Comparing Leading Data Security Proposals: The DOJ ANPRM and H.R. 7520

On March 5, DOJ published an advanced notice of proposed rulemaking (Provisions Regarding Access to Americans' Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern) with a 45-day comment period.

On March 7, the U.S. House Energy and Commerce Committee reported legislation by a 50-0 vote to prohibit data brokers from selling sensitive personal data to countries of concern (the Protecting Americans' Data from Foreign Adversaries Act (H.R. 7520)).

The table below compares elements of each proposal.

ISSUE	DOJ ANPRM	H.R. 7520
Primary Regulator	Department of Justice	Federal Trade Commission
General Prohibition	**Prohibits** data transfers to countries of concern (1) by data brokers involving *bulk* sensitive personal data or *any* volume of government-related data, or (2) involving transactions with *bulk* human genomic data **Restricts** data transfers to countries of concern involving other bulk sensitive personal data unless security requirements are met for transactions under (1) vendor agreements, (2) employment agreements, or (3) investment agreements	**Prohibits** data transfers to foreign adversary countries (or entities controlled by a foreign adversary) by data brokers involving *any* volume of sensitive personal data
Restricted Countries	Six Countries of Concern: China, Russia, Iran, North Korea, Cuba, Venezuela Applies to data transfers to individuals or entities under ownership, control, or jurisdiction of these countries	Four Foreign Adversary Countries: China, Russia, Iran, North Korea Applies to data transfers to a foreign adversary country or entity "controlled" by a foreign adversary; controlled entities include (1) foreign persons domiciled, headquartered, having principal place of business, or organized under laws of the country, (2) those with covered foreign persons owning at least 20 percent, or (3) those subject to the direction or control of a foreign person

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Sensitive Personal Data	**Six Defined Categories:** 1. Personal Identifiers ("Bulk" threshold TBD, between 10,000 and 1,000,000) (a) government ID or account # (SS#, driver's license, passport, alien registration) (b) full financial account # (c) device-based or hardware-based identifier (such as IMEI, MAC, SIM card) (d) demographic or contact data (name, birthday, address, phone #, email) (e) advertising identifier (f) account authentication data (username, password) (g) network-based identifier (IP address or cookie data) (h) call detail data (such as CPNI) Note: covered personal identifiers do not include employment history, educational history, organizational memberships, criminal history, or web-browsing history 2. Personal Financial Data ("Bulk" threshold TBD, between 1,000 and 1,000,000) Includes data about an individual's credit, charge or debit card, bank account, financial statements, or consumer reports 3. Personal Health Data ("Bulk" threshold TBD, between 1,000 and 1,000,000) Means individually identifiable health information (as defined under HIPAA) 4. Precise Geolocation Data ("Bulk" threshold TBD, between 100 and 10,000) Includes data identifying the physical location of an individual or device within a specified distance (TBD) 5. Biometric Identifiers ("Bulk" threshold TBD, between 100 and 10,000) Includes facial images, voice prints and patterns, retina and iris scans, palm prints and fingerprints, gait, and keyboard usage pattern	**16 Defined Categories:** 1. Government-issued Identifier Includes Social Security number, passport number, driver's license number 2. Personal Health Data Includes physical health, mental health, disability, diagnosis, or healthcare condition or treatment 3. Personal Financial Data Includes financial account number, debit card number, credit card number, income level or bank account balances 4. Biometric Information 5. Genetic Information 6. Precise Geolocation Data Includes data identifying street-level location information or the location of an individual or device within 1,850 feet 7. Private Communications Includes voicemails, emails, texts, direct messages, mail, and voice or video communications 8. Account or Device Log-in Credentials 9. Sexual Behavior Information 10. Calendar, Address, Phone or Text Information 11. Compromising Photos, Videos or Recordings 12. Video Content Request Data 13. Information about individuals under the age of 17 14. Race, color, ethnicity, or religion Information 15. Online Activities Data 16. Armed Forces Status Information

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Sensitive Personal Data (cont.)	6. Human Genomic Data ("Bulk" threshold TBD, between 100 and 1,000) Includes data representing the nucleic acid sequences comprising genetic instructions found in a human cell Note: DOJ may exclude trade secrets or proprietary information not tied to an individual, public government records, certain personal communications and informational materials	
Restrictions on Data Relating to Government Personnel or Facilities	Prohibits data transfers by data brokers or pursuant to a vendor agreement, employment agreement, or investment agreement to countries of concern of *any* amount of: 1. Precise Geolocation Data associated with certain military, government, or other sensitive facilities (a Government-Related Location Data List will be created) 2. Sensitive Personal Data (the six categories above) associated with current or certain former government employees (senior officials, military) and contractors	No comparable provision
Restrictions on Human Genomic Data	Prohibits data transfers by data brokers or pursuant to a vendor agreement, employment agreement, or investment agreement to countries of concern of *bulk* amounts of human genomic data, which includes "data representing the nucleic acid sequences comprising genetic instructions found in a human cell," including genetic tests tied to an individual	General data transfer prohibition by data brokers includes genomic data
Restrictions on Other Types of Sensitive Personal Data	Prohibits bulk data transfers in other sensitive personal data categories by data brokers Restricts bulk data transfers in other sensitive personal data categories pursuant to a vendor agreement, employment agreement, or investment agreement unless security requirements are in place	General data transfer prohibition by data brokers includes other types of sensitive personal data

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Data Brokers	A Data Brokerage is the "sale of, licensing of access to, or similar commercial transactions involving the transfer of data … where the recipient did not collect or process the data directly."	Data Brokers include an entity that "sells, licenses, rents, trades, transfers, releases, discloses, provides access to, or otherwise makes available data of United States individuals, that the entity did not collect directly from such individuals, to another entity that is not acting as a service provider." Service providers are entities that collect, process or transfer data for entities that are not data brokers or controlled by foreign adversaries
Vendor, Employment, or Investment Agreements	Vendor Agreements include technology services and cloud service agreements (cloud computing includes IaaS, PaaS, SaaS) Employment Agreements include direct employment or board or committee membership (but does not include independent contractors) Investment Agreements include agreements where a party obtains ownership interests in relation to U.S. real estate or a U.S. legal entity	No comparable provision
Security Requirements	Security requirements have not been finalized but are envisioned as: (1) basic organizational cybersecurity requirements (2) data minimization and masking (3) privacy preserving technologies (4) systems to prevent unauthorized access (5) logical and physical access controls (6) validation of (1) – (5) such as via an annual independent audit	No comparable provision
Exemptions	Provides exemptions for routine financial transactions and routine intra-entity transactions such as human resources, payroll, permit and licensing transactions	No comparable provision
General or Specific Licenses	DOJ has proposed that General and Specific licenses will be modeled on the current OFAC structure for export controls; details are still being developed	No comparable provision