July 14, 2014

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

Re: Consumer Privacy Notices - Docket No. CFPB-2014-0010

Dear Ms. Jackson:

The American Bankers Association (ABA),[1] the Consumer Bankers Association (CBA),[2] the Financial Services Roundtable (FSR),[3] the Independent Community Bankers of America

[1] The American Bankers Association is the voice of the nation's $14 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend nearly $8 trillion in loans. ABA believes that government policies should recognize the industry's diversity. Laws and regulations should be tailored to correspond to a bank's charter, business model, geography and risk profile. This policymaking approach avoids the negative economic consequences of burdensome, unsuitable and inefficient bank regulation. Through a broad array of information, training, staff expertise and resources, ABA supports banks as they perform their critical role as drivers of America's economic growth and job creation.

[2] The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

[3] Financial Services Roundtable represents the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies

(ICBA)[4] and the Securities Industry and Financial Markets Association (SIFMA)[5] (collectively, "the Associations") appreciate the opportunity to comment on the notice issued by the Consumer Financial Protection Bureau (CFPB or Bureau) proposing to amend Regulation P (Proposal), the rule which implements the consumer privacy provisions of the Gramm-Leach-Bliley Act (GLBA). The Proposal is intended to provide more effective and efficient disclosures to consumers while alleviating unnecessary regulatory burden. The Associations support the purpose of the change but believe that the Proposal falls short of its intended goal and we urge the CFPB not to adopt it as proposed. Instead, we encourage the Bureau to provide what consumers need and want: information about how their personal data is collected and shared and, when the right to opt-out exists, a convenient way to exercise that right.

Regulation P currently requires financial institutions to provide an annual disclosure of their privacy policies to their customers. Our members' customers complain about being confused and annoyed because year after year they are inundated with written privacy notices when nothing has changed. For our members, mailing notices every year under these circumstances is a costly and unnecessary burden. When the CFPB indicated its consideration to streamline the annual notice requirement, we and our members hoped the Bureau would take the dysfunctional nature of the current process into account. We also hoped that the CFPB would consider the impact of the digital revolution on the consumer financial services marketplace.

While the Proposal would create an alternative method for delivering the annual privacy notice, the alternative is so circumscribed that it has very little practical value to consumers or financial service providers. As discussed below, the Associations strongly urge the CFPB to eliminate the annual notice as superfluous where there is no sharing under either GLBA or Fair Credit Reporting Act (FCRA) that would require the institution to offer customers an opt-out.

To be eligible to take advantage of the CFPB's proposed alternative delivery method, a financial institution must not have changed its information sharing practices, must only share information in accordance with one of the statutory exceptions, and must post its privacy notice online. Furthermore, the online notice option would only be available to institutions that do not share data with either affiliates or unaffiliated third parties in any manner that triggers customers' rights to opt-out of such sharing, while strictly adhering to the model form. Financial institutions eligible for the online notice option would still be required to provide the GLBA privacy notice

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provide fuel for America's economic engine, accounting for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs. For more information, visit FSRoundtable.org.

[4] The Independent Community Bankers of America® (ICBA), the nation's voice for more than 6,500 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. ICBA members operate 24,000 locations nationwide, employ 300,000 Americans and hold $1.3 trillion in assets, $1 trillion in deposits and $800 billion in loans to consumers, small businesses and the agricultural community. For more information, visit www.icba.org.

[5] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

to any customer on request. Furthermore, financial institutions that elect the alternative delivery method would be required to provide the customer with a clear and conspicuous annual disclosure that: (i) the privacy notice has not changed, (ii) the notice is available on the institution's website with a specific web address that takes the customer directly to the privacy notice, and (iii) the customer may request a mailed copy of the notice by calling a toll-free number.

The Associations appreciate the Bureau's initiative to identify regulatory requirements that are outdated and unnecessarily burdensome. Reform to the current regulatory provisions for providing privacy notices is indeed needed and timely. If done correctly, changing this currently antiquated process will result in more effective communication between businesses and consumers. This Proposal is an important first step in this long process and the Associations look forward to working with the Bureau to achieve what we believe can benefit both consumers and the financial services industry.

While the Associations strongly believe streamlining the current privacy notice requirements would provide great benefit to consumers and financial institutions, the Proposal, as written, does little to minimize the overall, unnecessary regulatory burden currently in place.

