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The Expanded NYDFS Cyber Requirements for Financial Services Companies

WHAT YOU NEED TO KNOW ABOUT THE FINAL AMENDMENT

NOVEMBER 6, 2023

Today's Presenters

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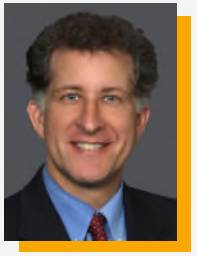

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Raj leads the firm's global Cybersecurity & Data Privacy practice and is a member of the firm's global Management Committee. Raj focuses his practice on cutting-edge legal and policy issues at the nexus of technology, national security, law enforcement and privacy. As the former General Counsel of the National Security Agency (NSA), Raj served as the agency's chief legal officer and senior advisor to the NSA Director. He also previously served in the White House as Staff Secretary and Deputy Assistant to the President of the United States and as Principal Deputy Assistant Attorney General in the Office of Legal Policy at the Department of Justice. Raj was also a Member of President Biden's Department of Justice Transition Team.

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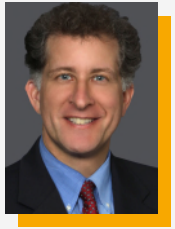
Justin provides comprehensive representation and counseling on sophisticated cybersecurity matters, including global incident response, enforcement actions and related litigation, cyber monitorships and regulatory compliance. Prior to joining the firm, he was Executive Deputy Superintendent of the Cybersecurity Division at the NYDFS, where he served as the first leader of the agency's Cybersecurity Division, itself a first-of-its-kind unit at a financial services regulator. NYDFS issued the nation's first cybersecurity regulation for financial services, which has since become a model for other regulators such as the FTC, the SEC, and dozens of state banking and insurance regulators.



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Jeff focuses primarily on cybersecurity and privacy issues for financial services entities, as well as bank regulation, payments and consumer financial services. He has extensive experience counseling financial institutions, merchants, technology companies and other entities on various federal and state banking and consumer credit issues, including the development and implementation of privacy, cybersecurity and information security programs under the Gramm-Leach Bliley Act, the NYDFS cybersecurity regulation and industry standards, such as PCI DSS and NIST. He has also advised banks, merchants, technology companies and financial services companies on issues relating to credit cards, debit cards, virtual currency, wire transfers and ACH transactions and other mobile payment products.

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Stephen focuses his practice on helping clients navigate cutting-edge and interrelated litigation, regulatory, and policy challenges. He has significant experience working with clients to identify, evaluate, and manage cybersecurity and data privacy risks; responding to cyber incidents and vulnerability disclosures; and defending businesses in related litigation. He is regularly called upon to advise senior executives and board members on their most challenging cybersecurity risks, to help companies develop governance programs to mitigate those risks, and to lead training exercises to implement and refine those programs. Widely recognized for his cybersecurity law and policy experience, Stephen previously served as Chief Counsel to the Senate Judiciary Committee's Subcommittee on Crime and Terrorism.

Today's Discussion

- Introduction
- Incident Response
- Governance and Policy
- Expanded Program Requirements
- Requirements for Large Companies
- Enforcement
- Implementation Timeline

Questions?

use the Q&A box (and be sure to please include your email address) or email jherring@mayerbrown.com

The DFS Regulation & Proposed Amendment

The NYDFS Cyber Regulation

- NYDFS's cybersecurity regulation was first promulgated in 2017 and applies to financial services companies licensed in New York
- The existing regulation is **detailed and utilizes a risk-focused approach**. It incorporates principles from NIST cybersecurity standards, and requires a risk-based cybersecurity program
- Includes significant governance requirements, such as documented policies and procedures
- Applies broadly to all NYDFS-regulated companies, including companies with DFS-regulated subsidiaries
- Has been explicitly adopted as a model by other regulators, including for the NAIC model cybersecurity law, the CSBS non-bank model cybersecurity rule, and the FTC Safeguards rule

The Amendment

- **July 29, 2022:** NYDFS first published pre-proposal language for an amendment and accepts comments on the language
- **November 9, 2022:** A revised amendment was published for a 60-day notice and comment period
- **June 28, 2023:** A revised amendment was published for a 45-day notice and comment period
- **August 14, 2023:** Comment period closed
- **November 1, 2023:** Final amendment published.

