

IDENTITY THEFT PROTECTION ACT (S. 1408)

In late July, the Senate Committee on Commerce, Science, and Transportation approved legislation that would impose a number of new requirements on institutions of higher education designed to protect against identity theft. The “Identity Theft Protection Act” (S. 1408) received broad bipartisan support in the committee and is expected to move quickly through the full Senate.

For a copy of the bill as reported, see: <http://commerce.senate.gov/pdf/s1408-asreported.pdf>. See also the committee’s press release about the bill.

Highlights of Provisions Affecting Colleges and Universities

Covered entities: The legislation covers all entities, including schools, that collect social security numbers or any other sensitive personal information that the Federal Trade Commission (FTC) determines can be used for identity theft.

Sensitive Personal Information: Defined as an individual’s name, address, or telephone number combined with: (1) social security number, taxpayer ID number, or employer identification number derived from social security number; (2) financial account/credit card number combined with password or access code; and/or (3) driver’s license identification number.

Requirements: Schools and other covered entities would be required to:

(1) **Security Program** - Develop and enforce a written security program for the personal information they collect to protect against anticipated threats to or unauthorized access to that information. (Entities that comply with the Gramm-Leach-Bliley Act customer information safeguards and the consumer report information disposal standards of the Fair and Accurate Credit Transactions Act are deemed to be in compliance with this requirement.)

(2) **Reports** - Report any security breach to the FTC and—for breaches affecting 1,000 or more individuals—report as well to consumer credit reporting agencies.

(3) **Investigation** - Investigate the security breach to determine whether or not it poses a reasonable risk of identity theft.

(4) **Notification** - Notify each individual affected by the breach, if the investigation shows there is a reasonable risk of identity theft. Notice may be provided in either written or electronic form and must be provided within 45 days of the discovery of the security breach. (Entities in compliance with title V of the Gramm-Leach-Bliley Act are deemed to be in compliance with the notification requirements.)

Attachment C

If done electronically, the notice must be consistent with the provisions of the Electronic Signatures in Global and National Commerce Act. Text of the Act may be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ229.106.pdf.

A substitute notice may be provided in cases where either the cost of providing the notice exceeds \$250,000; the number of individuals to be notified exceeds 500,000; or the entity does not have sufficient contact information for the affected individuals. The substitute notice includes: E-mail (if the entity has e-mail addresses for the affected individuals); conspicuous posting on the entity's Web site; and notification to State-wide media.

(5) **Contents of Notice** - Include in the notice: the name of the individual whose information was taken; the entity where the breach occurred; the dates of the security breach and of its discovery; the categories of personal information subject to the breach; and toll-free numbers for the entity subject to the breach, all nationwide credit reporting agencies, and the FTC.

Penalties: Entities that fail to provide the require notification are subject to fines up to \$11,000 per individual subject to a breach (capped at \$11 million for all individuals involved in the same breach).

Social Security Numbers: A school or other covered entity may not obtain a social security number from any individual unless there is a specific use for it and no other identifier can reasonably be used. Social security numbers (or derivatives) may not be displayed on student or school employee identification cards.

No Private Right of Action; Pre-emption of State and Local Laws: The legislation prohibits a private right of action and also pre-empts State and local laws in this area.