Summary of Comments

- The Proposal imposes unwarranted layers of additional compliance requirements when consumers are not eligible to opt out. For institutions that only share under one of the GLBA exceptions or that only share information with affiliates under FCRA for reasons other than marketing, the proposed conditions defeat the streamlining purpose and become a barrier to the adoption of the alternative delivery option. The Associations believe that an unconditional alternative delivery option should be available to all financial institutions that have not changed their policies, that do not share in ways that require an opt-out, and that post their privacy notice on an institution webpage or otherwise make it available on request. All other conditions recited in the proposal should be eliminated for these institutions as providing no real benefits and exceeding the real costs imposed.

- The Associations believe that institutions that do not share beyond the GLBA exceptions but do share information with affiliates beyond transaction and experience information or for marketing purposes, i.e., institutions which must give customers notice and an opportunity to opt out of such "within-family" sharing also should be able to use the alternative delivery option provided they have not changed their information sharing practices and provided they post their privacy notice online or otherwise make it available on request. Here, too, the conditions imposed by the Proposal are unnecessarily complicated and should be eliminated. For this group of institutions, GLBA streamlining should not be conditioned on an FCRA opt out, especially since the FCRA opt out has no annual notice requirement under the law.

- The Proposal is more restrictive than recently-introduced bills in Congress which have attracted broad bipartisan support.

- The Proposal reduces the incentive for financial services providers to use the proposed alternative delivery method by conditioning this option on several additional requirements which will complicate compliance. These include use of the Regulation P model forms, the provision of a toll free number and requiring that the notice be posted at a location on the provider's website that the consumer can reach without logging in or agreeing to any terms.

- For institutions that share with unaffiliated third parties beyond the GLBA exceptions, the Associations believe that there should be alternatives available for communicating customer privacy and opt-out rights that will serve their customers more effectively and in less costly ways than the current regime of annual notice. For instance, the CFPB could permit these institutions to use an alternative delivery option provided they have not changed their information sharing practices and post their privacy notice online, and provide a reasonable means to obtain the notice or to opt out.

A Streamlining Initiative

Fundamentally, the goal of the privacy notice is to inform consumers about how their information is collected and shared and to let them opt-out as provided in the law. Revising the rules for annual privacy notices would provide an opportunity to reduce the amount of paper created and distributed while still ensuring these disclosures and opt-out rights are widely available. Millions, if not billions, of pieces of paper are generated in providing these notices, and consumers receive multiple annual notices for their checking, savings, mortgages, credit cards, and other loan products and receive them from numerous sources, including financial institutions, brokerage firms, insurance companies, and other entities from which they receive financial services. It has reached a point where consumers are inundated with paper and are becoming increasingly annoyed and confused. It is also important to recognize that the cost of producing these notices is passed on, at least to some extent, to the consumer. Perhaps more important, the onslaught of notices means that they frequently are ignored by consumers.

In early 2012, the Bureau solicited suggestions for regulatory streamlining. Each of the Associations recommended elimination of the GLBA annual privacy notice among their streamlining suggestions.[6] Accordingly we welcome the recognition by the CFPB that it has the authority to eliminate the annual mailing requirement. As the Bureau notes, the statutory language only requires the financial institution to "provide" notices to the consumer customer on an annual basis. The word "provide" has several definitions, including "to make available." This language clearly authorizes the CFPB to provide more flexible and effective methods of providing the annual notice in a manner that promotes efficiency.

Legislative Approaches

[6] The general consensus is that the privacy notice is ignored by most consumers and does more for landfills than consumer enlightenment. See, e.g., http://www.aba.com/Advocacy/commentletters/Documents/clABACommentCFPBStreamliningFinalMarch2012.pdf and http://www.cbanet.org/documents/Comment%20Letters/03052012_CFPBStreamliningInheritedRegulations.pdf

Congress has also taken up legislation to simplify the GLBA mandate by eliminating the annual privacy notice by creating a simple and straight forward exception. The *Privacy Notice Modernization Act of 2013* (S.635)[7]and the *Eliminate Privacy Notice Confusion Act* (H.R. 749)[8] both would exempt banks from annual written privacy policy notice requirements under the following conditions: (1) a financial institution shares nonpublic personal information only within the parameters of the existing exceptions under GLBA,[9] (2) the financial institution has not changed its privacy policies and practices, and (3) the institution otherwise provides customers access to the most recent disclosure in electronic or other form permitted by specified regulations.