Incident Response

IMPLICATIONS FOR PLANNING AND RESPONSE

New Incident Notification Requirements

New Requirements for Incident Notification

- Notification for incidents that resulted in the deployment of ransomware
- Requirement to provide any information requested to NYDFS and to provide updates
- Notification requirement for third-party incidents

New Requirement for Notification of Extortion Payment

New Requirements for the Incident Response Plan

- Annual testing with senior officers
- Post-incident root cause analysis and updates to the incident response plan
- Recovering from backups

Business Continuity and Disaster Recovery (BCDR) Planning

Key Requirements:

- Identify all assets and personnel essential to the continued operations of the covered entity's business, including documents, data, facilities, infrastructure, services, etc.
- Identify supervisory personnel for each aspect of the plan, and provide necessary training to all personnel
- Include a communications plan
- Annual testing of the plan with senior officers
- Must maintain offsite backups necessary to restore critical operations, and those backups must be adequately protected from alteration or destruction
- Annual testing of the ability to recover from backups

Governance and Policy

New Governance Requirements

Emphasis on governance requirements

- **Boards:** Responsible for overseeing cyber risk management. Must have "sufficient understanding of cybersecurity-related matters" to exercise oversight.
- **CISO:** Defined as a qualified individual with adequate authority to implement an effective program. The CISO must also timely report to the Board on material cybersecurity issues.
- **Annual Compliance Certification:** Compliance must be certified by the "highest ranking executive" and CISO. Now must certify to "material" compliance during the prior "calendar year."

The final amendment dropped the requirement that the board approve the cybersecurity policies

New Policy Requirements

The Amendment has a New Requirement for Policies for:

- Data retention
- End of life management
- Remote access
- Security awareness and training
- Systems and application security, and
- Vulnerability management

Expanded Program and Controls Requirements

Access Controls

Multi-Factor Authentication for All User Access

- Exceptions can still be made in writing by CISO
- Such exceptions must be periodically reviewed by CISO

Access Controls

- Several new requirements codify the principles of least access privilege, and require granting each user only the access necessary to perform the user's job, periodically reviewing all user access and privileges, disabling or securing remote control protocols, and promptly terminating access following employee departures
- To the extent passwords are used, the company must have a written password policy that meets industry standards

Other Requirements

- **Asset inventory:** Requires implementing a written policy and procedures to maintain a complete inventory of technology assets, including attributes such as owner, sensitivity, end-of-life date, and recovery time objectives.
- **Cybersecurity training:** For all users, must be at least annual and must include training in avoiding social engineering attacks.
- **Vulnerability management:** Requires automated vulnerability scanning of information systems at a regular frequency or whenever there are material changes to a system. Requires that vulnerabilities be timely remediated.
- **Penetration testing**: Requires annual penetration testing from inside and outside the company's network.
- **Encryption**: CISO can longer approve compensating controls for encryption in transit

Large Companies

NEW REQUIREMENTS FOR "CLASS A COMPANIES"

Class A Companies

Definition

At least $20 million in revenue for the covered entity plus New York revenue for all affiliates, and either:

1. $1 billion in total revenue, or
2. 2,000+ employees.

Affiliates

- All affiliates count, not just those licensed by NYDFS
- Limited exception: Do not need to count affiliates that do not share information systems, cybersecurity resources, or cybersecurity programs with the NYDFS-licensed entity

Class A Companies

Additional Requirements for Large Companies

- Independent Audit Requirement
- Endpoint Detection & Response
- SIEM (centralized logging and alerting)
- Privilege Access Management
- Blocking Common Passwords

Enforcement

New Enforcement Section

Defines a Violation

- The material failure to comply with any section of the regulation for 24 hours; or
- The failure to secure or protect any individual's or entity's non-public information due to non-compliance with the regulation

Adds Mitigation and Aggravating Factors for the Department to Consider

- Mostly tracks similar factors in the New York Banking Law
- Includes cooperation, history of prior violations, extent of harm to consumers, timeliness of disclosures, willfulness of violation, size of business, etc.
- Also includes the extent to which the company's policies and procedures are consistent with nationally recognized cybersecurity frameworks, such as NIST

Implementation Timeline

Implementation Timeline

Requirement	Effective Date
Requirements for cybersecurity event notification and annual compliance certification (500.17)	**December 1, 2023**
General deadline for covered entities to come into compliance, including for risk assessments, policy updates, audits, penetration testing, monitoring process, remediation, and cybersecurity awareness training (500.2(c), 500.3, 500.5(a)(1), (b), and (c), 500.9, 500.14(a)(3))	**April 29, 2024**
Requirements for incident response planning and BCDR, governance, encryption, and the size-based exemption (500.4, 500.15, 500.16 and 500.19(a))	**November 1, 2024**
Requirements for vulnerability scanning, password controls, and enhanced monitoring controls for Class A Companies (500.5(a)(2), 500.7, 500.14(a)(2) and 500.14(b))	**May 1, 2025**
Requirements for an asset inventory and multi-factor authentication (500.12 and 500.13(a))	**November 1, 2025**

Thank You

Questions?

Please email
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