October 11, 2019

To: Nonbank Commissioners and Deputies

Re: CSBS Nonbank Model Data Security Law for State Regulator Review and Comment

REVIEW AND COMMENT REQUESTED

**Background:** In 2018, triggered by several high-profile cybersecurity breaches, the CSBS Board of Directors requested the NonDepository Supervisory Committee (NDSC) undertake consideration and development of a model law addressing nonbank data security (cybersecurity) concerns. The purpose of the initiative was to establish CSBS approved model statutory language to be used by states already considering such, and to encourage states that have not passed laws to consider following a uniform model.

The NDSC established a state work group of cyber experts and staff familiar with legislative drafting to consider the states’ needs and propose the model. The work group looked at various frameworks including the NY DFS rule, the National Association of Insurance Commissioners model law, and the Federal Trade Commission’s (FTC) Safeguards Rule under the Graham Leach Bliley Act.

**Process and Concept:** Following the review of other frameworks, the work group decided to base the CSBS model on the FTC Safeguards Rule for the following reasons:

* 2019 proposed amendments to the FTC rule are modeled largely on the NY DFS rule and contain most of the states’ needs.
* The FTC rule is already applicable by federal law to state covered nonbanks and state adoption and implementation adds little to no additional burden in compliance.

**Question:** If the FTC rule as proposed covers state needs and nonbanks already must comply, why do the states need their own law?

**Answers:**

1. The states do not have the authority to enforce the FTC rule. While a state could identify failures in compliance as a control weakness in an exam, it is questionable whether a state could enforce compliance with the rule.
2. The work group felt that a limited number of additions should be made to the rule to meet state needs. For example, the work group added a section on notifying the commissioner in the event of a security event.
3. There is no certainty that the amended sections of the FTC rule will be made final. The work group also added a section to the model addressing such a possibility.

**Question:** How would my agency use the CSBS Nonbank Model Data Security Law?

**Answers:** The model is for voluntary consideration and adoption. States with existing laws or rules likely do not need this model, however, you may wish to review for completeness of your coverage. States needing requirements for nonbank cybersecurity may find the following use suggestions helpful:

1. As a model or guide for your own state’s law, with minor modifications for [bracketed] language.
2. For states desiring to implement a rule over a law, conform the model to your rule writing process.
3. For states not yet ready to implement a rule or pass a law, consider conforming the essential sections of the model to your guidance process. Doing this will create greater harmonization across the state system even where states cannot yet pass a law.

**Model for Consideration:** The CSBS Nonbank Cybersecurity Model Law can be found at the following link: <https://www.csbs.org/unidyru9s2>

**Notes on reviewing the model:**

* We have used yellow highlights to identify any substantive changes from the FTC rule.
* The model contains [Optional] sections, clearly identified. These sections are encouraged depending on your state’s need.
* The model contains [bracketed] placeholders for state specific language (e.g., “commissioner” or specific effective dates, etc.].
* We should keep the language as close to the FTC rule language as possible to avoid any undue or layered burden on the industry.

**Governance Process, Comment Period and Process:** The NDSC has approved the current version of the model. Following a short comment period and any necessary amendment, the model will be moved forward to the CSBS Executive Committee and then to the Board for approval at their December 2019 meeting in Scottsdale, AZ. This governance track will require an expedited comment period. This shortened comment period does not preclude an agency from the following:

1. Providing comments after the comment period for later enhancement of the model.
2. Commissioner proposal of amendments at the December Board meeting.
3. Alterations of the model by individual states to meet specific needs.

**Comment Date:** Preferably by Friday, November 1, 2019

**Submission:** Comments should be made where possible in the Word document through Track Changes and inserted Comments. Please rename the document to include your state and agency name (e.g. WADFI, FLOFR, etc.). Send commented documents to [mbray@csbs.org](mailto:mbray@csbs.org). Comments without edit to the document can simply be made in an email body referencing the model law.

**For questions or more information:** Contact Chuck Cross, SVP Nonbank Supervision and Enforcement Section, [ccross@csbs.org](mailto:ccross@csbs.org) or 202-728-5745.