

107TH CONGRESS  
2D SESSION

# H. R. 4561

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## AN ACT

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes.



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## AN ACT

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Agency Pro-  
3 tection of Privacy Act”.

4 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**  
5 **INTO CONSIDERATION IMPACTS ON INDI-**  
6 **VIDUAL PRIVACY.**

7 (a) IN GENERAL.—Title 5, United States Code, is  
8 amended by adding after section 553 the following new  
9 section:

10 **“§ 553a. Privacy impact analysis in rulemaking**

11 “(a) INITIAL PRIVACY IMPACT ANALYSIS.—

12 “(1) IN GENERAL.—Whenever an agency is re-  
13 quired by section 553 of this title, or any other law,  
14 to publish a general notice of proposed rulemaking  
15 for any proposed rule, or publishes a notice of pro-  
16 posed rulemaking for an interpretative rule involving  
17 the internal revenue laws of the United States, the  
18 agency shall prepare and make available for public  
19 comment an initial privacy impact analysis. Such  
20 analysis shall describe the impact of the proposed  
21 rule on the privacy of individuals. The initial privacy  
22 impact analysis or a summary shall be signed by the  
23 senior agency official with primary responsibility for  
24 privacy policy and be published in the Federal Reg-  
25 ister at the time of the publication of a general no-  
26 tice of proposed rulemaking for the rule.

1           “(2) CONTENTS.—Each initial privacy impact  
2 analysis required under this subsection shall contain  
3 the following:

4           “(A) A description and assessment of the  
5 extent to which the proposed rule will impact  
6 the privacy interests of individuals, including  
7 the extent to which the proposed rule—

8           “(i) provides notice of the collection of  
9 personally identifiable information, and  
10 specifies what personally identifiable infor-  
11 mation is to be collected and how it is to  
12 be collected, maintained, used, and dis-  
13 closed;

14           “(ii) allows access to such information  
15 by the person to whom the personally iden-  
16 tifiable information pertains and provides  
17 an opportunity to correct inaccuracies;

18           “(iii) prevents such information,  
19 which is collected for one purpose, from  
20 being used for another purpose; and

21           “(iv) provides security for such infor-  
22 mation.

23           “(B) A description of any significant alter-  
24 natives to the proposed rule which accomplish  
25 the stated objectives of applicable statutes and

1           which minimize any significant privacy impact  
2           of the proposed rule on individuals.

3           “(b) FINAL PRIVACY IMPACT ANALYSIS.—

4           “(1) IN GENERAL.—Whenever an agency pro-  
5           mulgates a final rule under section 553 of this title,  
6           after being required by that section or any other law  
7           to publish a general notice of proposed rulemaking,  
8           or promulgates a final interpretative rule involving  
9           the internal revenue laws of the United States, the  
10          agency shall prepare a final privacy impact analysis,  
11          signed by the senior agency official with primary re-  
12          sponsibility for privacy policy.

13          “(2) CONTENTS.—Each final privacy impact  
14          analysis required under this subsection shall contain  
15          the following:

16                 “(A) A description and assessment of the  
17                 extent to which the final rule will impact the  
18                 privacy interests of individuals, including the  
19                 extent to which the proposed rule—

20                         “(i) provides notice of the collection of  
21                         personally identifiable information, and  
22                         specifies what personally identifiable infor-  
23                         mation is to be collected and how it is to  
24                         be collected, maintained, used, and dis-  
25                         closed;

1           “(ii) allows access to such information  
2           by the person to whom the personally iden-  
3           tifiable information pertains and provides  
4           an opportunity to correct inaccuracies;

5           “(iii) prevents such information,  
6           which is collected for one purpose, from  
7           being used for another purpose; and

8           “(iv) provides security for such infor-  
9           mation.

10          “(B) A summary of the significant issues  
11          raised by the public comments in response to  
12          the initial privacy impact analysis, a summary  
13          of the assessment of the agency of such issues,  
14          and a statement of any changes made in the  
15          proposed rule as a result of such issues.

16          “(C) A description of the steps the agency  
17          has taken to minimize the significant privacy  
18          impact on individuals consistent with the stated  
19          objectives of applicable statutes, including a  
20          statement of the factual, policy, and legal rea-  
21          sons for selecting the alternative adopted in the  
22          final rule and why each one of the other signifi-  
23          cant alternatives to the rule considered by the  
24          agency which affect the privacy interests of in-  
25          dividuals was rejected.

