

Frequently Asked Questions Regarding Data Breach Notifications and Changes to the Data Breach Notification Law, M.G.L. Chapter 93H.

1. *Q: When did changes to M.G.L. Chapter 93H take effect?*

A: The changes took effect on April 10, 2019.

2. *Q: Where can I find the current law incorporating the changes?*

A: Here is the link: <https://malegislature.gov/laws/generallaws/parti/titlexv/chapter93h>

3. *Q: What changes were made to Chapter 93H?*

A: Beginning April 10, 2019, the notice provided to the Attorney General's Office ("AGO") and the Office of Consumer Affairs and Business Regulation ("OCABR") shall include, in addition to the **nature of the breach and number of MA residents**, the following information:

- the name and address of the person or agency that experienced the breach of security;
- name and title of the person or agency reporting the breach of security;
- their relationship to the person or agency that experienced the breach of security;
- the type of person or agency reporting the breach of security;
- the person responsible for the breach of security, if known;
- the type of personal information compromised, including, but not limited to, Social Security number, driver's license number, financial account number, credit or debit card number or other data;
- whether the person or agency maintains a written information security program (WISP); and
- any steps the person or agency has taken or plans to take relating to the incident, including whether they have updated the WISP.

4. *Q: If the Social Security number of a MA resident has been compromised by a data breach that is being reported, what additional steps must the person that experienced the breach take?*

A: The new section 3A that was added to Chapter 93H provides that if a Social Security number of a MA resident has been compromised, the person that experienced the breach shall offer free credit monitoring services to the MA residents for 18 months through a third party vendor. If that person is a consumer reporting agency, then the consumer reporting agency shall offer free credit monitoring services to the MA residents for at least 42 months through a third party vendor.

As defined in Section 1 of Chapter 93H:

"Person", a natural person, corporation, association, partnership or other legal entity.

5. *Q: If a MA resident's Social Security number was not compromised in the data breach being reported, is the person that experienced the breach required to offer or provide any type of free credit monitoring services?*

A: No. In those circumstances, there is no requirement that credit monitoring services be provided.

- 6.** *Q: How does a MA resident whose Social Security number has been compromised sign up for the free credit monitoring services being offered?*

A: The notice provided to the consumer shall have all the information necessary for the MA resident to enroll in credit monitoring services and information on how the resident may place a security freeze on their consumer credit report at no cost.

- 7.** *Q: What other steps must the person take when a resident's Social Security number has been compromised?*

A: Under subsection (b) of Section 3 of M.G.L. Chapter 93H, a person who experienced a breach of security shall also file a report with the AGO and the OCABR certifying that their credit monitoring services comply with the requirements of Section 3A of Chapter 93H.

- 8.** *Q: Does this report have to be filed separately from the data breach notification?*

A: No, the breach notification to the AGO and the OCABR may include the acknowledgment of certification of the data breach. Reporting entities may provide the OCABR with notification by mail, email or by filing online using the Office's reporting portal found here:

<https://www.mass.gov/forms/data-breach-notification-submission>.

- 9.** *Q: In exchange for receiving credit monitoring services, can the resident be required to sign a waiver prohibiting that consumer resident from taking legal action against the person relating to the data breach?*

A: No. A resident cannot be required by the person that experienced the data breach to waive their private right of action as a condition of being offered the free credit monitoring services. This is true whether or not the person is offering the free credit monitoring services because they are required to under section 3A of Chapter 93H or they are opting to do so as a gesture of good will to reduce the potential harm of the data breach.

- 10.** *Q: Were any other changes made to the notice to be provided to the MA resident by the person or agency that experienced the data breach?*

A: Yes. Under both federal and state law, the notice to the MA resident shall now include that there shall be no charge for a security freeze and the mitigation services that shall be provided to the resident.

Additionally, the law requires that the notice to be provided to the resident shall include the resident's right to obtain a police report, how a resident may request a security freeze and the necessary information to be provided when requesting the security freeze. The notice to the resident shall not, however, include the nature of the breach of security or unauthorized acquisition or use, or the number of residents affected by said breach of security or unauthorized access or use.

11. Q: *What if the person or agency that experienced the data breach is owned by another person or corporation?*

A: The notice to the consumer shall include the name of the parent or the affiliated corporation.

12. Q: *Who else must receive a copy of the notice sent to the MA resident?*

A: The person or agency that experienced the breach of security shall provide a sample copy of the notice it sent to the MA residents to the AGO and the OCABR. Even if the number of residents affected by the breach is not known, the filing of the sample notice must be provided with the breach notification.

13. Q: *Does the person or agency that experienced a breach need to submit a data breach notification or provide the notice to consumers if information about the breach is unknown?*

A: Yes. The breach notification shall be reported to the AGO, the OCABR, and the resident as soon as practicable and without any unreasonable delay. As additional information about the breach is discovered, the person or agency that experienced the breach shall provide updates in both the notification to the AGO, the OCABR, and the consumer.

14. Q: *What is the OCABR required to do with these sample notices that are sent to the MA residents?*

A: The OCABR shall post on its website a copy of each of these notices within 1 business day of receipt from the person or agency that experienced the data breach.

The OCABR reminds reporting persons or agencies to ensure that the sample notice sent to consumers and provided to OCABR does not include any personal information of the consumer resident.