



The Sedona Conference

Commentary on Proposed Model Data Breach Notification Law

(May 2023 Public Comment Version)

The Sedona Conference Working Group 11 on Data Security and Privacy Liability (WG11) developed the *Commentary on Proposed Model Data Breach Notification Law* (“*Commentary*”) to address two key problems with current data breach notification statutes—(1) the lack of uniformity among the laws and (2) the fact that most data breach notification letters do little to help consumers. The *Commentary* puts forth a model data breach notification law. The *Commentary* is intended to inform policy decisions at the U.S. federal or state levels as data breach statutes evolve. Even if a legislature declines to adopt all of the recommendations made in the *Commentary*, it may benefit from the analysis as to specific elements of the proposed model data breach notification law.

Section I is the introduction to the *Commentary*. Section II provides background on the topic. Section III provides analysis and discussion of current U.S. state data breach notification laws and the proposed model data breach notification law. Section IV sets forth the proposed model data breach notification law in its entirety.

The eight areas where the *Commentary* suggests current iterations of U.S. state data breach notification laws can be improved by greater uniformity and clarity are as follows:

- Definition of a security breach
- Definition of PII
- Definition of risk of harm
- Encryption, de-identification, and similar technologies
- Method and form of notification
- Timeline for notification
- Credit monitoring
- Notifying law enforcement and regulatory authorities

Proposed model language for each of these eight areas is included in the *Commentary*. Because of the interplay among them, it is essential to the formulation and subsequent use of this proposed language that the eight sections be considered as a whole.

The full text of The Sedona Conference *Commentary on Proposed Model Data Breach Notification Law*, Public Comment Version, is available free for individual download from The Sedona Conference website at

[https://thesedonaconference.org/publication/Commentary on Proposed Model Data Breach Notification Law](https://thesedonaconference.org/publication/Commentary_on_Proposed_Model_Data_Breach_Notification_Law)

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