MORTGAGE BANKERS ASSOCIATION

November 21, 2016

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Safeguards Rule, 16 CFR 314, Project No. P145407

Dear Mr. Lincicum and Ms. McCarron,

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the Federal Trade Commission's ("FTC") Standards or Safeguarding Customer Information ("Safeguards Rule").

Cybersecurity and protecting customer information are of paramount importance to the mortgage industry. In most cases, when customers choose to proceed with a mortgage loan they will be required to disclose a significant amount of sensitive and detailed personal financial information. Customers trust lenders to protect this information well beyond the origination of the loan, and a breach of that data poses significant risks for both customers and financial institutions alike.

MBA believes that the Safeguards Rule, in its current form, sets forth a sound, flexible standard that need not be modified.

Accordingly, as the FTC moves forward with its review, MBA strongly encourages the FTC to ensure that the following concerns are addressed:

1) **The need for nationwide consistency.** Aligning standards across federal agencies and state regulators so that compliance with one standard can be deemed compliance with others minimizes undue costs and maximizes focus.

2) **The need to maintain flexibility.** General standards, allowing varied approaches to compliance, not only enables businesses of all sizes to comply but also avoids calcifying requirements that are sure to become outdated in an extraordinarily dynamic area.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

Background

Since it became effective in 2003, the Safeguards Rule has required financial institutions to develop, implement, and maintain comprehensive information security programs. Specifically, the Rule requires financial institutions to implement a written information security program that is appropriate to the company's size and complexity, the nature and scope of its activities, and the sensitivity of the customer information it handles. A financial institution must also: 1) assign one or more employees to oversee the program; 2) conduct a risk assessment; 3) put safeguards in place to control the risks identified in the assessment, and regularly test and monitor the safeguards' effectiveness; 4) require service providers to protect customers' personal information; and 5) periodically update its security program.

The Need for Nationwide Consistency

As cybersecurity and data breach threats grow in number, diversity, and scale, it is understandable that federal and state lawmakers and regulators develop standards to address these threats. Unfortunately, however, these well-intentioned efforts are resulting in uneven and inconsistent standards that create complex compliance burdens for financial institutions of all sizes but especially small businesses. In contrast, a consistent and flexible set of standards affords financial institutions—especially those operating in multiple states—the ability to marshal their resources to focus on maximizing the effectiveness of their cybersecurity and data protection programs, rather than diverting them to meet an array of differing requirements.

The Safeguards Rule already embraces both strong protections and flexibility with respect to cybersecurity and the protection of customer information and we respectfully urge that the FTC maintain these features. We would also encourage the FTC to work with the Administration, with other federal regulators, and with state regulators, to ensure that any their standards also emphasize consistency and flexibility.

The FTC Should Maintain Its Focus on Outcome-Driven Standards and Preserve Businesses' Flexibility in Developing Cybersecurity Protections

MBA applauds the fact that the current Safeguards Rule has been flexible enough to accommodate a wide range of businesses and circumstances. Financial institutions—and mortgage lenders in particular—vary significantly in size and business model. For example, some non-depository lenders originate fewer than 100 loans per year while nationwide depositories and large non-depository lenders may originate tens of thousands. These factors result in wide differences in cybersecurity risks as well as resources.

As indicated, the Rule requires institutions to assess risks and develop a sufficiently tailored cybersecurity program but it does not specify overly detailed action steps or requirements that institutions must meet. We believe this approach should be preserved.

In the face of increasing and ever-changing risks, cybersecurity and data protection solutions are extraordinarily dynamic. In this milieu, static requirements embedding overly-detailed standards ironically can impede—not enhance—an institution's ability to adopt or develop effective protections against cyber threats. Small businesses, in particular, need the flexibility to adopt cutting edge solutions that are both effective and economical. Innovative solutions should not be slowed or impeded by overly-prescriptive standards and guidelines.

Accordingly, should the FTC wish to revise the Safeguards Rule we urge the FTC to continue to allow business's flexibility in developing cybersecurity protections.

Conclusion

We appreciate the FTC's work in this area and your consideration of these comments. We look forward to continuing to work with the Commission and with other state and federal regulators on cybersecurity requirements applicable to financial institutions. Should you have questions or wish to discuss any aspect of these comments, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or kmarkison@mba.org; or Elizabeth Kemp, Assistant Regulatory Counsel, at (202) 557-2941 or ekemp@mba.org.

Sincerely,

Pete Mills
Senior Vice President, Residential Policy and Member Engagement
Mortgage Bankers Association