State Trends Policy Brief
Data Privacy and Protection Regulation

Background

The issue of data privacy, and how personal data is collected, stored, and protected by the entities that we entrust it to, has rapidly grown in importance to both students and lawmakers across the country. Spurred by a series of data breaches, or alleged data breaches, at both higher education institutions and for-profit corporations, legislators at state houses around the country, in Washington, D.C., and even within international governing bodies are acting to pass legislation that protects the data privacy rights of individuals.

In April 2016 the European Union (EU) passed one of the most comprehensive pieces of data privacy legislation in history, the General Data Protection Regulation (GDPR). The GDPR enumerated a number of new data protection obligations for data holders, including colleges and universities, and created the ability for individuals to play an active role in dictating how an entity may use, protect, and store their data. This innovative law paved the way for other lawmakers around the world to follow in its footsteps, and since its creation many state and federal lawmakers have hastened to enact similar legislation.¹

State Action

According to the Data Quality Campaign’s 2019 Education Data Legislation Review, state lawmakers introduced 325 different bills and actually enacted 83 laws in 32 different states that in some way addressed the use of data in education². While some of these bills were aimed primarily at K-12 institutions and others dealt with data informed decision making, 37 percent of these bills dealt directly with governing the foundational infrastructure and policy conditions surrounding the use of education data, including how data is stored, shared, or protected.

Of all the bills related to the governing of student data, student data privacy bills were the most common. Of the 54 bills introduced by state lawmakers last year that directly addressed the privacy, security, or confidentiality of student information, 12 made it through their state houses and were signed into law. Further, as state lawmakers become more sophisticated in issues of data privacy, the Data Quality Campaign’s research shows that lawmakers are more frequently incorporating data privacy provisions directly into other pieces of legislation to eliminate the need for standalone bills.

California, often a leader in the data privacy space, passed what is being called the most comprehensive data privacy law in the U.S. with its California Consumer Privacy Act (CCPA)³. Many see the CCPA, which took effect in January 2020, as laying the groundwork for other states to draft and enact similar laws. Washington⁴, Nevada⁵ and Florida⁶ have all seen introduction or passage of similar versions of the CCPA.

---

¹ For more information on the GDPR visit NACUBO’s Privacy and Data Security Resources page.
³ California Consumer Privacy Act.
⁴ Washington Privacy Act.
⁵ Nevada Privacy Act.
⁶ FL: SB 1670/HB 963
and New York lawmakers have introduced what would actually be a slightly stronger data privacy law. All these bills feature provisions that give individuals greater control over their data once it has been collected, and many feature protections that enable individuals to take action against a data holder if a breach occurs as a result of insufficient security measures.

The National Conference of State Legislators reported that 2019 represented a “significant increase in bill introductions addressing various aspects of data privacy, compared to previous years” and also reported that “all 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have enacted legislation requiring private or governmental entities to notify individuals of security breaches of information involving personally identifiable information.” Further, by the end of 2019, 26 states had created statewide cybersecurity task forces, commissions, advisory councils or groups to examine cybersecurity issues.

The growing trend of state lawmaker concern over data privacy and protection is mirrored in a 2019 Pew Research Center study which found that 70 percent of Americans felt their data was less secure than it was five years ago. The same study found that over 80 percent of adults believe they have very little or no control over the data that the government or companies collect from them. As public concern continues to apply pressure to lawmaker action, the trend of state-level regulation of data collection and data privacy will only escalate.

Federal Response

Many experts in the cybersecurity field have called on Congress to draft federal legislation that would create a national standard for protecting the data of all Americans in a more uniform manner, similar to what the GDPR provides to EU-located individuals. A federal standard would likely be of particular use to colleges and universities that often provide distance education, sell university merchandise, engage alumni, solicit donations, and otherwise collect individuals’ data via digital platforms across state lines. A federal regulation, as opposed to a patchwork of state regulation in this space, could help institutions manage compliance costs and provide students and other individuals with a more concrete and uniform understanding of how their data is being collected, used, and stored.

Although there are efforts in Congress to address the issue of federal data protection legislation, none have gained significant traction. Congresswomen Anna Eshoo (D-CA) and Zoe Lofgren (D-CA) have introduced an ambitious bill that features individual rights relating to privacy of personal information, privacy and security requirements for data holders, and the establishment of a federal agency to enforce these rights and requirements, but it currently lacks Republican support. Meanwhile, Senate Democrats crafted a privacy and data protection framework of guiding principles to be incorporated into all attempts to draft comprehensive data protection legislation, and various Congressional committees

---

7 New York Privacy Act.
8 NCSL: 2019 Consumer Data Privacy Legislation.
10 NCSL: Statewide Cybersecurity Task Forces.
11 Pew Research Center: Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information.
12 Online Privacy Act of 2019.
13 Senate Democrats Privacy and Data Protection Framework
have held hearings surrounding the idea of data privacy and protection, but none have yielded notable bipartisan legislation.

Perhaps most notably for higher education administrators, federal agencies, including the Department of Education\(^ {14}\), have increasingly expressed greater interest in regulating in this space in recent years\(^ {15}\), and all indicators point towards this trend continuing.

Even as Congress debates potential federal legislation, states are, and will continue, taking action to pass their own data privacy and data protection regulations. As several states lead the way with pioneering new laws, college and university administrators and their compliance teams should keep this issue at the forefront of their minds as an emerging issue of growing importance.

\(^ {14}\) NACUBO News: New Policy Requires Title IV Privacy and Data Security Audit Checks.  
\(^ {15}\) EDUCAUSE: The Safeguards Rule and Its Possible Changes.