



November 21, 2016

*Via electronic submission to <https://ftcpublishcommentworks.com/ftc/safeguardsrulenprm>*

Donald S. Clark  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

**Re: Safeguards Rule, 16 CFR 314, Matter No. P145407**

Dear Secretary Clark:

The Data & Marketing Association (“DMA”) appreciates this opportunity to provide comments regarding the Federal Trade Commission’s (“FTC” or “Commission”) Request for Public Comment on its Standards for Safeguarding Customer Information (“Safeguards Rule” or “Rule”).<sup>1</sup> DMA supports maintaining the Safeguards Rule as it currently stands.

Founded in 1917, DMA ([www.thedma.org](http://www.thedma.org)) is the community that champions deeper consumer engagement and business value through the innovative and responsible use of data-driven marketing. DMA’s membership is made up of today’s leading tech and data innovators, brand marketers, agencies, service providers, and media companies. By representing the entire marketing ecosystem—from demand side to supply side—DMA is uniquely positioned to bring win/win solutions to the market and ensure that innovative and disruptive marketing technology and techniques can be quickly applied for ROI. DMA advances the data-driven marketing industry and serves our members through four principal pillars of leadership: advocating for marketers’ ability to responsibly gather and refine detailed data; innovating to bring solutions forward for marketers’ most vexing challenges; educating today’s marketers to grow and lead marketing organizations in the ever-increasing omnichannel world; and connecting industry participants to stay current, learn best practices and gain access to emerging solutions.

The Commission’s review seeks information about the costs and benefits of the Safeguards Rule and its regulatory and economic impact for the purpose of assisting the Commission to identify elements that may warrant modification or rescission. More specifically, the Commission has solicited comments on what modifications to the Rule are needed (if any) to increase consumer benefits, reduce costs, or to account for changes in relevant technology or economic conditions.

DMA encourages the Commission to preserve the Rule as is. Data-driven marketing strategies, techniques, and technologies are commonly used tools in the financial services marketing space. Data, particularly consumer data, is a key component to the effectiveness of

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<sup>1</sup> Federal Trade Commission, 81 Fed. Reg. 61632 (September 7, 2016).



these tools, the ultimate objective of which is to connect consumers with the products and services they desire at competitive prices. While DMA is an advocate of the reasonable and productive use of information to drive consumer benefits and economic growth,<sup>2</sup> DMA is equally concerned about protecting this valuable data and preventing undue consumer harm as a result of unnecessary disclosure or fraudulent use.

We believe that the Safeguards Rule as currently written effectively promotes information security as applied to the financial services sector. Since taking effect in 2002, the information security requirements imposed by the Safeguards Rule have been held by several agencies, including the FTC, as a model set of elements comprising an information security program. These elements have served as a foundation upon which companies operating in the financial services sector have built leading cybersecurity programs, leveraging the inherent flexibility of the Rule to tailor information security practices and protocols that meet their unique business models, data use practices, and network environments.

As set forth in the Federal Register notice, the Commission seeks comment on whether the Rule should be “modified to include more specific and prescriptive requirements for information security plans?”<sup>3</sup> In response, DMA cautions that additional prescriptive requirements would limit the flexibility currently built into the Rule and as a result negatively impact innovation. The security best practices developed and implemented by the financial services sector to date are the product of dedicated research devoted to the pursuit of innovation and the deployment of new security technologies to protect financial information. As technology and innovation continue to shape how financial products are created and how these products are delivered and employed by consumers, any regulation in this space must remain adaptable and should not impose rigid rules that have the effect of unnecessarily restraining innovation in contradiction of both consumer and business interests.

