Comments in response to the New York State
Office of the Attorney General's (OAG)
Notice of Proposed Rulemaking (NPRM)
for the Stop Addictive Feeds Exploitation (SAFE) for Kids Act (S7694A)

Respectfully submitted,

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on behalf of

Common Sense Media
Fairplay
Issue One
Mothers Against Media Addiction (MAMA)
NY State American Academy of Pediatrics
Parents RISE!
ParentsSOS
SAVE (Suicide Awareness Voices of Education)

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Introduction.

On behalf of Common Sense Media, Fairplay, Issue One, Mothers Against Media Addiction (MAMA), the NY State American Academy of Pediatrics, Parents RISE!, ParentsSOS, and Suicide Awareness Voices of Education (SAVE), we are pleased to submit these comments in response to the New York State Office of the Attorney General's (OAG) Notice of Proposed Rulemaking (NPRM) (herein, 'draft rule') for the SAFE for Kids Act. We continue to support New York State's OAG's efforts to protect children's safety while ensuring their privacy, and we offer some constructive suggestions to further achieve this balance below.

Common Sense Media is the leading nonprofit organization dedicated to improving the lives of all children and families by providing the trustworthy information, education, and independent voice they need to thrive in the 21st century. Fairplay is a nonprofit organization committed to helping children thrive in an increasingly commercialized, screen-obsessed culture, and the only organization dedicated to ending marketing to children. Issue One is a leading bipartisan political reform group focused on fixing our political system and building a democracy that works for everyone. Mothers Against Media Addiction (MAMA) is a grassroots movement of parents and allies fighting back against media addiction and creating a world where real-life experiences and interactions remain at the heart of a healthy childhood. The NY State American Academy of Pediatrics (NYS AAP), District II, comprised of Chapters 1, 2, & 3, is dedicated to the physical, mental, and social health and well-being of all infants, toddlers, children, and adolescents. NYS AAP is committed to advocating for a state that supports all children to ensure they can thrive. Parents RISE! is a national survivor-parent-led movement building a unified national force of survivor parents and allies that drives legislative reform, corporate accountability, and cultural change to ensure technology serves, and never exploits, our children. ParentsSOS is a group of more than 20 families that tragically lost their children to online harms, and that have turned their grief into action by advocating for meaningful social media reforms. SAVE (Suicide Awareness Voices of Education) is a 36-year-old Minnesota-based national nonprofit dedicated to preventing suicide and supporting those affected by it. SAVE provides education and training, promotes lethal means safety, supports suicide loss survivors, and advances advocacy to protect children and families from online harms.

Social media companies use personally tailored and targeted feeds (addictive feeds) to get kids and teens to engage and view their platforms for longer periods of time in order for the companies to make more money. This design choice by social media companies occurs despite ample evidence that addictive feeds have had an increasingly devastating effect on children and teenagers; spending increasing amounts of time on social media has been tied to significantly higher rates of youth depression, anxiety, suicidal ideation, and self-harm.

In response to the negative impact of addictive social media platform design features on children and teens, in 2024, the New York Legislature passed, and Governor Kathy Hochul signed into law, the Stop Addictive Feeds Exploitation (SAFE) for Kids Act. The SAFE for Kids Act has two main

features to protect young users online. It bans the use of algorithmic, or addictive, feeds to minors, and it bans overnight notifications from addictive feeds to minors. Both features of this law can be changed if a parent consents. This landmark law offers the best of both worlds when it comes to protecting kids online - eliminating two design choices that are known to cause harm to kids while allowing full access to the internet and community of friends, family, and areas of interests for those same users.

Our comments focus on several areas of this new law for which the OAG is seeking responses. We commend the OAG for its thoughtful approach in developing this draft rule. We submitted lengthy comments for the Advanced Notice of Proposed Rulemaking (ANPRM) in September of 2024.[1] We appreciate that these comments were carefully considered in the drafting of these rules. Further, we believe that the inclusive process—seeking input from a wide range of stakeholders and incorporating their perspectives—strengthens the resulting framework. We particularly support the clear and comprehensive definitions throughout the draft rule, including the OAG's definition of "Actual Knowledge" (Section 700.4), which provides meaningful clarity for covered operators.

