

# Government Relations

## Data Security and Privacy

### The Issue

Data breaches continued to break records in 2018 in terms of scale and severity. Despite increased risk and frequency, Congressional efforts to pass meaningful legislation have stalled. Members introduce a number of bills each new Congress, but long-standing issues of jurisdictional overlap, policy disputes between the financial and retail sectors, and concerns over Federal preemption continue to derail legislative efforts. In the absence of Federal action, a patchwork framework has emerged at the state level. LPL Financial believes that a Federal standard with preemption would provide clarity, uniformity, and regulatory relief from the varying state requirements.

### Current Status

In 2019, Congress and the Administration are expected to focus on data privacy—or the appropriate use of consumer data. Data security and breach notification, which encompasses practices put in place to protect consumer data, may be included in future legislation. However, data security and breach notification legislation will be less of a Congressional priority this year. Instead, for example, data privacy legislation could include provisions regulating third-party data access, requiring consumer consent (opt-in) for data collection, and the right to correction or deletion.

In any legislation, preemption continues to be a sticking point. For instance, last Congress, the House Financial Services Committee approved Rep. Luetkemeyer's (R-MO) data security bill (*H.R. 6743, the Consumer Information Notification Requirement Act*). This bill would have codified existing guidance from Federal financial regulators and preempted state-level requirements. With the Democrats taking control of the House this Congress, the prospect of this bill being reintroduced remains uncertain and its passage highly unlikely. House Financial Services Chair Waters (D-CA) is expected to prioritize financial inclusion, education, and privacy. As Chair, she will support state-led efforts and argue that Federal preemption would undermine existing consumer protections.

In the Senate, Senator Wicker (R-MS) will now chair the Senate Commerce Committee and has been working with Sens. Moran (R-KS), Blumenthal (D-CT) and Schatz (D-HI) on a bipartisan privacy bill, which will be the starting point for discussion in 2019. Senate Banking Committee leadership also has said they will prioritize consumer privacy and data protection issues in 2019.

Members in both Chambers agree abstractly that they must pass legislation to address consumer privacy, but there continues to be no consensus on details. However, new state and international laws will continue to pressure the Federal government to act.

We anticipate that a number of bills will likely be introduced to comprise a larger Internet Bill of Rights legislative package and the House Energy and Commerce Committee will lead those efforts. The House Financial Services Committee will also play a major role and will emphasize consumer protection and breach notification. Senate Republicans will have to negotiate with the new Democratic majority to pass bipartisan legislation, but House/Senate Republicans are unlikely to agree to a bill unless it preempts state law.

### LPL Position

LPL believes that any company that collects and stores personal information must implement and maintain reasonable security practices to protect the information and notify consumers in the event that their personal information has been unlawfully accessed. In this vein, LPL will continue to advocate for thoughtful data security and breach notification legislation.

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