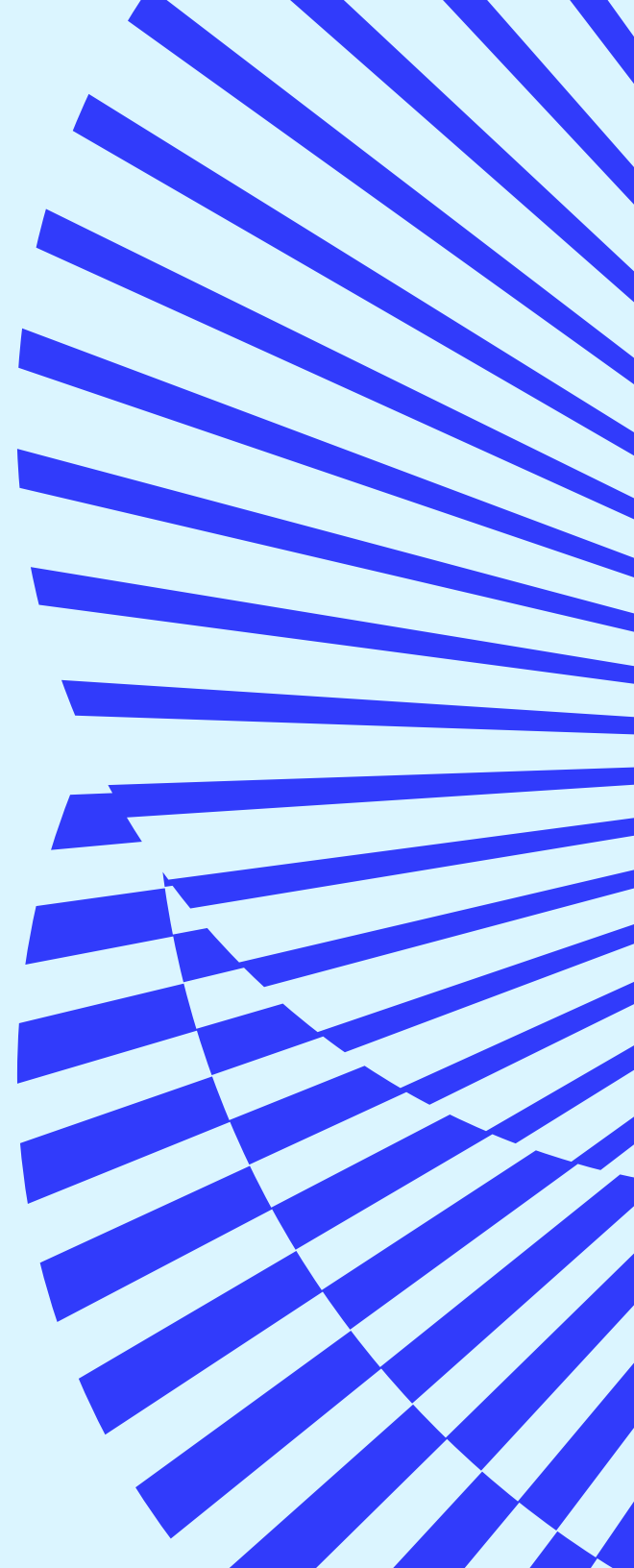


American Data Privacy and Protection Act

Definitions



U.S. Chamber of Commerce
Technology
Engagement Center





Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
Covered Algorithm	A computational process that uses machine learning, natural language processing, artificial intelligence techniques, or other computational processing techniques of similar or greater complexity and that makes a decision or facilitates human decision-making with respect to covered data, including to determine the provision of products or services or to rank, order, promote, recommend, amplify, or similarly determine the delivery or display of information or an individual.		
Covered Data	Information that identifies or is linked or reasonably linkable, alone or in combination with other information, to an individual or a device that identifies or is linked or reasonably linkable to an individual, and may include derived data and unique persistent identifiers. Exclusions: <ul style="list-style-type: none">• De-identified data• Employee data• Publicly available information• Inferences made exclusively from multiple independent sources of publicly available information that do not reveal sensitive covered data with respect to an individual.		
Covered Entity	Any entity or any person, other than an individual acting non-commercial context, that alone or jointly with others determines the purposes and means of collecting, processing, or transferring covered data and is: <ul style="list-style-type: none">• Subject to the Federal Trade Commission Act (15 U.S.C. 41 et seq.) OR• Common carrier subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and all Acts amendatory thereof and supplementary thereto: OR• Is an organization not organized to carry on business for its own profit or that of its members; AND A Covered Entity is also any entity or person that controls, is controlled by, or is under common control with the covered entity. <i>EXCLUSIONS—Not a government entity or service provider acting as a service provider. Not a non-profit design to assist with missing and exploited children.</i>		
First Party Advertising or Marketing	Advertising or marketing conducted by a first party either through direct communications with a user such as direct mail, email, or text message communications, or advertising or marketing conducted entirely within the first-party context, such as in a physical location operated by the first party, or on a web site or app operated by the first party.		
Knowledge	<ul style="list-style-type: none">• For “high-impact social media companies” the entity knew or should have known the individual was a covered minor.• For “large data holder” the covered entity knew or acted in a willful disregard of the fact that the individual was a covered minor.• For others covered entities, actual knowledge.		



Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
High-Impact Social Media Company	<p>Covered entities that:</p> <ul style="list-style-type: none"> Entity generates \$3B or more in annual revenues 300M or more monthly active users for not fewer than 3 of the preceding 12 months on the online product; AND Platform is primarily used by users to access or share, user-generated content. 		
Large Data Holder	<p>Covered entities or service providers that in most recent calendar year:</p> <ul style="list-style-type: none"> Had annual gross revenues of \$250M or more. Collected, processed, or transferred the covered data of more than 5M individuals or devices (except payment, billing, fulfillment data) AND the sensitive covered data of more than 200,000 individuals or devices. <p>EXCEPTIONS:</p> <ul style="list-style-type: none"> Does not include any instance which the covered entity or service provider would qualify solely on bases of collecting or processing personal email addresses, personal telephone numbers, or log-in information. 		
Process	<p>Conduct or direct any operation or set of operations performed on covered data, including analyzing, organizing, structuring, retaining, storing, using or otherwise handling covered data.</p>		
Sensitive Covered Data	<ul style="list-style-type: none"> A government-issued identifier, such as a SSN, passport number, driver's license number, that is not required by law to be displayed publicly. Any information that describes or reveals the past, present, or future physical health, mental health, disability, diagnosis, or healthcare condition or treatment of an individual. A financial account number, debit card number, credit card number, or information that describes or reveals the income level or bank account balances of an individual, except the last four digits of a debit or credit. Biometric information Genetic information Precise geolocation information An individual's private communications such as voicemails, emails, texts, direct messages, or mail, or information identifying the parties to such communications, voice communications, video communications, and any information that pertains to the transmission of such communications, including telephone numbers called, telephone numbers from which calls were placed, the time calls were made, call duration, and location information of the parties to the call, unless the covered entity or service provider acting on behalf of the covered entity is the sender or an intended recipient of the communications. <i>This does not include communications made from or to a device provided by an employer to an employee insofar as much as the employer provides conspicuous notice that such employer may access such communications.</i> 	<p>APA Rulemaking</p>	



Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
Sensitive Covered Data <i>(continued)</i>	<ul style="list-style-type: none"> • Account or device login-in credentials, or security or access codes for an account or device. • Information identifying the sexual behavior of an individual in a manner inconsistent with the individual's reasonable expectation regarding the collection, processing, or transfer of such information. • Calendar information, address book information, phone or text logs, photos, audio recordings, or videos, maintained for private use by an individual. Employment related not included if notice. • A photograph, film, video recording, or other similar medium that shows the naked or undergarment-clad private area of an individual. • Information revealing the video content requested or selected by an individual collected by a covered entity that is not a provider of a service (broadcast television, streaming, cable, satellite service or video programming service described in 47 USC 613(h)(2)). • Information about an individual when the covered entity or service provider has knowledge that the individual is a covered minor (under 17). • Race, color, ethnicity, religion, or union membership. • Information identifying an individual's online activities over time and across third party websites or online services. • Any other covered data collected, process, or transferred for the purpose of identifying the types of sensitive covered data listed in the Act. • Other covered data determined by FTC that may require a similar level of protection as a result of any new method of collecting, processing, or transferring covered data. 	APA Rulemaking	
Service Provider	<p>A person or entity that:</p> <ul style="list-style-type: none"> • Collects, processes, or transfers covered data on behalf of, and at the direction of, a covered entity or a Federal, State, Tribal, territorial, or local government entity; AND • Receives covered data from or on behalf of a covered entity or a Federal, State, Tribal, territorial, or local government entity. <p>Service providers that receive data from other service providers as permitted under the Act shall be treated as a service provider with respect to such data.</p>		
Substantial Privacy Risk	<p>The Collection, processing, or transfer of covered data in a manner that may result in any reasonably foreseeable substantial physical injury, economic injury, high offensive intrusion into the privacy expectations of a reasonable individual under the circumstances, or discrimination on the basis of race, color, religion, national origin, sex, or disability.</p>		
Third-party Collecting Entity	<p>A covered entity whose principal source of revenue is derived from processing or transferring covered data that the covered entity did not collect directly from the individuals linked or linkable to the covered data. <i>This does not include a covered entity insofar as such entity processes employee data.</i></p>		



Definition or Requirement	Details	FTC Rulemaking	Private Right of Action
<p>Permissible Purposes</p>	<ul style="list-style-type: none"> • Initiate, manage, or complete a transaction or fulfill order for specific products or service requested by an individual, including any associated routine administrative, operational, and account-servicing activity such as billing, shipping, delivery, storage, and accounting. • With respect to previously collected covered data in accordance with the Act, System diagnostics, enhance product or service, internal research or analytics to improve product or service for which data collected, inventory or network management, protect against spam, debug or repair errors. • Authenticate users of a product or service. • Fulfill product or service warranty. • Prevent, detect, protect against security incidents (network or physical). • Prevent, detect, protect against fraud, harassment, or illegal activity. • Comply with a legal obligation. • Prevent death, serious physical injury, or other serious health risk. • Effectuate product recall. • Conduct public or peer-reviewed scientific, historical, or statistical research project that is in the public interest and adheres to all relevant laws and regulations governing such research including regulations for the protection of human subjects, or is excluded from criteria of the institutional review board. . • Deliver a communication that is not an advertisement to an individual, if the communication is reasonably anticipated by the individual within the context of the individual’s interactions with the covered entity. • To deliver a communication at the direction of an individual between such individual and one or more individuals or entities. • To transfer assets to a third party in the context of a merger, acquisition, bankruptcy, or similar transaction when the third party assumes control. • Ensure the data security and integrity of covered data. • With respect to covered data previously collected in accordance with this Act, a service provider acting at the direction of a government entity, or a service provided to a government entity, or a service provided to a government entity by a covered entity to prevent, detect, detect against public safety incident. • With respect to covered data collected in accordance with this Act, process data as necessary to provide first party advertising or marketing. • With respect to previously collected covered data, if otherwise complies with requirements of act, provide targeted advertising. 	<p>Guidelines for research</p>	
<p>Small Business (for the purposes of protections)</p>	<p>Small businesses (covered entities or service providers) must meet the following elements test:</p> <ul style="list-style-type: none"> • Annual revenue did not exceed \$41M • On average did not collect covered data of more than 200,000 • Did not derive more than 50 percent of revenue from transferring covered data during any year 		