

RE: NYDFS CYBERSECURITY REGULATION – 9/3/18 COMPLIANCE REQUIREMENTS

The next set of New York Department of Financial Services (DFS) cybersecurity regulation requirements is due by September 3, 2018. To help guide ELANY members, we have partnered with [Spot on Insurance](#) to create a [podcast](#) containing practical advice from legal and IT experts. We invite all ELANY members to avail themselves of this free resource. While most of the upcoming requirements apply exclusively to non-exempt licensees under the regulation, the record management mandate applies to both exempt and non-exempt licensees. It is important to note that full compliance with these requirements (as applicable) will be necessary for licensees to certify compliance to the DFS early next year.

The following are the requirements that must be complied with by September 3rd:

- Audit Trail (Section 500.06)
- Application Security (Section 500.08)
- Limitations on Data Retention (Section 500.13)
- Monitoring (Section 500.14(a))
- Encryption of Nonpublic Information (Section 500.15)

Please see [ELANY's Compliance Advisor](#) on the regulation for more detail. The regulation can be found [here](#).

Importantly, the DFS recently added an FAQ to its website that discusses the status of insurance producers as Third Party Service Providers under the regulation. The newly published DFS interpretation could prove burdensome to independent agents and brokers, including the comment that insurers could be Third Party Service Providers of their producers, meaning that some producers would have to implement policies and procedures for their insurance company partners vis-à-vis cybersecurity standards. Many brokers and independent agents may be required to develop their own first-party compliance structure (which they are in the process of doing now) and then hope that it matches the requirements imposed by insurers so as not to be forced into conceptually duplicative efforts. Compliance with the Third Party Service Provider requirements is due by **March 1, 2019**. See the full FAQ below (with emphasis added).

1. Can the same entity be a Covered Entity, an Authorized User, and a Third Party Service Provider?

Yes. Depending on the facts and circumstances, the same entity can be a Covered Entity, an Authorized User, and a Third Party Service Provider.

This is common in the case of independent insurance agents. For example, a DFS-licensed independent agent that works with multiple insurance companies is a Covered Entity with its own obligation to establish and maintain a cybersecurity program designed to protect the confidentiality, integrity and availability of its Information Systems and Nonpublic Information. *See* 23 NYCRR 500.02.

In addition, **when the independent agent holds or has access to any Nonpublic Information or Information Systems maintained by an insurance company with which it works (for example, for quotations, issuing a policy or any other data or system access), the independent agent will be a Third Party Service Provider with respect to that insurance company**; and the insurance company, as a Covered Entity, will be required under 23 NYCRR 500.11 to have written policies and procedures to ensure the security of its Information Systems and Nonpublic Information that are accessible to, or held by, the independent agent (including but not limited to risk based policies and procedures for minimum cybersecurity practices, due diligence processes, periodic assessment, access controls, and encryption).

Further, an independent agent will also be an Authorized User if it participates in the business operations, and is authorized to use any Information Systems and data, of an insurance company that is a Covered Entity. In such a case, the insurance company must implement risk-based policies, procedures and controls to monitor the activities of the independent agent, as more fully described in 23 NYCRR 500.14.

It is also noted that, like any other Covered Entity, **an insurance company may also be a Third Party Service Provider and/or Authorized User with respect to another Covered Entity, including an independent insurance agent**.

In all events, each Covered Entity is responsible for thoroughly evaluating its relationships with other entities in order to ensure that it is fully complying with all applicable provisions of 23 NYCRR Part 500.

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