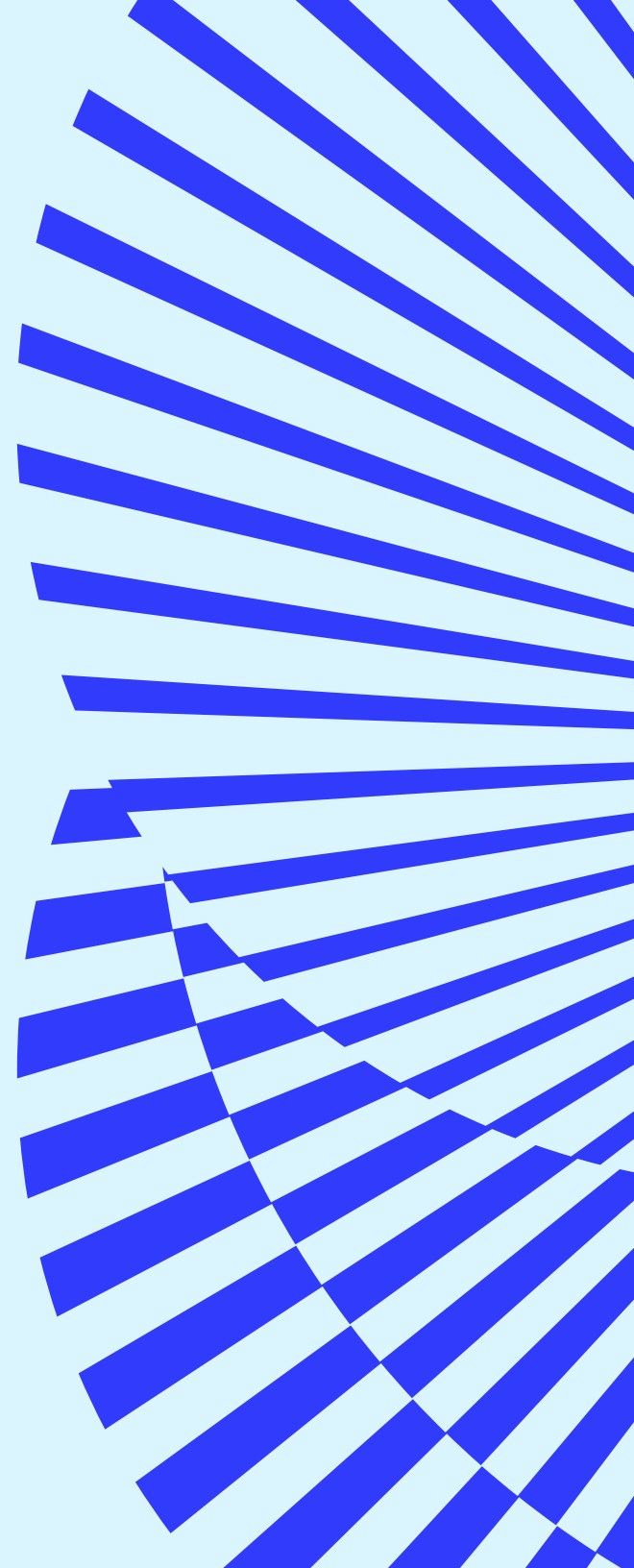


American Data Privacy and Protection Act



U.S. Chamber of Commerce
Technology
Engagement Center



Title	Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
Title I—Duty of Loyalty	Data Minimization	<p>A covered entity may not collect, process, or transfer, covered data unless the collection, processing, or transfer is limited to what is reasonably necessary and proportionate to provide or maintain a specific product or service requested by the individual to whom the data pertains or <i>effect a permissible purpose</i>.</p> <p>A covered entity or service provider may not engage in deceptive advertising or marketing with respect to a product or service offered to an individual.</p>	Guidance	
	Loyalty Duties (Prohibited Practices)	<ul style="list-style-type: none"> • Collect, process, or transfer an SSN <i>except extension of credit, fraud and ID protection, payment of taxes, enforcement of contract, or fraud prevention/prosecution.</i> • Collect or process sensitive covered data unless <i>permissible purpose</i>. • Transfer an individual’s sensitive covered data to a third party <i>unless affirmative express consent, comply with legal obligation, prevent serious bodily risk, government service provider, identifying reused passwords, medical diagnosis, research, or treatment for genetic information.</i> • For broadcast television services, cable services, satellite service, streaming media service, or other video programming described in 47 USC 613(h)(2) reveal video content or services. 		Yes
	Privacy by Design	<p>Covered entities and service providers shall establish, implement, and maintain reasonable policies practices, and procedures that reflect the role of the covered entity or service provider in the collecting, processing, and transferring of covered data. This must consider:</p> <ul style="list-style-type: none"> • Applicable federal laws • <i>Identify, assess, and mitigate privacy risks related to covered minors (including, if applicable, with respect to a covered entity that does not have small business protections, in a manner that considers the developmental needs of different age ranges of covered minors) to results in reasonably necessary and proportionate residual covered risk to covered minors.</i> • Mitigate privacy risks, including substantial privacy risks • Implement reasonable training and safeguards 	Guidance	
	Pricing Loyalty (Discrimination)	<p>A covered entity may not retaliate against an individual for exercising any of the rights guaranteed by the Act, or any regulations promulgated under this Act, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods or services.</p> <p>Exceptions Include:</p> <ul style="list-style-type: none"> • The relation of price of a service or the level of service provided to an individual to the provision, by the individual, of financial information this is necessarily collected and processed only for the purpose of initiating, rendering, billing for, or collecting payment for a service or a product requested by the individual. 		Yes