1           “(3) AVAILABILITY TO PUBLIC.—The agency  
2           shall make copies of the final privacy impact anal-  
3           ysis available to members of the public and shall  
4           publish in the Federal Register such analysis or a  
5           summary thereof.

6           “(c) PROCEDURE FOR WAIVER OR DELAY OF COM-  
7           PLETION.—An agency head may waive or delay the com-  
8           pletion of some or all of the requirements of subsections  
9           (a) and (b) to the same extent as the agency head may,  
10          under section 608, waive or delay the completion of some  
11          or all of the requirements of sections 603 and 604, respec-  
12          tively.

13          “(d) PROCEDURES FOR GATHERING COMMENTS.—  
14          When any rule is promulgated which may have a signifi-  
15          cant privacy impact on individuals, or a privacy impact  
16          on a substantial number of individuals, the head of the  
17          agency promulgating the rule or the official of the agency  
18          with statutory responsibility for the promulgation of the  
19          rule shall assure that individuals have been given an op-  
20          portunity to participate in the rulemaking for the rule  
21          through techniques such as—

22                 “(1) the inclusion in an advance notice of pro-  
23                 posed rulemaking, if issued, of a statement that the  
24                 proposed rule may have a significant privacy impact



1 on individuals, or a privacy impact on a substantial  
2 number of individuals;

3 “(2) the publication of a general notice of pro-  
4 posed rulemaking in publications of national circula-  
5 tion likely to be obtained by individuals;

6 “(3) the direct notification of interested individ-  
7 uals;

8 “(4) the conduct of open conferences or public  
9 hearings concerning the rule for individuals, includ-  
10 ing soliciting and receiving comments over computer  
11 networks; and

12 “(5) the adoption or modification of agency  
13 procedural rules to reduce the cost or complexity of  
14 participation in the rulemaking by individuals.

15 “(e) PERIODIC REVIEW OF RULES.—

16 “(1) IN GENERAL.—Each agency shall carry  
17 out a periodic review of the rules promulgated by the  
18 agency that have a significant privacy impact on in-  
19 dividuals, or a privacy impact on a substantial num-  
20 ber of individuals. Under such periodic review, the  
21 agency shall determine, for each such rule, whether  
22 the rule can be amended or rescinded in a manner  
23 that minimizes any such impact while remaining in  
24 accordance with applicable statutes. For each such

1 determination, the agency shall consider the fol-  
2 lowing factors:

3 “(A) The continued need for the rule.

4 “(B) The nature of complaints or com-  
5 ments received from the public concerning the  
6 rule.

7 “(C) The complexity of the rule.

8 “(D) The extent to which the rule over-  
9 laps, duplicates, or conflicts with other Federal  
10 rules, and, to the extent feasible, with State and  
11 local governmental rules.

12 “(E) The length of time since the rule was  
13 last reviewed under this subsection.

14 “(F) The degree to which technology, eco-  
15 nomic conditions, or other factors have changed  
16 in the area affected by the rule since the rule  
17 was last reviewed under this subsection.

18 “(2) PLAN REQUIRED.—Each agency shall  
19 carry out the periodic review required by paragraph  
20 (1) in accordance with a plan published by such  
21 agency in the Federal Register. Each such plan shall  
22 provide for the review under this subsection of each  
23 rule promulgated by the agency not later than 10  
24 years after the date on which such rule was pub-  
25 lished as the final rule and, thereafter, not later

1 than 10 years after the date on which such rule was  
2 last reviewed under this subsection. The agency may  
3 amend such plan at any time by publishing the revi-  
4 sion in the Federal Register.

5 “(3) ANNUAL PUBLICATION.—Each year, each  
6 agency shall publish in the Federal Register a list of  
7 the rules to be reviewed by such agency under this  
8 subsection during the following year. The list shall  
9 include a brief description of each such rule and the  
10 need for and legal basis of such rule and shall invite  
11 public comment upon the determination to be made  
12 under this subsection with respect to such rule.

13 “(f) JUDICIAL REVIEW.—

14 “(1) IN GENERAL.—For any rule subject to this  
15 section, an individual who is adversely affected or  
16 aggrieved by final agency action is entitled to judi-  
17 cial review of agency compliance with the require-  
18 ments of subsections (b) and (c) in accordance with  
19 chapter 7. Agency compliance with subsection (d)  
20 shall be judicially reviewable in connection with judi-  
21 cial review of subsection (b).

22 “(2) JURISDICTION.—Each court having juris-  
23 diction to review such rule for compliance with sec-  
24 tion 553, or under any other provision of law, shall  
25 have jurisdiction to review any claims of noncompli-

1       ance with subsections (b) and (c) in accordance with  
2       chapter 7. Agency compliance with subsection (d)  
3       shall be judicially reviewable in connection with judi-  
4       cial review of subsection (b).

