



The State of South Carolina Department of Consumer Affairs

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Celebrating Over 40 Years of Public Service

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August 2, 2019

Via Electronic Submission: <https://www.regulations.gov>

Federal Trade Commission
Office of the Secretary
Docket No. FTC 2019-0019
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)
Washington, DC 20580

**RE: Standards for Safeguarding Customer Information
16 CFR part 314, Project No. 145407**

Dear Commissioners:

The South Carolina Department of Consumer Affairs (“SCDCA”/“Department”) is pleased to offer comments in response to the Federal Trade Commission’s (“FTC”/“Commission”) proposed amendments to the Safeguards Rule. SCDCA is the state’s consumer protection agency. Established in 1974, SCDCA is responsible for the administration and enforcement of Title 37 of the South Carolina Code of Laws, the Consumer Protection Code, as well as several South Carolina Identity Theft Protection statutes¹. SCDCA helps formulate and modify consumer laws, policies, and regulations; resolves complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers.

Since 2012, the Department has also assisted and educated victims of identity theft and scams, and reported on security breaches affecting South Carolina residents. From 2013 to 2018, more than 4.5 million² South Carolina residents were affected by security breaches, and 22% of consumers reporting identity theft also reported receiving a security breach notice. Of the 273 reported breaches, 18% involved financial organizations, impacting roughly 59% of the affected

¹ See S.C. Code Ann. § 37-1-101 et seq.; see also <https://consumer.sc.gov/>.

² The totals provided reflect the minimum number of South Carolina residents potentially affected as many companies and organizations experiencing large nationwide or international breaches did not report a specific number of consumers affected.

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4.5 million South Carolina residents. During this same time period, SCDCA also assisted over 1,500 South Carolina identity theft victims mitigate the effects of their identity theft event.

SCDCA commends the FTC for its work to amend the Safeguards Rule to better align with the rapidly evolving landscape of technology and information security. We provide the following comments based on our experience in hopes of assisting the Commission's goals of providing covered financial institutions with guidance on information security programs and improving the accountability of financial institutions' information security programs.

Inclusion of an Incident Response Plan (Section 314.4(h))

To aid in combating identity theft, the South Carolina General Assembly passed the Financial Identity Fraud and Identity Theft Protection Act (the "Act"), which largely became effective in 2008³. In addition to making identity theft a crime, the Act also provides for security freezes, sets parameters for the collection, disclosure and use of social security numbers by businesses and state agencies, puts forth requirements for disposing of items containing personal identifying information and provides a framework for security breach notifications⁴. Several federal laws, including the Gramm-Leach-Bliley Act⁵, complement South Carolina's identity theft protection laws. While both set privacy and security standards for safekeeping consumer data, the Safeguards Rule fills in gaps contained in South Carolina's laws and vice versa.

Current South Carolina law does not address or otherwise require a business create and implement an incident response plan. As such, the Department is in favor of providing additional clarification for businesses in this area of privacy and security standards for safekeeping consumer data. With the pervasiveness of security breaches and swift action being of the essence when responding or otherwise attempting to mitigate any of its effects, it is the Department's opinion that explicitly requiring a written incident response plan is vital to an effective information security plan.

We further encourage the Commission to require that internal processes for responding to a security event include promptly notifying the senior personnel responsible for overseeing information security. Such a requirement would allow a timelier mitigation effort and quicker consumer notification.

³ See Act. No. 190, available at https://www.scstatehouse.gov/sess117_2007-2008/bills/453.htm.

⁴ See *supra*, Note 2.

⁵ Public Law 106-102, 113 Stat. 1338 (1999); Several of South Carolina's identity theft protection statutes exempting institutions that are both subject to and *in compliance with* the privacy and security provisions of the Gramm-Leach Bliley Act. See Act. No. 190, available at https://www.scstatehouse.gov/sess117_2007-2008/bills/453.htm



Conclusion

SCDCA appreciates the needed balance between industry burden and consumer protection. We hope the information provided assists with this exercise. SCDCA appreciates the opportunity to comment on the FTC's proposed amendments to the Safeguards Rule for covered financial institutions. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best Regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker". The signature is fluid and cursive.

Carri Grube Lybarker, Esq.