

# Daily Privacy & Consumer Regulatory Alert

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## FEDERAL DEVELOPMENTS

### Financial Stability Oversight Council Study

On December 14<sup>th</sup>, the Financial Stability Oversight Council [published](#) its annual study highlighting the need for “sustained senior-level attention” to cybersecurity risks and potential impacts on the financial sector. The Council recommended:

- The public and private sector merge resources and implement the Department of Homeland Security’s Automated Indicator Sharing program to identify and eliminate vulnerabilities;
- Congress pass legislation to give government agencies enforcement authority over third-party service providers; and
- Government agencies work with international partners to promote a common vernacular and consistent discussion of cybersecurity.

### Department of Education Action

On December 20<sup>th</sup>, the Department of Education [announced](#) an updated discharge process for “Borrower to Defense” claims which implements a multi-tiered relief plan based on earnings. Under the plan, “students whose current earnings are less than 50 percent of their peers from a passing gainful employment (GE) program will receive full relief.” Students whose current earnings are at least 50 percent or more of other GE program students will receive relief based on earnings scale. The Department also approved the discharge of 12,900 claims submitted by students who attended Corinthian Colleges Inc., and denied 8,600. California Attorney General Xavier Becerra [said](#) that under federal law, the Department is required to “provide full – not partial – relief” and that the California Department of Justice will proceed with its lawsuit against the Department of Education.

### Recently Introduced Legislation

The following bills have been recently introduced:

- [H.R. 4625](#) - Representative John Delaney (D-MD): the “Fundamentally Understanding the Usability and Realistic Evolution of Artificial Intelligence Act.” This bill would require the Secretary of Commerce to establish the Federal Advisory Committee on the development and implementation of artificial intelligence. The companion bill, [S. 2217](#), was also introduced by Senator Maria Cantwell (D-WA).
- [H.R. 4668](#) - Representative Steve Chabot (R-OH): the “Small Business Advanced Cybersecurity Enhancements Act.” This bill would amend the Small Business Act to provide enhanced cybersecurity assistance and protections for small businesses.
- [S. 2228](#) - Senator Mike Lee (R-UT): the “Higher Education Reform and Opportunity Act.” This bill would provide for accreditation reform and require post-secondary institutions to publish information regarding student success and student loans.
- [S. 2234](#) - Senator Roger Wicker (R-MS): the “Internet of Things Consumer TIPS Act.” This bill would require the FTC to develop cybersecurity resources for consumer education and awareness regarding the purchase and use of Internet of Things devices.

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## COURT CASES

### Debtor Prisons Ruled Unconstitutional

On December 13<sup>th</sup>, the U.S. District Court for the Eastern District of Louisiana [ruled](#) that imprisoning individuals for failing to pay court-related debts is unconstitutional. Lead Plaintiff Alana Cain alleged that the Orleans Parish Criminal District Court (OPCDC) imposed various fees on criminal defendants, including court fees and restitution, and imprisoned those who were delinquent on their payments. The Court ruled that the OPCDC's practices were unconstitutional concluding that the judges did not consider the Defendant's ability to pay their fees. The Court also found that the judges had a "conflict of interest" since the fees funded the OPCDC's staff and offices. As a result, the judges had an "institutional incentive" to impose fees on the Defendants without considering their ability to pay them.

*The case is Alana Cain v. City of New Orleans et al., case no. 2:15-cv-04479-SSV-JCW, in the U.S. District Court for the Eastern District of Louisiana.*

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## INTERNATIONAL DEVELOPMENTS

### Article 29 Working Party Releases GDPR Guidelines on Transparency and Consent

On December 12<sup>th</sup>, the EU's Article 29 Working Party published [guidelines on transparency](#) obligations under the General Data Protection Regulation (GDPR). The guidelines intend to provide "practical guidance and interpretive assistance" regarding transparency guidelines under the GDPR for data controllers. Under the obligations, controllers are required to provide certain information to data subjects regarding the processing of their personal data. The Working Party also adopted [guidelines regarding consent](#) under the GDPR. The Working Party states that data subjects must have "genuine choice" with regard to accepting or denying terms offered "without detriment." The guidelines are open to public comment until January 23<sup>rd</sup>, 2018. Key takeaways include:

- Information provided to data subjects regarding the processing of their data must be "concise, transparent, intelligible and easily accessible." The Working Party recommends processing information be provided in a "layered structure" to allow individuals to read through the information;
  - Information must be concise and easy to understand and provided for free;
  - If the data is obtained directly, then data subjects must be provided information regarding the processing of their data once it is obtained. If the data is obtained indirectly, the information must be provided in a "reasonable" period of time and no later than one month after it is collected;
  - Consent must be given for the processing of personal data for a specific purpose and certain information must be provided to the data subject before consent can be given: including the identity of the controller, the data that will be collected, and the purpose of the processing; and
  - Consent must be provided by a clear statement or by a "clear affirmative action" indicating agreement to the processing of a subject's personal data.
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