



Status Report on Federal Privacy Developments Heading into the Fall

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Introduction

The deadline for Congress to enact federal privacy legislation that may forestall businesses' need to comply with the California Consumer Privacy Act (CCPA) is rapidly approaching as the CCPA goes into effect on January 1, 2020. Federal preemption in particular, along with a private right of action, remains a controversial provision for lawmakers in both chambers of Congress. Key California Democrats in the House, such as Speaker Nancy Pelosi (D-CA), remain opposed to federal legislation that weakens provisions in the CCPA.

While negotiators from the Senate Commerce Committee appeared poised earlier this year to release draft privacy legislation, the August recess commenced without a legislative proposal from either chamber. Lead negotiators from the Senate Commerce Committee and the House Energy & Commerce (E&C) Committee have not made significant progress in their privacy efforts. Their inability to release draft text prior to the August recess has shortened the window of time open for negotiation and passage of a federal privacy bill in the 116th Congress.

House E&C Committee negotiators have continued discussions on federal privacy legislation, but complications have arisen as key Democrats continue to speak out against federal preemption of state privacy laws. House E&C negotiators have come to an impasse on the issue, and Rep. Jan Schakowsky (D-IL) has indicated that E&C Democrats will unveil their own legislation with or without support from the Committee's Republicans. The Committee has not discussed a specific timeline for releasing any kind of proposal.

Below, we provide an overview of the status of federal privacy negotiations in the Senate and House. We continue to monitor the situation closely.

Senate

Negotiations between the Senate's "Gang of Six" (Sens. Wicker (R-MS), Moran (R-KS), Thune (R-SD), Cantwell (D-WA), Schatz (D-HI) and Blumenthal (D-CT)) have been put on hold as Chairman Wicker now pursues one-on-one negotiations with Sen. Cantwell. The pair met on July 30 to continue talks on developing federal privacy legislation. Discussions of a private right of action remain a point of contention for the pair. Sen. Cantwell has reportedly drafted legislation containing a private right of action, as well as restrictions for online advertising and expanded FTC authorities. In addition, Chairman Wicker has not ruled out bundling data security and privacy together in a bill, which Sen. Cantwell has previously pushed for.

Chairman Wicker, Sen. Moran, Sen. Blumenthal and Sen. Schatz partnered together to craft their own privacy legislation earlier this year. The earlier bill reportedly provided for federal preemption, as well as increased FTC authorities. Sen. Moran did not publically rule out a private right of action. While this proposal was put on hold after Sen. Thune and Sen. Cantwell joined the talks, Sen. Schatz has worked with Sen. Cantwell in an effort to bring her back to the negotiating table.

Sen. Blumenthal and Sen. Moran have again paired up to draft their own preemptive proposal, which would also include enforcement by state attorneys general and expanded FTC authorities.

Members of the Senate Commerce Committee will likely provide an update on privacy talks within the next few weeks.

House

While the House E&C Committee has taken the lead on developing privacy legislation in the House, progress in the Committee has been slow and negotiations seem to have reached an impasse. Rep. Schakowsky has maintained an active role in the debate and has indicated that there may be appetite in the House to go beyond what the Senate proposes. As previously noted, Rep. Schakowsky is expected to unveil her legislation sometime in the fall.

In June, Rep. Schakowsky publicly stated that she is in talks with members on the House E&C Committee about privacy legislation. She suggested that she plans to introduce legislation with or without the minority. Rep. Schakowsky has noted that she would potentially support

federal preemption that does not weaken state protections (e.g., a federal floor and not a federal ceiling). In addition, she asserted that state attorneys general should be able to enforce the law. She also noted that the bill will have a strong section on the right to erase, correct, delete and amend information. In terms of the drafting process, she raised concerns about bipartisan cooperation, noting that many Republicans on the subcommittee have suggested they will not support legislation that does not contain full federal preemption.

California Democrats in the House remain vocal on the issue of federal preemption, with Speaker Pelosi advocating for a federal standard that uses the CCPA as a floor, stressing that the House will not pass preemptive legislation that weakens privacy protections in the CCPA. Other California Democrats, namely Rep. Eshoo (D-CA) and Rep. Lofgren (D-CA), have taken matters into their own hands, teaming up in June to draft the Online Privacy Act of 2019. The pair released a draft framework of the legislation and solicited feedback from stakeholders on the proposal. The Eshoo-Lofgren draft is representative of the high standards California Democrats will demand if they are asked to support legislation that includes federal preemption of the CCPA. For more information on the legislation, please visit Akin Gump's summary of the framework [here](#).

Conclusion

Akin Gump's cybersecurity, privacy and data protection practice continues to work with the public law and policy practice to monitor real-time updates at both the federal and state level. Our team apprises clients of any legislative or regulatory updates, as well as applicable industry action in the privacy arena.

Categories

CCPA

Federal Privacy Policy

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