



The Commission must also ensure it is vigorously enforcing the laws on the books. Congress has entrusted the FTC with promulgating and enforcing the Health Breach Notification Rule, one of only a handful of federal privacy laws protecting consumers. The rule requires vendors of unsecured health information, including mobile health apps, to notify users and the FTC if there has been an unauthorized disclosure. Although the FTC has advised mobile health apps to examine their obligations under the rule,<sup>3</sup> including through the use of an interactive tool,<sup>4</sup> the FTC has never brought an action to enforce it.<sup>5</sup>

In our view, the FTC should have charged Flo with violating the Health Breach Notification Rule. Under the rule, Flo was obligated to notify its users after it allegedly shared their health information with Facebook, Google, and others without their authorization.<sup>6</sup> Flo did not do so, making the company liable under the rule.<sup>7</sup>

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Phillips In the Matter of Flo Health, Inc. Comm'n File No. 1923133 at 2 (Jan. 13, 2021). In our view, the notice requirement here squarely meets that test, as consumers can switch to more privacy-protecting services

The Health Breach Notification Rule was first issued more than a decade ago, but the explosion in connected health apps make its requirements more important than ever. While we would prefer to see substantive limits on firms' ability to collect and monetize our personal information, the rule at least ensures that services like Flo need to come clean when they experience privacy or security breaches. Over time, this may induce firms to take greater care in collecting and monetizing our most sensitive information.

We are pleased to see a notice provision in today's proposed order, but there is much more the FTC can do to protect consumers' data, and hold accountable those who abuse it. Where Congress has given us rulemaking authority, we should use it.<sup>8</sup> And where we have rules already