

GRAMM-LEACH-BLILEY ACT EXEMPTIONS FROM DATA PRIVACY LAWS

Many states are looking to enhance cybersecurity and data privacy through new laws which take a comprehensive approach to the security of personal data that might be exploited for criminal purposes. In recent years, the most high profile of these laws was the California Consumer Privacy Act of 2018 (“CCPA”). Since then, Colorado, Connecticut, Utah, and Virginia have passed similar laws and a number of other states are considering following suit.

One of the challenges for financial institutions is reconciling new state laws with existing federal protections, including the Gramm-Leach-Bliley Act (GLBA), P.L. 106-102, and its implementing regulations. The GLBA and the Fair Credit Reporting Act (FCRA), P.L. 91-508, ensure consumers engaging with covered entities have strong privacy protections, negating the need for additional state regulation.

- Under the GLBA, consumers have the choice of whether a financial institution may share their personal information with nonaffiliated third parties. The GLBA prohibits disclosure of consumer information to any nonaffiliated third party unless the consumer is given notice and the opportunity to opt out of the sharing.
- Under the FCRA, consumers have the choice of whether consumer report information can be shared by affiliated companies, and also whether that information can be used to send marketing solicitations. In both cases, consumers must receive notice and have the opportunity to opt out of the sharing or use unless a specific exception applies.
- The FCRA affiliate sharing opt-out notice must be included in the financial institution’s GLBA privacy notice at the beginning of a customer relationship and every subsequent year. While both the FCRA and GLBA permit information sharing for necessary customer service purposes, the fundamental consumer protections in both laws limit other information sharing.

The vast majority of states that have passed comprehensive data protection laws have exempted financial services companies covered by GLBA and FCRA. These exemptions can be at the level of the data itself, though all states since California have exempted the financial services entity.