Comments.

Section 700.1 – Definitions

We continue to believe that age assurance and accuracy minimums in the final rule should be privacy protective, proportionate, fair and equitable. We appreciate the non-prescriptive approach to age assurance methods adopted by the OAG in the draft rule. Allowing flexibility while still requiring that methods be commercially reasonable, technically feasible, and accurate ensures innovation while maintaining strong protections. However, we have several questions and suggestions as to several definitions.

We seek clarification on the definition of **Accuracy Minimum (b)** and whether there is a need for the five age brackets (0–7, 8–13, 14–15, 16, and 17). If, as the OAG notes, facial age estimation is nearly 100% effective for younger children, it may be more practical to use two primary brackets 1) under 13; and 2) 14–17—for accuracy standards. We encourage the OAG to consider whether the proposed accuracy thresholds require additional information collection, particularly for younger children. We appreciate that the proposed rule accounts for method circumvention when establishing accuracy minimums.

As to the definition of an **Addictive Online Platform (d)**, we appreciate the objective 20% user-time metric as a reasonable measure of when an addictive feed is "significant." We do, however, encourage consideration of whether certain high-engagement platforms (e.g., Roblox, YouTube) might unintentionally fall outside this scope despite meeting the underlying criteria. We want to ensure that a platform cannot move in and out of scope simply because its compliance

[1] https://www.commonsensemedia.org/sites/default/files/featured-content/files/safe-for-kids-act-comments.pdf

efforts cause it to fall below the 20% threshold during one six-month period, only to return above it in the following six-month period. Additionally, we recommend clarifying this subsection to ensure it is explicit that the 20% threshold includes any time a user spends consuming content delivered through an "addictive feed." This is essential because some platforms push you to a separate page to watch the content after the addictive feed recommends the video.

We are concerned with the current definition of **Exempt Online Platform (q).** As discussed below in Section 700.2, we believe "exempt" platforms should not be exempt from all obligations and should still be responsible for not providing addictive feeds to known minors. Further, the AG should ensure that companies cannot turn a blind eye to young users and try to pretend they do not have children on their site to become "exempt."

Smaller platforms often lack trust and safety teams and may pose heightened risks to minors. As noted in the draft rule (p. 62), early-stage platforms may lack resources to implement robust safeguards, which further justifies not exempting such platforms from addictive feed prohibitions.

Additionally, we are concerned with the use of "primary user base" in the exception for "exempt online platform," which indicates that, regardless of their size, "addictive online platforms whose primary user base is minors are not exempt online platforms." We believe that "primary user base" as used in this exemption is subjective, and we therefore recommend adding objective criteria to determine when a platform's "primary users" are not minors to ensure consistency and enforceability.

Finally, we agree with the OAG's decision not to exempt platforms based on subject matter or audience type. Such exemptions would undermine the statute's content-neutral design and invite unnecessary litigation. However, we recommend clarifying that this exemption applies only to age assurance obligations and not to prohibitions against addictive feeds when the platform knows or should know that a user is a minor.

Related to the definition of **Technical Information Concerning a User's Device (ff)**. We support the examples provided and the careful distinction between technical information and identifiable data. We also appreciate the rule obligating operators to take reasonable steps to detect circumvention, which we see as a feasible standard given existing geolocation and compliance tools across industries such as banking and video streaming services. However, we believe the regulations should clarify to the operators that the geolocation cannot be so specific as to be linked to the user's identity. We also believe that the regulations should reinforce to operators that they may not use this location information to provide an addictive feed or nighttime notifications to a covered user.

Section 700.2 – Prohibition of Addictive Feeds

We support the provision under subsection (b) that covered operators are not required to provide minors access to verifiable parental consent mechanisms for addictive feeds. However, subsection (c) raises concerns. The 180-day grace period for compliance could inadvertently allow platforms

to oscillate in and out of coverage, creating regulatory gaps. We suggest making it clear in this provision that once a platform needs to comply with the rule - because they are within the scope of the definition of "addictive online platform" under Section 700.1(d) - they cannot move out of the scope of this provision due to making the required changes in order to comply with Section 700.2. This clarification is necessary in order to avoid unintentional cyclical compliance exemptions.

