when you cross state lines.”<sup>15</sup> Startups need exactly that—a uniform federal privacy standard that creates certainty for them and establishes protections for their users nationwide.

A uniform, comprehensive federal privacy law is needed to streamline compliance costs and lower barriers for startups, especially those headed by underrepresented founders. Consider the experience of Tani Chambers, the Founder & CEO of RAVN, a wealth planning platform specifically designed for Black women. Chambers built the company after a bad experience with a financial advisor that did not understand her experiences and needs: “I left feeling scolded and chastised for bad money management instead of feeling understood and empowered,” she said.<sup>16</sup> RAVN solves this problem and helps their clients build wealth by matching them “with culturally attuned financial advisors who understand our experiences, the reasons we make the decisions that we do, and the systemic issues we face.”<sup>17</sup> While RAVN has been successful thus far, they have had to delay parts of their product central to their scalability due to compliance barriers. One federal privacy framework, Chambers says, could help alleviate some of those burdens, but only if policymakers design the law with startups in mind—not just the largest tech companies:

“one uniform, consistently enforced federal policy framework could help make running RAVN easier, especially as a fintech startup. Compliance can be very costly and is one of the reasons we've delayed our technical product. However, if an overarching framework is developed, it would need to consider small businesses and startups and preferably segment the requirements accordingly. Creating a framework built around regulating large companies and big tech could be harmful to smaller companies and startups like RAVN.”<sup>18</sup>

### IV. Startups need space to innovate.

Startups need space to innovate and solve society’s most pressing problems—especially problems arising from discrimination and historical biases. At the same time, no startup wants to intentionally discriminate. A federal privacy law must account for both of these realities. One way to allow startups to innovate, iterate, and correct problems as they arise is through a right to cure unintentional violations of the law.

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<sup>15</sup> Alan Davidson, Building on the Dream, Privacy Equity and Civil Rights, (Jan. 18, 2023), <https://www.youtube.com/watch?v=wseMeBR9heY>.

<sup>16</sup> #StartupsEverywhere Profile: Tani Chambers, Founder & CEO, RAVN, Engine (Jan. 20, 2023), <https://www.engine.is/news/startupseverywhere-newyork-ny-ravn>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

NTIA is right to be wary about potential harms—especially to marginalized communities—of some technologies as some types of data and some uses of data present such clear potential harms to consumers that a federal privacy framework should prohibit those kinds of collections and uses. Policymakers must be incredibly precise in identifying those kinds of prohibitions to avoid limiting startups’ ability to use data in innovative, innocuous, and beneficial ways—especially in ways that aim to benefit historically marginalized groups, e.g., as outlined in this response.

When considering limiting or prohibiting types of data that can be collected, the context and potential consumer benefits of that data should be weighed. For instance, biometric data that fuels facial recognition technology can have incredibly privacy-invasive uses and has a worse track record of accurately identifying non-white individuals.<sup>19</sup> But at the same time, a startup may use that data for privacy-enhancing purposes, like accurately blurring the background when it recognizes that a face is present on a screen. That latter use shouldn’t face the same kind of burdens as a company offering a more privacy-invasive product or service. Rather than eliminating uses of entire categories of data, careful, detailed, and forward-looking analyses are needed to sort out what uses of each specific kind of data should be limited.

Additionally, as discussed above, startups need data to build accurate models and useful products,<sup>20</sup> and limiting the collection and retention of data will limit startups’ ability to develop new products and services or even pivot to new business offerings.<sup>21</sup> And startups’ access to data directly correlates with their competitiveness. As Kenneth Salas, the Camino Financial Co-Founder pointed out, not only does more data better inform their models to achieve more equitable outcomes, it also is needed to succeed in the marketplace because “companies that have greater access to large datasets have the upper hand...”

Many types of startups are using data, AI models, and algorithms in beneficial ways, and data privacy rules should account for that. In addition to Camino Financial, for instance, Noula (also discussed above) uses an algorithm to recommend healthcare information for users to have more informed conversations with their outside medical professionals.<sup>22</sup> These are examples of companies that operate in what could be defined as sensitive spaces—finance and healthcare—but their services focus on using algorithms to expand access to capital and information, not excluding users from opportunities.

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<sup>19</sup> See, e.g., Patrick Grother, et al., *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects*, NIST (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

<sup>20</sup> See generally *supra* §I.

<sup>21</sup> Startups often start with one product or service in mind and then shift or expand as they identify other or additional opportunities, and privacy rules may impact the ease with which startups make such pivots. See generally Comments of Engine Advocacy in response to Commercial Surveillance ANPR, R111004, §VI Engine (Nov. 21, 2022), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/638526cc3d868e2a6337b3d2/1669670605521/Engine+-+FTC+Privacy+ANPRM+Comments.pdf>.

<sup>22</sup> *Supra* note 2.

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Engine has long advocated for a federal privacy framework crafted by Congress that creates strong protections for consumers while setting consistent obligations and prohibitions for startups. We recognize NTIA's longstanding interest in federal privacy rules and appreciate this opportunity to share the perspective of startups.

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