

Upton, Bono Mack: Move quickly on data security



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By [TONY ROMM](#) | 10/28/11 5:41 AM EDT

Key House Republicans are accelerating work on a bill that would require companies to boost their data security practices and notify consumers if their information is stolen — and they're eyeing early November as a target date for action.

A memo sent this week to GOP members of the House Energy and Commerce Committee requested a Nov. 2 meeting to discuss the SAFE Data Act, proposed by Rep. Mary Bono Mack of California earlier this year.

Members will discuss "possible refinements" to the bill, with the goal of securing "all Republicans to support reporting the bill favorably to the full House," according to the memo, obtained by POLITICO. The memo was from Bono Mack and full committee Chairman Fred Upton (R-Mich.).

For now, the leaders revealed their goal is to schedule a markup before the entire Energy and Commerce Committee some time in November.

"We think we're getting closer to accommodating the concerns of some of the Republicans on our committee," a spokesman for Bono Mack said in an interview. He added that Republicans are still "struggling to find compromise"

with panel Democrats, who supported a bill last Congress similar to Bono Mack's.

Data security commanded the attention of both chambers of Congress earlier this year after hacking incidents against Sony and Epsilon. But delivering a new federal security and breach notification standard has proven quite politically vexing, despite bipartisan interest in the issue.

Another complicating factor is time: Lawmakers have been preoccupied with the debt, a situation that's unlikely to change before the end of the year.

Members of both parties criticized the scope of Bono Mack's bill, starting when it was unveiled as a draft in June. A revision in later weeks helped shore up some new support, but a markup in July lasted hours and triggered debate over a number of amendments from Democrats and Republicans that changed key provisions of the bill.

The makeover isn't complete. A few GOP-backed amendments were withdrawn during the markup, according to the memo sent this week, and those proposals might need to be addressed before the full committee considers the bill.

Among those still dissatisfied is Rep. Cliff Stearns (R-Fla.), who unveiled his own data security bill in a previous session of Congress.

"I continue to have some concerns with Rep. Bono Mack's SAFE Data Act, particularly the restrictive time periods put in place for notifying when a breach takes place," Stearns said in a statement. The congressman, though, added that he is looking forward to "meeting next week and working out a solution."

Democrats have their own issues with the bill. At the July markup, full committee ranking member Henry Waxman (D-Calif.) lambasted the proposal as too weak.

As a subcommittee vote approached, Democratic members tried to replace the Bono Mack bill with the text of a data security proposal introduced in the previous session of Congress by Rep. Bobby Rush (D-Ill.) An amended version of Bono Mack's bill survived that vote and then cleared the subcommittee on a voice vote.

Rep. G.K. Butterfield of North Carolina, the top Democrat on the subcommittee, told POLITICO there have been meetings in the past among staff on the issue of data breach, but nothing recently. He also expressed concern that the panel has the past few months on other topics.

As it stands, Bono Mack's proposal would require companies to notify consumers in the event their names, addresses and phone numbers were obtained by hackers, along with another unique identifier, such as a Social Security or bank account number.

In many cases, hacked companies would have to contact law enforcement within 48 hours after an incident. And they would have 48 hours to notify consumers and the FTC, but the clock would begin after companies assess the breach itself. All of that must take place within a 40-day window.

Chief among the disagreements remaining is the role of the FTC. Under the bill, the agency may adjust the definition of personally identifiable information. But a Republican-sponsored amendment adopted at the markup would require the agency use a complicated, lengthy rulemaking process, called Magnuson-Moss, in order to adapt a definition.

That infuriated Democrats, who said the amendment by Rep. Pete Olson (R-Texas) and Marsha Blackburn (R-Tenn.) would hamstring the FTC. Still, that section could see further revision. At least to Bono Mack, the effort to set out the FTC's role explicitly and narrowly meant Congress had to write the definition of personal information in a thoughtful enough way to account for the wide array of security threats.

Her spokesman said Thursday that "there's been some progress" on the best way to handle that definition, which Democrats had sought to expand greatly to include a swath of data such as photos and videos stored online.

But Democrats aren't totally satisfied.

"I remain concerned about several components of this bill, particularly the definition of Personal Information," Butterfield said. "If the definition of Personal Information is not expanded, an entity would have to meet all requirements of the definition before triggering a breach notification."

He noted, though, that he supported one GOP amendment that cleared markup to include an email address and password as "personal information."

Meanwhile, work is under way to hammer out compromises on provisions for data minimization, breach pre-emption and the notification timeline, and corporate liability in the event of inadequate breach notification, Bono Mack's

spokesman said. The goal is for Republicans to "lock down" what they want before trying to corral more support for the bill, he added.

Senate Democrats are paying attention to what happens in the House. In the upper chamber, a flurry of data security proposals is making the rounds — and disagreement splits the parties there, too, on the best approach to security threats.

The Senate Judiciary Committee earlier this year sent three data security bills to the full chamber, where the issue is likely to be addressed as part of a larger front on cybersecurity. But the Senate Commerce Committee has yet to hold a markup. A committee aide said lawmakers are still "working in good faith, and we remain hopeful to get a bipartisan bill through the committee."