DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

October 5, 2022

UPDATED FTC SAFEGUARDS RULE EFFECTIVE DECEMBER 9, 2022

On December 9, 2022, certain provisions of the updated FTC Safeguards Rule will take effect. The provisions of the updated Safeguards Rule mentioned below were adopted in December of 2021 but are not effective until December 9, 2022, to allow time for compliance. The Safeguards Rule is applicable to "financial institutions," which include non-bank financial institutions like non-bank lenders and companies acting as a finder along with other entities engaged in activities financial in nature or incidental to such financial activities. The specific requirements that will take effect in December include:

- To designate a qualified individual responsible for overseeing and implementing the program and reporting at least annually to boards of directors about the program.
- To undertake risk assessments and implement safeguards to address identified risks. Risk assessments must be set forth in writing and include criteria for evaluating, categorizing and identifying security risks, as well as ways to mitigate or accept those identified risks. Risk assessments must be performed periodically to reexamine the reasonably foreseeable internal and external risks to the security, confidentiality and integrity of customer information.
- To encrypt all customer information, both in transit over external networks and at rest. To the extent a financial institution determines that encryption of customer information is infeasible, the financial institution may instead secure such customer information using an effective alternative approved by the qualified individual.
- To implement multifactor authentication for individuals accessing any information system, unless the qualified individual has approved in writing the use of reasonably equivalent or more secure access controls.
- To develop, implement and maintain procedures for the secure disposal of customer information no later than two years after the last date the information was used, unless otherwise required to retain the information.
- To implement policies, procedures and controls designed to monitor and log the activity of unauthorized users and detect unauthorized access or use of, or tampering with, customer information.
- To regularly test or otherwise monitor the effectiveness of information systems. The monitoring and testing must include continuous monitoring or periodic penetration testing and vulnerability assessments. Absent effective continuous monitoring, the financial institution must conduct annual penetration tests of information systems and vulnerability assessments every six months or whenever there are material changes.
- To periodically assess service providers based on risk they present and the continued adequacy of their safeguards.
- To establish a written incident response plan to promptly respond to any material security event relating to customer information.

With only about two months until the new requirements become effective, financial institutions should carefully review their information security program and the updated FTC Safeguards Rule to ensure full compliance. If you have any questions regarding compliance with the updated FTC requirements or need assistance in revising your information security program, please let us know. ❑

✧ *Elizabeth Anstaett* and *Nathan Copeland*

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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