



Information Accountability Foundation

Adverse Processing Impact Definition from [FAIR AND OPEN USE ACT](#)

Introduction

The IAF model legislation, FAIR AND OPEN USE ACT is risk-based with a broad requirement that covered entities conduct risk assessments to identify, avoid, manage and mitigate adverse processing impacts. It does not use the terms “harm” or “injury.” Instead, the IAF Model defines a broad concept of “Adverse Processing Impact.” The definition of Adverse Processing Impact aligns with the approach to privacy risk and “privacy problems” codified in the National Institute of Standards and Technology’s publication, [NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0 2020](#) (“NIST Privacy Framework”). NIST defines privacy events as “potential problems individuals could experience arising from system, product, or service operations with data, whether in digital or non-digital form, through a complete life cycle from data collection through disposal. NIST Privacy Framework at p. 3. NIST identifies the range of problems an individual can experience as a result of processing as ranging from dignity-type effects such as embarrassment or stigmas to more tangible harms such as discrimination, economic loss, or physical harm. Id. The definition of Adverse Processing Impact is also generally consistent with NIST’s [Catalog of Problematic Data Actions and Problems](#), which is a non-exhaustive, illustrative set of problematic data actions and problems that individuals could experience as the result of data processing.

Definition

ADVERSE PROCESSING IMPACT.— The term “Adverse Processing Impact” means detrimental, deleterious, or disadvantageous consequences to an Individual arising from the Processing of that Individual’s Personal Data or to society from the Processing of Personal Data, including—

1. direct or indirect financial loss or economic harm;
2. physical harm, harassment, or threat to an Individual or property;
3. psychological harm, including anxiety, embarrassment, fear, and other mental trauma;
4. inconvenience or expenditure of time;
5. a negative outcome or decision with respect to an Individual’s eligibility for a right, privilege, or benefit related to—

- a. employment, including hiring, firing, promotion, demotion, reassignment, or compensation;
 - b. credit and insurance, including denial of an application, obtaining less favorable terms, cancellation, or an unfavorable change in terms of coverage;
 - c. housing;
 - d. education admissions;
 - e. financial aid;
 - f. professional certification;
 - g. issuance of a license; or
 - h. the provision of health care and related services.
6. stigmatization or reputational injury;
 7. disruption and intrusion from unwanted commercial communications or contacts;
 8. discrimination in violation of Federal antidiscrimination laws or antidiscrimination laws of any State or political subdivision thereof;
 9. loss of autonomy¹ through acts or practices that are not reasonably foreseeable by an Individual and that are intended to materially—
 - i. alter that Individual’s experiences;
 - ii. limit that Individual’s choices;
 - iii. influence that Individual’s responses; or
 - iv. predetermine results or outcomes for that Individual; or²
 10. other detrimental or negative consequences that affect an Individual’s private life, privacy affairs, private family matters or similar concerns, including actions and communications within an Individual’s home or similar physical, online, or digital location, where an

¹ The concept of “loss of autonomy” is widely recognized in many bills and frameworks including the NIST Privacy Framework, which provides that, “[l]oss of autonomy includes losing control over determinations about information processing or interactions with systems/products/services, as well as needless changes in ordinary behavior, including self-imposed restrictions on expression or civic engagement.” [Catalog of Problematic Data Actions and Problems](#).

² The IAF Model applies the well accepted drafting convention that “or” means “either or both”, or if there is a series of items, “anyone item or combination of items”.

Individual has a reasonable expectation that Personal Data or other data will not be collected, observed, or used.