

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2492

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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## IN THE SENATE OF THE UNITED STATES

MAY 9, 2002

Mr. CLELAND introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

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,*

3       **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**  
2 **INTO CONSIDERATION IMPACTS ON INDI-**  
3 **VIDUAL PRIVACY.**

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

6 **“§ 553a. Privacy impact analysis in rulemaking**

7 “(a) INITIAL PRIVACY IMPACT ANALYSIS.—

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

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

1           “(A) A description and assessment of the  
2 extent to which the proposed rule will impact  
3 the privacy interests of individuals, including  
4 the extent to which the proposed rule—

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

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

15                   “(iii) prevents such information,  
16 which is collected for one purpose, from  
17 being used for another purpose; and

18                   “(iv) provides security for such infor-  
19 mation.

20           “(B) A description of any significant alter-  
21 natives to the proposed rule which accomplish  
22 the stated objectives of applicable statutes and  
23 which minimize any significant privacy impact  
24 of the proposed rule on individuals.

25           “(b) FINAL PRIVACY IMPACT ANALYSIS.—

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

10           “(2) CONTENTS.—Each final privacy impact  
11           analysis required under this subsection shall contain  
12           the following:

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

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

23                           “(ii) allows access to such information  
24                           by the person to whom the personally iden-

1           tifiable information pertains and provides  
2           an opportunity to correct inaccuracies;

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

6           “(iv) provides security for such infor-  
7           mation.

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

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

24          “(3) AVAILABILITY TO PUBLIC.—The agency  
25          shall make copies of the final privacy impact anal-

1        ysis available to members of the public and shall  
2        publish in the Federal Register such analysis or a  
3        summary thereof.

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

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

20                “(1) the inclusion in an advance notice of pro-  
21       posed rulemaking, if issued, of a statement that the  
22       proposed rule may have a significant privacy impact  
23       on individuals, or a privacy impact on a substantial  
24       number of individuals;

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

4           “(3) the direct notification of interested individ-  
5           uals;

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

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

13           “(e) PERIODIC REVIEW OF RULES.—

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

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

1           “(B) The nature of complaints or com-  
2           ments received from the public concerning the  
3           rule.

4           “(C) The complexity of the rule.

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

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

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

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

1 amend such plan at any time by publishing the revi-  
2 sion in the Federal Register.

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

11 “(f) JUDICIAL REVIEW.—

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

20 “(2) JURISDICTION.—Each court having juris-  
21 diction to review such rule for compliance with sec-  
22 tion 553, or under any other provision of law, shall  
23 have jurisdiction to review any claims of noncompli-  
24 ance with subsections (b) and (c) in accordance with  
25 chapter 7. Agency compliance with subsection (d)

1 shall be judicially reviewable in connection with judi-  
2 cial review of subsection (b).

3 “(3) LIMITATIONS.—

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

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

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

19 “(ii) where a provision of law requires  
20 that an action challenging a final agency  
21 regulation be commenced before the expi-  
22 ration of the 1-year period, the number of  
23 days specified in such provision of law that  
24 is after the date the analysis is made avail-  
25 able to the public.

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

6                   “(A) remanding the rule to the agency;  
7           and

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

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

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

24          “(7) EXCLUSIVITY.—Compliance or noncompli-  
25          ance by an agency with the provisions of this section

1 shall be subject to judicial review only in accordance  
2 with this subsection.

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

8 “(g) DEFINITION.—In this section, the term ‘person-  
9 ally identifiable information’—

10 “(1) means information that can be used to  
11 identify an individual, including such individual’s  
12 name, address, telephone number, photograph, social  
13 security number or other identifying information;  
14 and

15 “(2) includes information about such individ-  
16 ual’s 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 enactment of this Act.

23 (2) PRIOR RULES.—In the case of a rule pro-  
24 mulgated by an agency before the date of the enact-  
25 ment of this Act, such plan shall provide for the

1 periodic review of such rule before the expiration of  
 2 the 10-year period beginning on the date of the en-  
 3 actment of this Act. For any such rule, the head of  
 4 the agency may provide for a 1-year extension of  
 5 such period if the head of the agency, before the ex-  
 6 piration of the period, certifies in a statement pub-  
 7 lished in the Federal Register that reviewing such  
 8 rule before the expiration of the period is not fea-  
 9 sible. The head of the agency may provide for addi-  
 10 tional 1-year extensions of the period pursuant to  
 11 the preceding sentence, but in no event may the pe-  
 12 riod exceed 15 years.

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

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

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

19 “(iii) the agency’s actions relevant to section  
 20 553a;”.

21 (d) CLERICAL AMENDMENT.—The table of sections  
 22 at the beginning of chapter 5 of title 5, United States  
 23 Code, is amended by adding after the item relating to sec-  
 24 tion 553 the following:

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