Moreover, with regulations such as the Safeguards Rule serving as a foundation, DMA’s self-regulatory framework has had a significant history of effectively enforcing responsible data use and security practices within industry while also allowing for data advancements. Much of DMA’s longstanding and successful work in self-regulation can be found in DMA’s *Guidelines*

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<sup>2</sup> Research has shown the concrete economic benefits of responsible data-driven marketing. A study commissioned by DMA’s Data-Driven Marketing Institute (“DDMI”) and conducted independently by Professors John Deighton of Harvard Business School and Peter Johnson of Columbia University, entitled, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* (“*Value of Data*”), quantifies this fact. The *Value of Data* study found that the Data-Driven Market Economy (“DDME”) added \$202 billion in revenue to the U.S. economy and fueled more than 966,000 jobs in 2014. See John Deighton & Peter Johnson, *The Value of Data* 19 (2015). In addition to increasing revenue, the study noted that the U.S. DDME catalyzed growth in the U.S. economy. For instance, according to the study, since 2012 the contribution of data-driven marketing to the U.S. economy grew by 35% and the jobs generated and sustained by data-driven marketing grew by 49%. *Id.* From 2012-2014, the DDME generated job growth in all 50 states. *Id.* at 5. The study also found that the U.S. DDME provides the American people with high value jobs. *Id.*

<sup>3</sup> 81 Fed. Reg. at 61635.



for Ethical Business Practice (“Guidelines”).<sup>4</sup> The *Guidelines* provide meaningful transparency, controls, and accountability to help ensure the responsible use and protection of data in marketing. Specific to data security, Article #37 of the *Guidelines* sets forth certain “responsibilities” for providing secure transactions and protecting personally identifiable information against unauthorized access, alteration, or dissemination of data. These responsibilities include, but are not limited to: written data security policies and procedures, personnel training, periodic monitoring and assessment of data security safeguards, and data security breach response plans.

For more than four decades, DMA has proactively enforced the *Guidelines* against both DMA members and non-member companies across the DDME. Such enforcement of the *Guidelines* by the DMA has occurred in hundreds of data-driven marketing cases concerning deception, unfair business practices, information protection, and other ethical issues.<sup>5</sup>

In addition, DMA regularly updates the *Guidelines* to account for changes in the way consumers and marketers create and engage with data. To this point, as part of DMA’s ongoing effort to set industry’s bar for how data should be used and protected, in January of 2016 DMA launched our Data Standards 2.0 initiative. With input from a broad spectrum of stakeholders, the initiative has focused on updating DMA’s current *Guidelines* to reflect the rapidly evolving data landscape. The goal of the initiative is to provide a practical framework for data practices in marketing across industry.

Given the rapidly evolving environment we live in today, self-regulation is the appropriate tool through which prescriptive requirements, beyond those already included in the Safeguards Rule, should be developed and enforced. Self-regulation allows for on-going review and modifications to reflect an ever changing marketplace, and by its very nature, the regulatory system is not designed for the constant evolution taking place today. Accordingly, DMA supports maintaining the existing information security requirements of the Safeguards Rule as is, and believes that any additional “specific or prescriptive requirements” are best addressed through established self-regulation.

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<sup>4</sup> THE DATA & MARKETING ASSOCIATION, *Guidelines for Ethical Business Practice (2016)*, available at <https://thedma.org/accountability/ethics-and-compliance/dma-ethical-guidelines/>.

<sup>5</sup> DMA receives matters for review in a number of ways, including from consumers, member companies, non-members, and consumer protection agencies. DMA’s Ethics Operating Committee reviews complaints that it receives against the *Guidelines* and if the Committee finds a potential violation, the Committee contacts, investigates, and advises the offending organization on how to come into full compliance. Most companies work with the Ethics Operating Committee voluntarily to cease or change the questioned practice. However, if a company declines to cooperate and the Ethics Operating Committee believes ongoing violations of the *Guidelines* exist, the Committee can recommend that DMA’s Board of Directors take action, including making case results public and referring cases to federal and state law enforcement authorities for review when appropriate.



DMA appreciates the opportunity to submit these comments. Please do not hesitate to contact me with any questions at (202) 861-2410.

Sincerely,

/S/

Emmett O'Keefe  
Senior Vice President, Advocacy  
Data & Marketing Association

cc: Stu Ingis, Venable LLP  
Tara Sugiyama Potashnik, Venable LLP