5           “(3) LIMITATIONS.—

6           “(A) An individual may seek such review  
7           during the period beginning on the date of final  
8           agency action and ending 1 year later, except  
9           that where a provision of law requires that an  
10          action challenging a final agency action be com-  
11          menced before the expiration of 1 year, such  
12          lesser period shall apply to an action for judicial  
13          review under this subsection.

14          “(B) In the case where an agency delays  
15          the issuance of a final privacy impact analysis  
16          pursuant to subsection (c), an action for judi-  
17          cial review under this section shall be filed not  
18          later than—

19                  “(i) 1 year after the date the analysis  
20                  is made available to the public; or

21                  “(ii) where a provision of law requires  
22                  that an action challenging a final agency  
23                  regulation be commenced before the expi-  
24                  ration of the 1-year period, the number of  
25                  days specified in such provision of law that

1           is after the date the analysis is made avail-  
2           able to the public.

3           “(4) RELIEF.—In granting any relief in an ac-  
4           tion under this subsection, the court shall order the  
5           agency to take corrective action consistent with this  
6           section and chapter 7, including, but not limited  
7           to—

8                   “(A) remanding the rule to the agency;  
9           and

10                   “(B) deferring the enforcement of the rule  
11           against individuals, unless the court finds that  
12           continued enforcement of the rule is in the pub-  
13           lic interest.

14           “(5) RULE OF CONSTRUCTION.—Nothing in  
15           this subsection shall be construed to limit the au-  
16           thority of any court to stay the effective date of any  
17           rule or provision thereof under any other provision  
18           of law or to grant any other relief in addition to the  
19           requirements of this subsection.

20           “(6) RECORD OF AGENCY ACTION.—In an ac-  
21           tion for the judicial review of a rule, the privacy im-  
22           pact analysis for such rule, including an analysis  
23           prepared or corrected pursuant to paragraph (4),  
24           shall constitute part of the entire record of agency  
25           action in connection with such review.

1           “(7) EXCLUSIVITY.—Compliance or noncompli-  
2           ance by an agency with the provisions of this section  
3           shall be subject to judicial review only in accordance  
4           with this subsection.

5           “(8) SAVINGS CLAUSE.—Nothing in this sub-  
6           section bars judicial review of any other impact  
7           statement or similar analysis required by any other  
8           law if judicial review of such statement or analysis  
9           is otherwise permitted by law.

10          “(g) DEFINITION.—For purposes of this section, the  
11          term ‘personally identifiable information’ means informa-  
12          tion that can be used to identify an individual, including  
13          such individual’s name, address, telephone number, photo-  
14          graph, social security number or other identifying infor-  
15          mation. It includes information about such individual’s  
16          medical or financial condition.”.

17          (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

18                 (1) INITIAL PLAN.—For each agency, the plan  
19                 required by subsection (e) of section 553a of title 5,  
20                 United States Code (as added by subsection (a)),  
21                 shall be published not later than 180 days after the  
22                 date of the enactment of this Act.

23                 (2) In the case of a rule promulgated by an  
24                 agency before the date of the enactment of this Act,  
25                 such plan shall provide for the periodic review of

1 such rule before the expiration of the 10-year period  
2 beginning on the date of the enactment of this Act.  
3 For any such rule, the head of the agency may pro-  
4 vide for a 1-year extension of such period if the head  
5 of the agency, before the expiration of the period,  
6 certifies in a statement published in the Federal  
7 Register that reviewing such rule before the expira-  
8 tion of the period is not feasible. The head of the  
9 agency may provide for additional 1-year extensions  
10 of the period pursuant to the preceding sentence,  
11 but in no event may the period exceed 15 years.

12 (c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B)  
13 of title 5, United States Code, is amended—

14 (1) by redesignating clauses (iii) and (iv) as  
15 clauses (iv) and (v), respectively; and

16 (2) by inserting after clause (ii) the following  
17 new clause:

18 “(iii) the agency’s actions relevant to section  
19 553a;”.

20 (d) CLERICAL AMENDMENT.—The table of sections  
21 at the beginning of chapter 5 of title 5, United States

- 1 Code, is amended by adding after the item relating to sec-
- 2 tion 553 the following new item:

“553a. Privacy impact analysis in rulemaking.”.

Passed the House of Representatives October 7,  
2002.

Attest:

*Clerk.*