Additionally, under (d), we support the provisions that a covered operator must take into account all reliable information accessible to determine whether a user is a covered user. Further, subsection (d) should require platforms to consider all reliable information, including device and behavioral data, when determining minor status, consistent with the rule's broader intent.

We support OAG's decision not to automatically adopt COPPA-approved consent mechanisms, but to allow them where they meet the law's standards. We specifically suggest that the OAG clarify the status of "email-plus" consent, which should not be considered sufficient given its vulnerability to circumvention by teens.

We recommend establishing frequency limits for how often minors and parents receive consent or denial notices, and especially any requests to change status to allow for an addictive feed. Our suggestion would be to limit the frequency of how often minors and parents can receive these consent or denial notices to annually or biannually in order to prevent "click fatigue."

We support annual reviews of parental consent methods and clear operator identification on all consent requests. We also strongly support the requirement that withdrawal of consent be as easy as providing it and the definition of "valid consent," which specifies that the use of "dark patterns" negates consent. Finally, we appreciate the use of "zero-knowledge proof age assurance" and third-party verifiers that would be able to pass age signals to covered platforms as we had suggested in our original comments submitted in September of 2024.[2]

Section 700.3 – Prohibition of Nighttime Notifications

We adopt the same comments as for Section 700.2, given the similar structure and goals of these provisions.

Section 700.4 – Actual Knowledge and Age Assurance Methods

We strongly support the *Actual Knowledge* standard laid out in the draft rule in general; however, we also suggest clarifying the timing of when the age assurance mechanism would be required (e.g., on day 1 of implementation of the law, will all covered user feeds be disabled by default until age assurance occurs?).

We also caution against overreliance on self-declaration alone as sufficient age assurance. While appropriate for identifying minors in this context of SAFE for Kids, in other contexts it is

[2] https://www.commonsensemedia.org/sites/default/files/featured-content/files/safe-for-kids-act-comments.pdf (Page 9).

insufficient to verify adult users or prevent interactions between minors and adults where safety concerns exist. While we acknowledge this particular concern may be outside of the current scope of this rulemaking, it could become a concern in the future if other lawmakers look to these regulations for guidance, so clarifying that it is permissible to rely on self-declared age for the purpose of being considered a child. However, this reliance on self-declaration should be cabined to situations where there are no concerns about adults pretending to be children. Additionally, we recommend maintaining an ongoing verification requirement so that if new data suggests a user's age status has changed, the platform must conduct further verification.

With regard to the age assurance mechanism, we appreciate that covered operators are responsible for periodic evaluation of accuracy, circumvention, and user burden of age assurance. However, we think it should be made more explicit in Section 700.4 that covered operators may rely on compliant third-party age assurance providers (including device-level or third-party verification systems) as long as these providers meet the accuracy standards identified in the rule.

Finally, we appreciate OAG's engagement with multiple stakeholders and its recognition of waterfall approaches and zero-knowledge proofs as viable privacy-preserving age assurance methods.

Sections 700.6–700.7 – Appeals and Data Handling

We support a fair appeals process for adults misclassified as minors but urge safeguards to prevent the process from being misused to bypass parental consent.

Additionally in this section we recommend clarifying that "Age status" refers only to minor/adult classification, not precise age.

Section 700.8 – Remedies

We support the mechanism for enforcement through the New York Attorney General.

Section 700.9 – Reliance on Third Parties

We support the clarification in 700.9(a) that covered operators remain fully responsible for compliance, even when using third-party vendors or age signal providers. This ensures accountability consistent with the Act's purpose.

Conclusion.

We thank the OAG for its comprehensive and balanced approach in this draft rule. Overall, we support the intent and structure of the regulations and believe the clarifications and refinements suggested above will strengthen their effectiveness, ensure fairness for operators and users, and, most importantly, enhance protections for children online.