Both bills have broad bipartisan support and would promote more effective notice for consumers while reducing compliance costs for financial institutions. With regard to the *Privacy Notice Modernization Act of 2013*, one co-sponsor, Senator Sherrod Brown, acknowledged the need to further reduce the paperwork burden on both consumer and financial institutions, saying, "The CPFB deserves credit for moving forward with its proposal. But our common sense bill would further reduce burdensome and unnecessary paperwork – that burden consumers and community banks and credit unions alike –and ensure that provide[d] disclosures are timely, clear and concise."[10] These legislative solutions to consumer confusion and inefficient use of resources related to mailing annual privacy disclosure statements would address the issue at hand in a better way and provide financial institutions a practical and realistic alternative to the physical privacy notice mailing requirement.

The key distinction between the legislative solutions pending in Congress and the CFPB approach is that the Congressional solutions would only require that information sharing be limited to the current statutory exceptions, that the information disclosed in the current privacy notice has not changed, and that the disclosure be available in electronic form or other format specified by regulation. The approach in the legislation provides a simple and flexible approach, unlike the proposed regulation, which adds unnecessary layers of conditions and qualifications.

For these reasons, we support efforts to amend the current requirements to allow for an alternative delivery option for "providing" the annual notice to consumers when this notice is not materially different from the one that had already been provided. However, as discussed in greater detail below, the current proposed regulation will do little to reduce the potential for

[7] https://www.govtrack.us/congress/bills/113/s635

[8] http://beta.congress.gov/bill/113th-congress/house-bill/749

[9] The existing statutory exceptions generally permit financial institutions to share nonpublic personal information with service providers, for joint marketing of financial products and services, for processing transactions requested by the consumer, with the consent of the consumer, to maintain confidentiality, to protect against fraud, to respond to court order, as permitted under the Right to Financial Privacy Act or to comply with other applicable laws and regulations. See 12 CFR 1016.13, 1016.14 and 1016.15. Generally, these are exceptions that permit the financial institution to share information without a right to opt-out.

[10] http://www.brown.senate.gov/newsroom/press/release/in-wake-of-new-proposed-rule-by-cfpb-brown-moran-call-onsenate-to-pass-their-bipartisan-bill-to-streamline-financial-protections-for-consumers

information overload on customers or significantly reduce the cost and burden on financial institutions of mailing hardcopy privacy notices.

Keep It Simple, Streamline!

The Associations believe the Bureau's Proposal unnecessarily complicates what should be a straight-forward regulatory regime. Where there is no sharing under either GLBA or FCRA that requires the institution to offer customers an opt-out, the annual mailed notice should be eliminated as superfluous. Institutions are providing and will continue to provide access to their privacy notices and do not need to inform their customers repeatedly unless particular changes occur. Customers will continue to have the protections recited in those notices and the ability to access them through electronic or other means which make them readily available today.

As demonstrated below, the Proposal's additional regulatory conditions are overly prescriptive and create undue compliance burden.

Model Forms

The Proposal would restrict the use of the alternative delivery method to only those financial institutions that utilize the model privacy notices provided under Regulation P. However, it is not clear the extent to which the Proposal acknowledges that many institutions have tailored the model forms to fit specific policies and circumstances and whether such modifications, however minor, may mean a financial institution will not be entitled to the safe harbor afforded by the model privacy notices.[11] It is important that the Bureau clearly specify in the final rule that, as stated in the proposal, changes to the model in the form of wording and layout are not changes to the form within the meaning of the proposal.

Institutions are and have been subject to examination for the compliance of their notice with regulatory requirements for over twelve years. Forcing institutions to hew with precision to the Model Form when the Model does not fit is an unnecessary obstacle to achieving our common goal of streamlining consumer regulations. The Associations believe that as long as a notice is compliant with the requirements of the GLBA Privacy Rule, the regulators should not take issue with the notice.[12]

Toll-free Contact

The Associations believe that requiring a toll-free number to request a copy of a financial institution's privacy notice is an unnecessary hurdle to using the alternative delivery method. Customers have established methods of contacting their institutions that suit their particular needs given the options afforded by their institution. Access to privacy notices does not need to be pigeon-holed into a particular method. Today's methods for obtaining privacy notices at a particular bank will remain available. Where those methods include talking to bank

[11] 79 Fed. Reg. 27222 (May 13, 2014)

[12] See 74 Fed. Reg. 62890, 62890 (Dec. 1, 2009) (final rulemaking notice)

representatives via toll-free numbers, there is no reason to believe that customer convenience will change. However, where toll-free contact is not an existing option for contacting one's institution, GLBA has not been and should not be construed to require its adoption for obtaining privacy notices.