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Title I—Duty of Loyalty <i>(continued)</i>	Pricing Loyalty (Discrimination) <i>(continued)</i>	<ul style="list-style-type: none"> Offering different rates, level, quality in connection with voluntary participation in a bona fide loyalty program. Offering financial incentive for participation in market research. Offering different types of pricing or functionalities based on exercising right to delete. Prohibit a covered entity from declining to provide product or service if data strictly necessary for product or service. 		Yes
Title II—Consumer Rights	Transparency	<p>Covered entities shall make publicly available a privacy policy that includes:</p> <ul style="list-style-type: none"> Contact information of covered entity or service provider and other entities within same corporate structure data transferred to. Categories of covered dates collected or processed. Processing purposes of data. Category of third parties covered data transferred to. Length of time intends to retain data. Prominent description of how an individual can exercise rights. A general description of covered entity’s or service provider’s data security practices. Effective date of privacy policy. Whether or not covered data transferred to, processed in or stored in China, Russia, Iran or North Korea. <p>Privacy policies in ten most prevalent languages and must be reasonable accessible to those with disabilities.</p> <p>Other than for <i>permissible purposes</i>, affirmative express consent required for material changes of privacy policy.</p> <p>Large data holders must retain privacy policies of last ten years.</p> <p>Large data holders are required to provide a short-form notice of privacy policies.</p>	APA Rulemaking for large data holder short-form notice	Yes
	Individual Data Ownership and Control	<p>For Covered Entities</p> <ul style="list-style-type: none"> Access Correction Deletion Portability <p>Required Exceptions:</p> <ul style="list-style-type: none"> Cannot reasonably verify request Reasonably believes request is made to interfere with contradict Would request access to or correction of another individual’s sensitive covered data Would require to engage in unfair or deceptive practice Request made to further fraud, illegal activity, or security threat 	APA Rulemaking	Yes



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Title II– Consumer Rights <i>(continued)</i>	Individual Data Ownership and Control <i>(continued)</i>	Permissive Exceptions: <ul style="list-style-type: none"> • Retain any covered data for a single one-time transaction. • Demonstrably impracticable request. • Require covered entity to re-identify de-identified data. • Release of trade secrets or confidential business information. • Correct data that cannot be reasonably verified as being inaccurate. • Interfere with law enforcement or protect against illegal, malicious activity. • Violates Federal or State law. • Prevent covered entity from being able to confidentially track deletion requests meant to prevent re-collection. • Enumerated exceptions in rules by FTC. • With respect to deletion, unreasonably interfere with provision of products or services to currently served person, public figures, data needed to perform contracts, comply with ethical regulations, evidence of unlawful activity or abused of covered entity’s products or services, or unreasonably interfere with Title I Education services. Large data holders are required to do annual metrics reports of data requests.	APA Rulemaking	Yes
	Right to Consent and Object	<ul style="list-style-type: none"> • Must be clear and conspicuous means to withdrawal consent. • Right to opt out of Covered Data Transfers. Exceptions include permissible purpose. • Right to opt out of targeted advertising. 		Yes
	Children and Minors	For Covered Entities <ul style="list-style-type: none"> • Targeted advertising banned if knowledge individual is a covered minor. • Transfer of covered minor’s data if has knowledge that individual is covered minor OR no express affirmative consent from covered minor or guardian or parent. There is an exception for missing, exploited, and victimized children. 		Yes
	Third-Party Collecting Entities	Third Party Collecting Entities <ul style="list-style-type: none"> • Shall place on their website notification they are a third-party collecting entity • Register as Third-Party Collecting Entity with FTC • Honor Do Not Collect registry link (for non-consumer reporting agencies) to delete and stop collection 	APA Rulemaking for Notice	Yes, for Do Not Click Link



