



Kentucky Automobile Dealers Association
The Voice of Automobile Dealers in Kentucky



STOLL
KEENON
OGDEN
PLLC

June 2, 2022

Winter is Coming Part 2: What is a Qualified Individual and Why Do I Need One?

DISCLAIMER: The information in this document may change over time with new information and developments. All content and materials are for general information purposes only. It does not provide, and is not intended to constitute, legal advice. Important: As necessary, dealers should consult an attorney familiar with dealership operations, Federal, State and/or local laws at issue.

This article is the second in a series of materials to help your dealership with the appropriate planning and implementation of the necessary policies and procedures required by the FTC's amended Safeguards Rule, the vast majority of which require dealer compliance by December 9, 2022. Our previous article addressed those provisions which had an earlier compliance deadline. The amended Safeguards Rule requires the appointment of a "Qualified Individual" who will be responsible for oversight, implementation, and management of your information security program. In addition to general oversight and enforcement duties, the Qualified Individual is expected to:

1. Report the status of the dealership information security program at least annually to the Board or top leadership;
2. Oversee and implement periodic risk assessments;
3. Coordinate ongoing employee information security training;
4. Implement mandatory safeguards and test and audit those safeguards;
5. Supervise third-party service providers that handle customer data;
6. Design and oversee preparation of a written incident response plan.

The requirement that a dealership identify a single Qualified Individual, according to the FTC, is not designed to impose all obligations or liability on a single person, but rather to ensure that there is an appointed individual as a point of contact if and when issues arise. The Qualified Individual may delegate tasks, but must be prepared and capable to address any security event.

Your Qualified Individual should report directly to a senior member of your dealership and should provide written reports to the dealership board or top leadership. While the Qualified Individual should have some level of information security training, he or she does not necessarily need to be a data security expert or have any particular level of education or certification.

Instead, your Qualified Individual should be selected based on the needs of your business, taking into consideration the complexity of your information systems and the amount of customer information you collect. The Program Coordinator role under the prior FTC safeguards may be the best individual to identify as your “Qualified Individual,” even though the amended Safeguards have more detailed requirements that likely require more training. The FTC guidance indicates that the appropriate qualifications, “will depend on the size and complexity of a financial institution’s information system and the volume and sensitivity of the customer information...” Accordingly, it is important to evaluate the amount and sensitivity of the consumer information your dealership’s information systems contains when deciding the level of training, experience, and knowledge that is necessary for your Qualified Individual.

The amended Safeguard Rule DOES permit dealerships to appoint third-party vendors to serve as a “Qualified Individual” and there are a number of entities out there that are willing to serve in this role. As a vetted KADA Preferred Partner, we recommend the resources and services that ComplyAuto offers. You can find their contact information below.

However, it's important to note that dealerships should not simply consider a third-party vendor as a standard outsourcing mechanism. The dealership will remain ultimately responsible for the conduct of any third-party vendor and must designate senior personnel to oversee and monitor the vendor’s work. As will be detailed in upcoming articles, if you elect to use a vendor to serve as your “Qualified Individual” you should closely examine not only their program, but also your contract with them to ensure that the provisions are fair and reasonable.

For further information, please contact:

Sarah Bishop: (502) 875-6245; sarah.bishop@skofirm.com

Ron Smith: (317) 822-6787; ron.smith@skofirm.com

ComplyAuto contact:

Hao Nguyen: (510) 676-8579; hao@complyauto.com

Visit our website: www.kyada.com

Follow KADA on Facebook

