

## DOJ Notes on the May 28 Consultation with Workday Regarding Bulk Thresholds

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On May 28, 2024, representatives from the Department of Justice (“DOJ”) and the Commerce Department (“Commerce”) consulted with representatives from Workday regarding Workday’s comments on DOJ’s March 5, 2024 Advanced Notice of Proposed Rulemaking (“ANPRM”) entitled “Provisions Regarding Access to Americans’ Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern.”

The consultation broadly focused on Workday’s concerns raised in their comment on the ANPRM. During the consultation, representatives from DOJ and Commerce asked Workday questions about the bulk thresholds proposed in the ANPRM and listened to Workday’s responses.

**The notes that follow are DOJ’s brief summary of the input shared by Workday.\***

- **Participants:** Representatives from the National Security Division of the Department of Justice, the International Trade Administration of Department of Commerce, and Workday.
- **Applicability of the proposed rule:**
  - Workday is unsure about the amount of data that would fall within the thresholds, but they assume at least some of their customers will meet the thresholds, especially those that handle employment data.
  - Workday has some sensitive personal data in their own data systems, like dates of birth, personal identifiers, home address, etc., but no genomic or biometric data. Workday notes that it is possible that their customers would upload a report describing that data.
  - Workday does not have access to customer data except for customer support purposes.
  - Workday processes transfers of payroll feeds that large companies send to payroll companies in China. These feeds include demographic information for the purposes of payroll processing.
  - Workday believes it does not have employees in a country of concern whose exposure to covered data types rises above the bulk threshold level.
  - Workday is unable to share the number and financial value of the transactions implicated by the proposed regulations for each country of concern as it has not yet analyzed this.
  - Workday has not yet assessed whether any of the exemptions identified in the ANPRM would apply to its transactions. They will do so when the bulk thresholds are included in the Notice of Proposed Rulemaking.
- **Workday customers’ concerns:**

\*These notes are a summary of the consultation; they are not a transcript. The Department of Justice has not shared these notes with meeting participants to confirm their accuracy.

## DOJ Notes from Consultation on Data Security ANPRM Proposed Bulk Thresholds

- Workday anticipates that it will be challenging to estimate the number of transactions that may fall under the proposed rule and would like more guidance from the Department on how to make those calculations.
  - Workday believes it would be very challenging to identify the amount of data subject to the proposed rule and tally up this data over the course of a year to determine whether it surpasses the bulk threshold or not.
  - Workday is concerned about having to set up separate payroll feeds for U.S. citizens and non-US citizens because this would force employers to know the citizenship of the employees Workday expressed concern about discrimination regarding this practice.
- **Other suggestions and feedback:**
    - Workday believes it is in a good position with its current controls, auditing, and testing tools for its customers to rely on for complying with restricted transaction requirements.

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