



July 14, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: *Amendment to the Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P)*
Docket No. CFPB-2014-0010, RIN 3170-AA39

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) proposed rule (“Proposed Rule”) to amend Regulation P, which implements certain requirements of the Gramm-Leach-Bliley Act (“GLBA”).¹ The GLBA mandates that financial institutions provide their customers with initial and annual notices regarding their privacy policies. The Proposed Rule would create an alternative delivery method for the annual disclosure, which financial institutions would be able to use under certain circumstances.

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks, and industry suppliers.

I. AFSA supports amendments to the GLBA’s annual privacy notice requirements.

AFSA agrees that mailing printed copies of the annual GLBA privacy notices to customers causes information overload for consumers and is an unnecessary expense for financial institutions. We appreciate that the CFPB is reviewing the GLBA annual privacy notice requirement and proposing to allow financial institutions to post the annual notices on their websites if certain conditions are met. Because AFSA members’ customers receive the initial privacy notices, they receive limited benefit from annual notices unless their content is changed in a material way. The annual privacy notices impose a significant cost to AFSA members. AFSA maintains that there are other ways of conveying to customers the information in the written notices just as effectively, but at a lower cost. The Truth in Lending Act and Fair Credit Reporting Act (“FCRA”) recognize this by specifically authorizing the communication of some notices electronically.

Financial institutions should be permitted to convey with or in another notice or disclosure the fact that the institution’s privacy notice is available on the institution’s website and customers

¹ 15 U.S.C. § 6801 *et seq.*

can get a copy of the current policy by calling a toll-free number. AFSA supports the option for financial institutions to post their current privacy notices continuously on a page of its website that contains only the privacy notice, without requiring a login or any conditions to access the page.

II. The conditions that financial institutions must meet in order to forgo mailing an annual disclosure are too limited.

Under the Proposed Rule, financial institutions would be permitted to stop mailing an annual privacy disclosure if they post the annual notices on their websites and if:

“(1) the financial institution does not share the customer’s nonpublic personal information with nonaffiliated third parties in a manner that triggers GLBA opt-out rights; (2) the financial institution does not include on its annual privacy notice an opt-out notice under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (FCRA); (3) the financial institution’s annual privacy notice is not the only notice provided to satisfy the requirements of section 624 of the FCRA; (4) the information included in the privacy notice has not changed since the customer received the previous notice; and (5) the financial institution uses the model form provided in the GLBA’s implementing Regulation P.”²

According to the Proposed Rule, many depositories may be able to meet these conditions and so use the alternative delivery method³ (posting the annual privacy notice on a website). The CFPB acknowledges that it needs to continue to refine its knowledge of the information sharing practices of non-depository financial institutions and the extent to which they may be able to use the proposed alternative delivery method. To that end, the CFPB requested comment on the issue.

AFSA believes that many non-depository financial institutions do not meet the criteria listed above and so would not be permitted to post the annual notices on their websites under the Proposed Rule. Many non-depository financial institutions provide their customers with an opt out under sections 603 603(d)(2)(A)(iii) of the FCRA. While not required by law, some non-depository financial institutions allow their customers to opt out of affiliate marketing, nonaffiliated marketing, and/or affiliate sharing of creditworthiness information as a benefit to their customers. However, by allowing customers to opt out, an institution would be prohibited from taking advantage of the Proposed Rule and would have to continue to mail the annual privacy notice. This seems counterproductive. The CFPB should not penalize non-depository financial institutions for allowing customers to opt out of sharing their personal information.

In addition, implementing a rule that would benefit depositories much more than non-depository financial institutions is contrary to the CFPB’s often stated goal of making the regulation and the regulatory burdens of depositories and non-depositories more consistent.

We ask the CFPB to allow financial institutions to use the proposed alternative delivery method in years where a financial institutions’ privacy policies do not materially change, as long as the financial institutions include an insert with a billing statement, or an email for customers with

² 79 F.R. 27214 (May 13, 2014), p. 3

³ *Ibid*, p. 44

whom the financial institution primarily communicates by email, stating that the privacy policy has not materially changed and directing customers to a website for a copy of the current policy or a toll-free number customers can call to get a copy of the policy mailed to them.

We also believe that, while the CFPB may seek to promote the use of the model notice form, due to the very limited degree that the model form may be customized to describe information sharing and use by a financial institution, the model notice form cannot accurately describe the information practices of some financial institutions. We do not believe that such financial institutions should be precluded from making use of the new proposal for electronic delivery for annual privacy notices.

III. The Proposed Rule should make clear that financial institutions may provide annual privacy notices electronically if the customer agrees.

As the CFPB notes in the Proposed Rule, financial institutions are currently able to provide a GLBA privacy notice “so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.”⁴ Current Regulation P also states that “[y]ou may reasonably expect that a customer will receive annual notice of your annual privacy notice if: ...The customer uses your Web site to access financial products and services electronically and agrees to receive notices at the Web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the Web site.”⁵ The above language is not conditioned on the categories of sharing in which the financial institution engages, whether an opt-out must be provided, whether the financial institution uses the model notice form, or whether the privacy notice has changed in the last year. We believe the Proposed Rule should make clear that the ability of a financial institution to provide a GLBA annual privacy notice electronically to a customer who has agreed to such a delivery means is unchanged by the Proposed Rule. We believe that the intention of the CFPB is to permit an additional means by which electronic delivery may be employed in the absence of customer agreement.

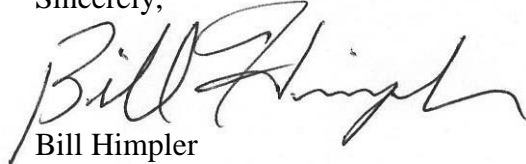
⁴ 12 C.F.R. § 1016.9(a).

⁵ 12 C.F.R. § 1016.9(c).

IV. Conclusion

Although we commend the CFPB for trying to create an alternative delivery method for the annual privacy notice, the exemption in the Proposed Rule is too narrow. The CFPB should allow companies to avoid mailing annual privacy notices as long as: (1) the privacy policy has not been materially changed from the prior year, and (2) the current policy is posted on-line. We look forward to working with the CFPB on this Proposed Rule. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Bill Himpler
Executive Vice President
American Financial Services Association