



March 12, 2019

FTC SEEKS COMMENTS ON PROPOSED AMENDMENTS TO SAFEGUARDS AND PRIVACY RULES

On March 5, 2019, the Federal Trade Commission ("FTC") announced that it is seeking comment on proposed amendments to the Safeguard Rule and the Privacy Rule under the Gramm-Leach-Bliley Act ("GLBA"). The FTC stated that the amendments to its data security rules for financial institutions are meant to better protect consumers and provide more certainty for businesses.

Proposed Amendments to the Safeguard Rule

The FTC's proposed amendments to the Safeguard Rule would incorporate the definition of "financial institution" from the Privacy Rule and add language to include institutions that are significantly engaged in activities that are incidental to financial activities as defined by the Bank Company Holding Act. Thus, this amendment would bring the act of "finding" under the scope of the Safeguards Rule.

The FTC's proposed amendments also include more specific security information program requirements, based primarily on the cybersecurity regulations issued by the New York Department of Financial Services and on the insurance data security model issued by the National Association of Insurance Commissioners. The amendments would replace the term "safeguards" used under the existing rule with "information security program." The amendments would also, among other things, alter existing required elements of an information security program and add new elements, including requirements that financial institutions (i) periodically perform additional risk assessments that reexamine the reasonably foreseeable internal and external risks to the security of customer information that could result in the unauthorized disclosure of such information, (ii) restrict access to physical locations containing customer information only to authorized individuals, (iii) encrypt all customer information, both in transit and at rest, (iv) implement multi-factor authentication for any individual accessing customer information or internal networks that contain customer information and (v) establish incident response plans.

The proposed amendments add a new section that would exempt financial institutions that maintain customer information concerning fewer than 5,000 consumers from certain information

security program requirements.

Proposed Amendments to the Privacy Rule

The FTC's proposed amendments to the Privacy Rule include revising the definition of "financial institution" to mirror the amendments to the Safeguard Rule by adding language to include institutions that are significantly engaged in activities that are incidental to financial activities as defined by the Bank Company Holding Act. The FTC's proposed amendments would revise the scope of the Privacy Rule to be consistent with the Dodd-Frank Act so that the rule applies only to motor vehicle dealers. All references that do not apply to motor vehicle dealers will be removed. The proposed amendments would also include modifications to the annual privacy notice requirements to reflect changes made to the GLBA by the FAST Act.

Comments must be received within 60 days after the proposed amendments are published in the Federal Register.

Consumer data security is currently a popular regulatory topic among federal and state lawmakers. See our prior ALERT dated January 22, 2019. On March 7, 2019, the FTC's Bureau of Consumer Protection Director testified before the Senate Homeland Security and Government Affairs Subcommittee and reiterated the FTC's longstanding bipartisan call for comprehensive federal data security law. Within the past year, at least seven congressmen have discussed or proposed separate, distinct bills that would govern consumer data security.

This year could be the year that a comprehensive federal data security law is proposed, if not enacted. We will continue to track and provide updates on data privacy laws on both the state and federal level. Financial privacy laws are contained in our firm's Marketing and Privacy Digest discussed below. Please let us know if you have any questions. □

✧ *Michael Tomkies and Lindsay Valentine*

LOOKING FOR A MARKETING AND PRIVACY COMPLIANCE RESOURCE? We publish an easy-to-use reference, our **MARKETING AND PRIVACY DIGEST** that compiles the state laws governing financial privacy, fair credit reporting, telemarketing /automatic dialing and announcing devices, telephone monitoring and recording, electronic signatures and restrictions on the use of social security numbers by financial service providers. Creditors, marketers and servicers should find this resource invaluable to marketing and privacy program development and regulatory compliance. **Contact us for details.**

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