

DATA ACCOUNTABILITY AND TRANSPARENCY ACT OF 2020

Released as a Discussion Draft by Senator Sherrod Brown

Background

The Data Accountability and Transparency Act of 2020 (DATA 2020) gives every American the power to hold corporations and the government responsible for how they collect and protect personal data. Federal legislation regulating data collection to protect individual privacy is long overdue. Corporations, non-profits, governments, and others have an unregulated ability to amass, sell, and share vast amounts of consumers' personal information in complete secrecy. While the numerous failures to protect consumer data are alarming, the analysis of that data by corporations that leaves the public vulnerable to manipulation and discrimination is even more shocking.

The current consent-based privacy framework leaves consumers no choice but to "agree" to confusing consent notices and complex privacy policies in order to use online services and products. That framework exploits their privacy unknowingly or in exchange for "free" services. DATA 2020 shifts the burden of privacy protection from consumers to the corporations with a new framework. This proposal aligns with the [Democratic caucus priorities](#) released in November 2019 to ensure data minimization and security, strong individual consumer rights, civil rights protections, and corporate accountability.

Explanation of Key Provisions

Framework. DATA 2020 begins with a general ban on collecting, using, or sharing personal data except for permissible purposes, which include:

- Providing a good or service requested by an individual;
- Journalism and free expression online;
- Public and peer-reviewed research when anonymized data does not suffice;
- Employment;
- Due process, legal claims, and as mandated by Federal, State, or local law;
- Detection and response to security incidents; and
- Exigent circumstances by first responders.

Civil Rights. This proposal prohibits using personal data to discriminate in the provision of housing, employment, credit, insurance, and public accommodations. Additionally, personal data cannot be used to deprive individuals of the free and fair exercise of their right to vote. This proposal also provides a general ban on the use of facial recognition technology.

Individual Rights. This proposal requires organizations and agencies to:

- Ensure accuracy, access to, and portability of data;
- Disclose to consumers the reason for collection, a description of personal data collected, and the time of retention; and
- Implement and maintain reasonable security procedures to protect personal data.

Individuals also have the right to challenge the reason for collection and request a human review of any automated decisions.

Independent Federal Agency. This proposal creates a new, independent agency dedicated to protecting individuals’ privacy and implementing DATA 2020. The new agency will have rulemaking, supervisory, and enforcement authority, the ability to issue civil penalties for violations of the Act, and a dedicated Office of Civil Rights to protect individuals from discrimination.

Algorithmic Accountability. Organizations and agencies that use decision-making algorithms will be required to report information to the new agency. They must provide a risk assessment prior to the deployment of algorithms, as well as periodic impact evaluations of any algorithms in use.

Strong Enforcement Rights. To ensure individuals can protect their privacy rights, the proposal includes a private right of action, allows outside organizations to sue to require the new agency to challenge a rule, and provides for broad relief, including both injunctive relief and statutory damages. The proposal also bans pre-dispute arbitration agreements and class action waivers.

Empowers States. The proposal authorizes state attorneys general to enforce consumer protections and does not preempt more protective state laws.

Accountability. This proposal requires CEO certification of compliance with the Act and contains potential criminal and civil penalties for CEO and Board of Directors. Strong whistleblower protections are also included.

What others are saying about this proposal:

“Senator Brown's draft Data Accountability and Transparency Act rejects the notice and consent regime that serves data collectors well, but fails consumers. Instead of that system, which counts on consumers to surrender their data for vague down-stream uses, Senator Brown proposes a new and welcome paradigm: it limits data collection to certain permitted uses, and those alone.”

—*Ed Mierzwinski, Senior Director, Federal Consumer Program, U.S. PIRG*

“This bill sets a bold new agenda for privacy. If it becomes law, consumers can breathe a sigh of relief: rather than being expected to wade through a sea of unreadable terms of service and misleading corporate "privacy policies," we can rely on a Data Accountability and Transparency Agency to protect us from scams, discrimination, and surveillance. The bill puts the burden of privacy policy where it always should have been: on regulators to protect us from increasingly irresponsible, insecure, and invasive data collection. The bill's sponsors deserve enormous credit for their visionary data policy. This bill is now the gold standard for privacy reform: any future efforts here need to be measured against it.”

—*Frank Pasquale, Professor of Law, University of Maryland Carey School of Law*

See more commentary on this proposal [here](#).