Title	Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
Title II– Consumer Rights (continued)	Civil Rights Protections	<p>For Covered Entities and Service Providers</p> <p>May not collect, process, or transfer covered data in a manner that discriminates in or otherwise makes unavailable the equal enjoyment of goods or services on the basis of race, color, religion, national origin, sex, or disability. <i>Exceptions include preventing or mitigating unlawful discrimination, diversifying applicant pools, or private clubs described in Civil Rights Act.</i></p> <p>For large data holder that uses a covered algorithm that poses a consequential risk of harm to an individual or group of individuals:</p> <ul style="list-style-type: none"> • Must conduct impact assessments. Impact assessments must be submitted to the FTC and made available to Congress, and summaries available to the public. Trade secrets may be redacted. • Evaluate design to reduce risks of potential harms. 	APA Rulemaking on how to submit impact assessment and exclusion of low or minimal consequential risk	Yes, for Discrimination Provisions
	Data Security and Protection of Covered Data	<p>For Covered Entities and Service Providers,</p> <ul style="list-style-type: none"> • Shall implement reasonable administrative, technical, and physical data security practices. These include vulnerability assessments, preventative and corrective action, evaluation of preventative and corrective action, information retention and disposal, training, officer designated to maintain and implement, and incident response. 		Yes, for Data Security Practices
	Small Business Protections	<p>Small businesses seeking protections for period of previous three years are exempt from:</p> <ul style="list-style-type: none"> • Portability • Specific cybersecurity requirements other than information retention and disposal requirements <p>Small businesses may also treat a correction request as a deletion request.</p>		
	Unified Opt Out	The Commission shall establish a United Opt Out for Covered Data Transfers and Targeted Advertising	Notice and Comment within 18 months	



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Title III– Corporate Accountability	Executive Responsibilities	<p>For Large Data Holders</p> <ul style="list-style-type: none"> • Executive Officer must certify internal controls reasonably designed to comply with Act and interval reporting structures to ensure that such certify executive officer is involved in and responsible for the decisions that impact the compliance by the large data holder with the Act. • Detailed Privacy Impact Assessments one year after enactment or one year after becoming large data holder. <p>For Non-Large Data Holders not enjoying small business protections,</p> <ul style="list-style-type: none"> • Impact Assessment within one year and biennially. 	APA Rulemaking	
	Technical Compliance Programs	Commission may approve technical compliance programs which the FTC and State Attorneys shall consider before enforcement and during penalty phase.	APA Rulemaking	
Enforcement	Commission Approved Compliance Guidelines	Covered entities not a third-party collecting entity and meets the requirements of small business protection or is a group of covered entities may apply for compliance guidelines covered collection, processing, and transfer of covered data. A covered entity that is eligible to participate in such a program is deemed to be in compliance with the law if in compliance with the program.	Notice and Comment	
	Federal Trade Commission	<p>New Bureau of Privacy may enforce violations of Act as violations of rule against unfair and deceptive practices.</p> <p>FTC may also levy \$100 per day civil penalty for failure to register as Third-Party Collecting Entity.</p>		
	State Attorneys General or State Privacy Authority	<p>May bring cases in federal district court for:</p> <ul style="list-style-type: none"> • Injunction • Enforce compliance with Act or such regulation • Obtain damages, civil penalties, restitution, or other compensation on behalf of the resident of such State • Obtain reasonable attorney’s fees <p>State AGs and State Privacy Authorities may still bring an action or other regulatory proceeding arising solely under the law in effect in the state that is preempted by this Act or under another applicable Federal law.</p>		



Title	Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
Enforcement <i>(continued)</i>	Private Enforcement	<p>After two years, a private right of action is authorized for:</p> <ul style="list-style-type: none"> • Compensatory damages • Injunctive relief • Declaratory relief • Reasonable attorney’s fees and litigation costs. <p>Pre-dispute arbitration agreements are barred for individuals under 18 or claims related to gender or partner-based violence or physical harm.</p> <p>Pre-dispute Joint-Action Waivers are barred for those under 18.</p> <p>A right to cure exists for injunctive relief and for protected small businesses.</p> <p>The PRA does not apply covered entities that have less than \$25M in revenue; handles the date of fewer than 50,000 individuals and derives less than 50 percent of its revenue from transferring covered data.</p>		
	Preemption	<p>No State or political subdivision of State may adopt, maintain, enforce, prescribe, or continue in effect any law, regulation, rule, standard, requirement, or other provision having the force and effect of law in any State, or political subdivision of a State, covered by the provisions of this Act or a rule, regulation, or requirement promulgated under this Act.</p> <p>EXCEPTIONS:</p> <ul style="list-style-type: none"> • Consumer Protection laws • Civil Rights Laws • Provisions of laws governing privacy protections of employees, employee information, students, or student information • Data Breach Notification • Contract or Tort Law • Criminal Law • Civil laws governing fraud, theft, or unauthorized access • Civil laws governing cyberstalking, cyberbullying, nonconsensual pornography, sexual harassment, child abuse • Public safety or sector specific laws unrelated to privacy • Public Records Laws • Facial Recognition, Electronic Surveillance, or Wiretapping • Illinois Biometric Privacy Law • Unsolicited Email and Telephone Calls • Public Health Activities, reporting data or services • Library Records • CCPA Data Breach • Encryption and Data Security 		
	Effective Date	180 Days After Enactment		