

DATA SECURITY & PRIVACY ALERT

PERSONAL DATA NOTIFICATION & PROTECTION ACT

On Monday, January 12, the White House called upon Congress to enact the Personal Data Notification & Protection Act, a proposed data breach notification law designed to replace the patchwork of often inconsistent individual laws currently in effect for 47 states, Washington D.C. and several U.S. territories.

The proposal incorporates provisions of state-specific regulations and elements of Federal bills previously introduced and would result in certain significant departures from existing state data breach laws. Here are some of the key features of the proposal:

- (1) The Federal Act would preempt the various state laws, except for provisions relating to victim protection assistance (California for example requires its notice to offer appropriate identity theft prevention products);
- (2) The Federal Trade Commission would hold primary enforcement authority, but the FTC may coordinate its efforts with the Consumer Financial Protection Bureau and the Federal Communications Commission;
- (3) The definition of “Sensitive Personally Identifiable Information” is much broader than most states’ definition of protected information (However, the definition of SPII does not include medical information, which is included within some states’ definitions);
- (4) Only “Business Entities” using or collecting information regarding more than 10,000 individuals must send notice of a breach; and
- (5) A breach affecting more than 5,000 individuals requires notice of the incident to the Secretary of Homeland Security, but also permits use of substitute notice methods, including consumer notification through media.

The White House and other federal agencies are increasing calls for passage of a comprehensive federal data breach response law. After years of debate over more than a dozen separate bills, it seems that passage of a federal data breach law may now be close, and the Personal Data Notification & Protection Act, or something very close to it, could well become that law.

*This **Data Security & Privacy Alert** is intended to keep readers current on developments in the data security & privacy world and in the law, and is not intended to be legal advice. If you have any questions, please call **Sandy B. Garfinkel**, Chair of the firm’s Data Security & Privacy Group, at 412-566-6868.*