

Legislation

Trump Privacy Pitch May See Public Input on Way to Congress

The Trump administration likely will seek public comment on a new online privacy proposal it is hammering out with tech companies before sending it to Congress, administration officials told Bloomberg Law.

The White House is working with technology giants on a legislative proposal through the National Economic Council and the Commerce Department, the officials said. Commerce is likely to invite the public to weigh in on the plan before it goes to Capitol Hill, the officials said.

There is fresh private sector interest in helping to write a new federal privacy law in the wake of the European Union's General Data Protection Regulation, and California's recently enacted state statute. Recent privacy missteps involving Facebook and other social media companies that have sparked lawmaker concern could be spurring the private sector to negotiate with the administration, privacy attorneys said.

"There is surprising interest in getting something done, whether by legislation or regulation," Harriet Pearson, head of Hogan Lovells' global cybersecurity practice, told Bloomberg Law. "There is an appetite for reasonable federal consumer data privacy legislation in important sectors of the business community, including the tech sector."

Despite the changed climate, it's unclear at best whether a deeply divided Congress can enact a new privacy bill, even with tech sector backing. Privacy advocates have staunch Democratic allies in both the House and Senate. A shift in party control of either chamber in the November midterm elections will cloud the prospects for a bill.

"Privacy legislation has been arduous to enact at the federal level and preemption of state laws has been a particularly contentious issue for lawmakers on both sides of the aisle," James Shreve, privacy counsel at Buckley Sandler in Chicago, told Bloomberg Law via email.

The administration started the talks in late June and has since held 22 meetings involving 80 organizations in a fluid process, Anne Veigle, a spokeswoman for the Commerce Department's National Telecommunications and Information Administration, told Bloomberg Law. "To help formulate privacy principles, NTIA is engaged in a broad outreach to all sectors of the economy, privacy, civil society and consumer groups as well as other

impacted governmental organizations including Congress," she said.

Administration officials declined to comment on which tech companies are involved. Facebook Inc. and Alphabet Inc.'s Google are among the companies talking with the administration, according to the Washington Post, which earlier reported the effort.

Corporate Impact The administration has been sounding out tech companies on provisions in the new EU regulation and the California data privacy law, a source close to the talks told Bloomberg Law. Companies involved in the discussions don't favor provisions resembling the GDPR, the source said. The GDPR took effect May 25 and provides enhanced data protections for EU consumer data, such as the right of data portability and clearer consumer consent provisions for data collection.

President Donald Trump wants to "craft a consumer privacy protection policy that is an appropriate balance between privacy and prosperity," White House deputy press secretary Lindsay Walters said.

Some industries will be impacted more than others if a new U.S. privacy law eventually reaches Trump's desk, privacy attorneys said. Heavily regulated industries, such as the banking and health-care sectors, will likely see fewer compliance burdens than consumer data companies, they said. With all of the privacy issues in the past few years, "it was only a matter of time before the U.S. started" updating such laws, Norma Krayem, senior policy adviser and chair of Holland and Knight's global cybersecurity and privacy regulation group, told Bloomberg Law July 30.

"For some sectors who are already heavily regulated, these principles will 'sit on top of' what they have already. For others who are not regulated at all in the U.S., this will be a first," Krayem said.

Some private-sector interest groups, including the U.S. Chamber of Commerce, favor the privacy talks.

The Chamber of Commerce "welcomes the administration's efforts to establish a smart, tailored privacy framework," Tim Day, senior vice president of the group's technology engagement center, told Bloomberg Law. The Chamber of Commerce aims to work with the White House to make sure regulations balance business and consumer interests, he said.

Spokespeople for Facebook and Google didn't immediately respond to Bloomberg Law's email requests for comment.

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