

American Privacy Rights Act Advances with Significant Revisions

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On May 23, 2024, the U.S. House Committee on Energy and Commerce Subcommittee on Data, Innovation, and Commerce approved a [revised](#) draft of the American Privacy Rights Act (“APRA”), which was released just 36 hours before the markup session. With the subcommittee’s approval, the APRA will now advance to full committee consideration. The revised draft includes several notable changes from the initial discussion draft, including:

- **New Section on COPPA 2.0** – the revised APRA draft includes the Children’s Online Privacy Protection Act (COPPA 2.0) under Title II, which differs to a certain degree from the COPPA 2.0 proposal currently before the Senate (e.g., removal of the revised “actual knowledge” standard; removal of applicability to teens over age 12 and under age 17).
- **New Section on Privacy By Design** – the revised APRA draft includes a new dedicated section on privacy by design. This section requires covered entities, service providers and third parties to establish, implement, and maintain reasonable policies, practices and procedures that identify, assess and mitigate privacy risks related to their products and services during the design, development and implementation stages, including risks to covered minors.
- **Expansion of Public Research Permitted Purpose** – as an exception to the general data minimization obligation, the revised APRA draft adds another permissible purpose for processing data for public or peer-reviewed scientific, historical, or statistical research projects. These research projects must be in the public interest and comply with all relevant laws and regulations. If the research involves transferring sensitive covered data, the revised APRA draft requires the affirmative express consent of the affected individuals.
- **Expanded Obligations for Data Brokers** – the revised APRA draft expands obligations for data brokers by requiring them to include a mechanism for individuals to submit a "Delete My Data" request. This mechanism, similar to the [California Delete Act](#), requires data brokers to delete all covered data related to an individual that they did not collect directly from that individual, if the individual so requests.
- **Changes to Algorithmic Impact Assessments** – while the initial APRA draft required large data holders to conduct and report a covered algorithmic impact assessment to the FTC if they used a covered algorithm posing a consequential risk of harm to individuals, the revised APRA requires such impact assessments for covered algorithms to make a “consequential decision.” The revised draft also allows large data holders to use certified independent

auditors to conduct the impact assessments, directs the reporting mechanism to NIST instead of the FTC, and expands requirements related to algorithm design evaluations.

- **Consequential Decision Opt-Out** – while the initial APRA draft allowed individuals to invoke an opt-out right against covered entities' use of a covered algorithm making or facilitating a consequential decision, the revised draft now also allows individuals to request that consequential decisions be made by a human.
- **New and/or Revised Definitions** – the revised APRA draft's definition section includes new terms, such as “contextual advertising” and “first party advertising.”. The revised APRA draft also redefines certain terms, including “covered algorithm,” “sensitive covered data,” “small business” and “targeted advertising.”

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National Law Review, Volume XIV, Number 163

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