

SELECT REMEDIES

for federal data privacy legislation

Below are some, but not an exhaustive list, of remedies and enforcement mechanisms that may be discussed for possible federal data privacy legislation.

DAMAGES

Damages are monetary awards paid to the plaintiff to compensate for losses or injuries. Generally, they serve two goals: (1) restoring the plaintiff to their original position and (2) deter future wrongdoing.

PRIVATE RIGHT OF ACTION

A private right of action allows individuals whose rights have been violated to directly sue the entity that violated their rights. Based on recent Supreme Court decisions, the individual may need to show "concrete harm," as well.

INJUNCTION

An injunction is a judicial order to do or stop doing something, such as to limit access to collected data, sharing of data with third parties, or require the parties to implement policies to protect the privacy and data security of consumer data.

DISGORGEMENT

Disgorgement requires an entity who profited from illegal actions to give up any profits they made from those illegal actions.

SAFE HARBOR

Safe harbor provisions grant actors protection from liability or penalty if certain conditions are met. They may give peace of mind to good-faith actors who might otherwise violate the law on technicalities beyond their reasonable control.

STATE AG

One possible design for enforcement of federal laws would provide state attorneys general with the ability to bring suits on behalf of their residents whose statutory rights have been violated, under certain conditions.

FEDERAL AGENCY (FTC)

Part of the discussion around any federal law is who will enforce it. Federal data privacy legislation proposals have suggested that it be enforced by the FTC with more resources or an entirely new agency.

The DOJ may be another option, particularly for any criminal penalties.