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Posted on July 21, 2010 by [Bret Cohen](#)

[Rep. Rush Introduces Privacy Bill to Regulate Collection and Use of Personal Information](#)

On July 19, Rep. Bobby Rush (D-Ill.), chairman of the House Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, introduced a privacy bill, [H.R. 5777](#), that would codify certain fair information principles into law for "covered entities" that collect, maintain, use, and transfer to third parties any "covered information" (consisting of personally identifiable information as well as any "unique identifier," including IP addresses). Covered entities would be those that (a) store covered information from or about at least 15,000 individuals; (b) collect covered information from or about at least 10,000 individuals during any 12-month period; (c) collect or store "sensitive information" (defined as an individual's medical history, race or ethnicity, religious beliefs, sexual orientation or behavior, financial information, precise geolocation information, biometric data, or Social Security number); or (d) use covered information to study, monitor, or analyze the behavior of individuals as the entity's primary business. The bill, titled the "BEST PRACTICES Act," would require covered entities, with some exceptions, to do the following:

- Make specific privacy disclosures to individuals whose personal information it collects or maintains "in concise, meaningful, timely, prominent, and easy-to-understand notice or notices"

- in a manner to be specified by the Federal Trade Commission (FTC);
- Provide individuals with a "reasonable means" to opt out of the information collection and use for non-operational purposes (though covered entities would be permitted to require consent to the collection and use as a condition of service to individuals with which it has a direct relationship);
 - Obtain opt-in consent before (a) disclosing covered information to third parties (except for joint marketing purposes); (b) collecting, using, or disclosing sensitive information; or (c) monitoring all or substantially all of an individual's Internet or computer activity;
 - Obtain opt-in consent to any "material" changes to privacy practices governing previously collected information or sensitive information;
 - Establish "reasonable procedures" to assure the accuracy of the covered information or sensitive information collected, assembled, or maintained, with the FTC issuing rules on what is "reasonable";
 - Upon request and subject to identity verification, provide individuals with "reasonable access" to, and the ability to dispute the accuracy or completeness of, covered or sensitive information about that individual if such information may be used for purposes that could result in an "adverse decision" against the individual, in a manner to be specified by the FTC;
 - Establish, implement, and maintain "reasonable and appropriate" administrative, technical, and physical safeguards for covered information stored and used by the entity;
 - Provide a process for individuals to file complaints concerning policies and procedures required by the bill;
 - Conduct a privacy risk assessment prior to the implementation of any plans by which the entity intends to collect, or believes there is a reasonable likelihood it will collect, covered or sensitive information from or about more than 1,000,000 individuals;
 - Retain covered or sensitive information only as long as necessary to fulfill a legitimate business purpose or comply with a legal requirement; and
 - Conduct periodic assessments to evaluate whether it is necessary to continue to retain information already collected, and whether ongoing information collection practices remain necessary for a legitimate business purpose.

The bill would provide exceptions from certain provisions for:

- Covered entities that participate in FTC-sanctioned industry self-regulatory programs that provide alternate mechanisms for obtaining consumer consent to information collection and use. These programs, at minimum, would be required to (a) provide a clear and conspicuous opt-out mechanism (which may be a preference management tool that will enable individuals to make more detailed choices about the transfer of covered information to a third party); (b) provide a clear and conspicuous mechanism to set communication, online behavioral advertising, and other preferences that, when selected by the individual, applies the individual's selected preferences to all covered entities participating in the program; and (c) establish procedures for the review of applications, periodic assessment of members, and enforcement of violations for covered entities participating in the program;
- The collection, use, or disclosure of aggregated or anonymized information (allowing the FTC to set rules regarding the levels of aggregation or anonymization necessary to qualify for the

exception); and

- Activities covered by other federal privacy laws.

If enacted, the bill could be enforced by the FTC or state attorneys general, with civil penalties authorized up to \$5,000,000 for each type of violation. The bill also would create a private right of action for individuals whose covered or sensitive information is "willfully" collected or used without the required consent, allowing recovery of actual damages not more than \$1,000, punitive damages, and costs and attorney's fees. There would be a two-year statute of limitations.

This bill contains a number of provisions similar to a [discussion draft of privacy legislation](#) published by Reps. Rick Boucher (D-Va.) and Cliff Stearns (R-Fl.) in May. Like the Boucher-Stearns proposal (which has not been formally introduced), the Rush bill would usher in a series of stricter European-like privacy protections to the collection and use of information, now regulated on an ad hoc basis by the FTC under its authority to regulate unfair and deceptive trade practices under Section 5 of the FTC Act.

Rush will [conduct a hearing on July 22 at 2:00 PM](#) to discuss the bill and the Boucher-Stearns proposal.

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