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Via regulations.gov

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Washington, D.C. 20219

Federal Deposit Insurance Corporation
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Washington, DC 20429-9990

Board of Governors of the Federal Reserve
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Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996: Gramm-Leach-Bliley Act and Fair Credit Reporting Act, Docket ID OCC–2023–0016/Docket No. OP–1828/RIN 3064–ZA39

The National Consumer Law Center (on behalf of its low-income clients) and the Electronic Privacy Information Center (EPIC) submit this letter in response to the request for comments¹ regarding the decennial review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) being conducted by the Office of the Comptroller of Currency (OCC), the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC). These comments specifically pertain to three sets of regulations pertaining to data security and identity theft prevention that are being reviewed by the OCC/FRB/FDIC under EGRPRA:

1. Interagency Guidelines Establishing Information Security Standards²

These are data security standards established pursuant to the Gramm Leach Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA)

2. Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal (FCRA)³

3. Identity Theft Red Flags (FCRA)⁴

None of these regulations are outdated or overly burdensome. Data security and identity theft prevention continue to be important issues. Identity theft was the top category of fraud complaints to the Federal Trade Commission (FTC) in 2023, as it has been for many years, with

¹ 89 Fed. Reg. 62,679 (Aug. 1, 2024).

² 12 CFR Part 30, Appx. B (OCC). There are parallel cites to the same Interagency Guidelines for the FRB and FDIC. These comments will cite the OCC version for ease of readability.

³ The OCC/FRB/FDIC FCRA regulations on records disposal simply require the institutions to dispute of information “in accordance with the Interagency Guidelines Establishing Information Security Standard.” 12 C.F.R. § 41.83 (OCC); 12 C.F.R. § 222.82 (FRB); 12 C.F.R. § 334.83 (FDIC).

⁴ 12 CFR Part 41, Subpart J (OCC); 12 CFR Part 222, Subpart J (FRB); 12 CFR Part 334, Subpart J (FDIC)

over 1 million complaints received in 2003.⁵ Data security breaches also continue to pose a huge problem for the financial services industry, with over 3,300 breaches affecting financial and insurance companies in a one- year period.⁶ Recent high-profile data breaches at banks include those affecting customers of Bank of America,⁷ Truist Bank,⁸ and Evolve Bank.⁹

If anything, the interagency data security regulations need to be strengthened, not reduced. In addition to the statistics cited above, the case for stronger data security rules is bolstered by the FTC's strengthening of its Safeguards Rule in 2021.¹⁰ This rule is the parallel regulation for non-banks to the first item above (Interagency Information Security Standards). The FTC added several new requirements to its Safeguards Rule that exceed what is required by Interagency Information Security Standards, including:

1. The FTC rule requires multi-factor authentication or an equivalent protection for anyone accessing customer information on the institution's system.¹¹ The Interagency Information Security Standards only require that the institution have some sort of controls to authenticate and limit access to authorized individuals.¹²
2. The FTC rule requires an institution to designate a single qualified individual to be responsible for overseeing and implementing the information security program.¹³ The Interagency Information Security Standards only require the involvement of the institution's Board of Director in approving and overseeing the program.¹⁴
- c. The FTC Safeguards Rule requires the secure disposal of customer information no later than two years after the most recent use of it to serve the customer.¹⁵ The Interagency Information Security Standards merely require institutions to have an information security program with "appropriate measures to properly dispose of customer information and consumer information."¹⁶

⁵ FTC, Consumer Sentinel Network Data Book 2024 at 7 (Feb. 2024),

https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.

⁶ Verizon 2024 Data Breach Investigations Report at 62 (Feb. 2024), [verizon.com/dbir](https://www.verizon.com/dbir/).

⁷ Carter Pape, American Banker, Data breach affects 57,000 Bank of America accounts, Feb. 13, 2024, <https://www.americanbanker.com/news/data-breach-affects-57-000-bank-of-america-accounts>.

⁸ Rajashree Chakravarty, Truist customer data exposed in third-party breach, Oct. 8, 2024, <https://www.bankingdive.com/news/truist-customer-data-exposed-in-fbcs-third-party-breach/729234/>

⁹ Ionut Arghire, Evolve Bank Data Breach Impacts 7.6 Million People, Security Week, July 9, 2024, <https://www.securityweek.com/evolve-bank-data-breach-impacts-7-6-million-people/>.

¹⁰ FTC, Standards for Safeguarding Customer Information, 86 Fed. Reg. 70,272 (Dec. 9, 2021).

¹¹ 16 C.F.R. § 314.4(c)(5).

¹² 12 CFR Part 30, Appx. B, ¶ III.C.i.a.

¹³ 16 C.F.R. § 314.4(a).

¹⁴ 12 CFR Part 30, Appx. B, ¶ III.A.

¹⁵ 16 C.F.R. § 314.4(c)(6)(i).

¹⁶ 12 CFR Part 30, Appx. B, ¶ III.C.4

Ironically, the differences between the FTC Safeguards Rule and the Interagency Information Security Standards mean that non-bank entities such as automobile dealers and payday lenders are subject to stricter data security requirements in certain areas than depository institutions.¹⁷ We urge that the Information Security Standards be strengthened where the FTC Safeguards Rule imposes greater protections.

Thank you for your consideration of these comments/ If you have any questions, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

Respectfully submitted,

National Consumer Law Center (on behalf of its low-income clients)
Electronic Privacy Information Center

¹⁷ For additional differences, see Debevoise & Plimpton LLP, The FTC's Strengthened Safeguards Rule and the Evolving Landscape of Reasonable Data Security, November 18, 2021, <https://www.debevoise.com/insights/publications/2021/11/ftc-safeguards-rule-post>