Implementing privacy act can be costly undertaking

Informal discussions with chief privacy officers from several firms indicated they were taking more or less the same steps, McCoy says. Similarly, Steve Kroll, senior vice president of marketing at Los Angeles-based insurance provider Answer Financial Inc., says his company sent customers a "plain English" summary of privacy policy in big type, along with the phone number of the firm's legal counsel.

Another area of the new law that experts believe will need to be clarified in the courts is its data security requirements. "Companies are clearly having trouble understanding the data security provisions of GLB," Kroll says, because each company's databases have unique features, and the GLB could not detail exactly what computer security work was necessary at each and every financial institution.

GLB legally requires financial companies to perform risk assessments and security tests, check for viruses and also get written pledges from all affiliates that they'll follow the same security measures and privacy policies that the company has described to its customers. Although uncertain exactly how much additional data security will be enough to avoid legal problems, financial law attorneys say a case of criminal hacking wouldn't necessarily mean courts can penalize a company under GLB.

If a data leak occurs, "what will be looked at by (federal regulators and courts) is, what did the institution do to limit the amount of the risk that the data was exposed to?" it's not simple, "there was a hacking incident, so there must be liability under GLB," Regan says. "Aside from the need to establish and follow a written privacy policy, "GLB should not restrict our ability to market the bank effectively," McCoy says, echoing opinions of other financial services industry executives.

For example, a financial services company can still telemarket and send unsolicited direct mail to its own customers without having to offer an opt-out option, as the GLB only requires companies to offer customers opt-out privileges for personal data shared with nonaffiliates.

(Not that some companies don't go beyond the law's requirement; McCoy says Sovereign Financial Group gives customers the ability to opt-out of the bank's direct mail and telephone marketing as part of its privacy policy, but that's a step Sovereign took voluntarily.)

Ultimately, GLB does add additional costs for financial services firms, even before the legal wrangling begins. Kroll points out that the law does mean higher printing and postage costs for the privacy notification mailings, which have to be repeatedly amended.

"One thing we're not pleased with is the fact that the GLB privacy policy disclosure needs to be made every year, irrespective of whether you make any changes or not," Kroll says. Also, many financial firms, including Answer Financial and Sovereign Bank, had to hire temporary outside legal counsel and perhaps computer security experts to help analyze their GLB readiness. Fees for these outside consultants run the gamut from thousands to hundreds of thousands of dollars, depending on the firm's database size and the duration of consultants' work, among other considerations.

For now, financial institutions are simply reclassifying and tightening their security measures and waiting to see what develops.

"There's a need for further clarification of GLB. There will be a lot of plaintiff litigation," predicts Arthur Rothberg, senior vice president and legal council for Answer Financial.

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