

August 10, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1275 First Street, NE
Washington, DC 20002

Re: Annual Privacy Notice, Docket No. CFPB–2016–0032, RIN 3170–AA60

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed rule to amend Regulation P, implementing the December 2015 amendment to the Gramm-Leach-Bliley Act (“GLBA”) in order to provide an exception to the annual notice requirement for financial institutions that meet certain conditions.

The CFPB has proposed abolishing the alternative delivery method established under the Bureau’s 2014 final rule. Rather than eliminating it, AFSA urges the CFPB to consider preserving the alternative delivery method as a means for satisfying the annual notice requirement by institutions whose privacy policies and disclosure have not changed, but otherwise do not meet the conditions prescribed by the December 2015 statute.

Background

In December 2015, Congress amended the GLBA as part of the Fixing America’s Surface Transportation Act (“FAST Act”).² This amendment added section 503(f), providing an exception under which financial institutions that meet certain conditions are not required to send annual privacy notices to customers. To qualify, a financial institution must not share nonpublic personal information with nonaffiliated third parties other than in ways described in certain statutory exceptions that do not trigger the consumer’s right to opt out. In addition, section 503(f) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice it sent.

Few Consumers Exercise their Right to Opt Out

Based on an informal survey of AFSA member companies, a vanishingly small share of consumers exercise their right to opt out of third-party information sharing – a nationwide average of about five percent in 2015. This suggests that consumers either do not read their privacy notices and are unaware of their right to opt out, or simply prefer not to exercise this right. In any case, it is not obvious that mailing a paper notice on an annual basis is the most efficient or effective method of educating consumers of their rights.

¹ Founded in 1916, the American Financial Services Association (“AFSA”) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² FAST Act, Public Law 114–94, section 75001.

Help Consumers to Know their Rights

AFSA recognizes that it was the intent of Congress to ensure that consumers are informed periodically of their right to opt out of information sharing, and AFSA members are committed to doing so as long as they are required under the law. However, AFSA members report that an increasing number of their customers prefer to receive important communications, such as monthly statements, via electronic delivery – suggesting that consumers may ignore paper communications received in the mail. For this reason, AFSA believes that it would best achieve the intent of the underlying statute to permit the electronic delivery of the privacy notice to those consumers who have already opted to receive other communications electronically. Electronic delivery has the added benefit of being available to consumers as a reference 365 days a year, versus a paper notice received in the mail that is typically discarded immediately.

Compliance Resources could be better Spent

For a nationwide financial institution, the cost of printing and mailing annual privacy notices can run in the millions of dollars. For an institution of any size, the money spent on delivering duplicative privacy notices could be better invested in other activities, such as bolstering regulatory compliance and working to improve the customer experience in meaningful ways.

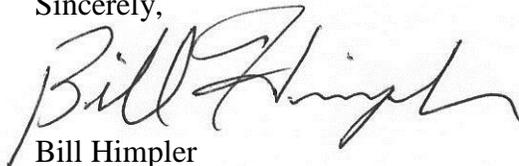
Many institutions have already begun to upgrade their systems to implement the alternative delivery method pursuant to the 2014 rule. Expanding its scope rather than eliminating it altogether would allow these firms to realize significant cost savings that could be redeployed to more worthwhile ends, or simply used to reduce the cost of providing financial services to consumers.

Conclusion

The CFPB can best achieve the intent of the GLBA by modernizing delivery of the privacy notice to those consumers who remain entitled to receive it on an annual basis. Facilitating electronic delivery would adhere to the letter of the most recent statute, while improving the ability of consumers to access this important information at any time and exercise their right to opt out if they so choose.

Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association