Many community banks operate in small geographical footprints and therefore do not need or have a toll-free line. The majority of their customers communicate, through a local phone number, in person or via electronic mail. In these cases, installing and manning a toll-free line for receiving privacy requests would be an expense incurred solely to take advantage of the Proposal rather than to continue customer communication, and community banks that do not currently provide a toll-free number have indicated that this requirement would inhibit them from using the alternative delivery method.

Furthermore, in today's market the majority of consumers to carry mobile telephones or have telephones plans where toll charges are not assessed for long-distance calling. This makes the value of accessing a toll-free number increasingly unnecessary. The majority of consumers that do not communicate by way of local calling, e-mailing, or in person could call the community bank's direct telephone number free of charge through their mobile devices or telephone plans.

It would be more effective and accurate to require an institution that uses the alternative delivery method to have procedures in place that would allow the bank to receive and respond to a consumer's request for its privacy policy through the various channels it currently utilizes to communicate with customers and therefore with which their customers are familiar. Whether a customer prefers to walk into the local community bank branch and speak to an employee, mail a letter, e-mail a request, or chat online, he or she will likely choose that same method when requesting a copy of the latest privacy policy. Therefore, requiring a bank to install and provide a toll-free number that customers have never used in the past, nor would they would likely use in the future, would provide little benefit to consumers.

In addition to seeking comment on the advantages and disadvantages of requiring financial institutions to provide a toll-free number and whether there would be other appropriate ways to balance customers' interests, the CFPB is also seeking comment on whether financial institutions should provide a *dedicated* telephone number for privacy notice requests so that customers can more easily request a hard copy of the notice. For the industry, the costs and expense of creating a special dedicated toll-free line would outweigh the benefits that might ensue from using the established delivery methods. Moreover, the likelihood that consumers would use a specified telephone line to request a privacy policy is extremely low since it is unlikely that customers would want to keep track of separate toll-free numbers for contacting their institution — especially if the number is for only one particular purpose that they are rarely if ever likely to invoke.

Annual Reminders

While the Proposal would eliminate the requirement to send customers an annual privacy notice, it would replace that requirement with a new mandate to send an annual notice about the notice that is not being sent. While the reminder notice would be a simplified notice, it does not

eliminate the most objectionable element of the privacy notice – the annual distribution requirement. This element alone is highly likely to discourage use of the alternative for a great many institutions, particularly community banks.

Financial institutions provide a range of information to their customers with a variety of documents that form the basis for their ongoing customer relationship - but reminding customers on an annual basis that such information is available to re-read is not a standard compliance obligation. Financial institutions are not compelled to remind their customers to read their mortgage disclosures, their deposit account agreements, or their safe deposit box agreements every year. Customers have ongoing access to that information based on their own files or from readily available sources when they need it. The lesson to be learned from the existing annual written privacy notice is that such reminders are not useful communications. Substituting an annual reminder that there exists a privacy notice that has not changed just perpetuates the sense of redundant communication that benefits neither the customer nor the institution, but it does feed the notion among customers that such mailings are "junk mail."

Moreover, imposing an annual reminder in another required periodic communication is an impractical hurdle for many financial institutions. These entities offer many accounts, including certificates of deposit and other products, where there is no notice that is otherwise required to be delivered. Thus, the bank would be unable to use the alternative method for those customers and instead would have to continue to furnish an annual privacy notice. Because current operating systems do not make it simple or cost-effective to identify which customers would be eligible for the alternative delivery method, community banks again will be discouraged from using the alternative delivery method in its entirety. The costs and burdens associated with the reminder notice will make it far simpler and more efficient for many institutions, particularly community banks, to maintain the status quo and send the existing privacy disclosure to all customers.[13]

Further compliance complications arise trying to define what meets the "clear and conspicuous" standard for the annual reminder notice. The amount of proposed text coupled with the requirement that the statement contain distinctive type size, style, and graphic devices, such as shading or sidebars, would make inserting the notice on a monthly statement or other required disclosure operationally costly and difficult. Monthly statements (and other disclosures) are often generated by processors that utilize virtually all the space technically available to the bank with very limited additional space, leading to the need to include an additional communication, such as a separate page, further increasing costs for institutions and their customers (and further undermining the appeal of the alternative).

For all these reasons the Associations urge the Bureau not to adopt the annual reminder requirement.

Continuous Posting Online without Need to Logon and Without Terms

[13] Generally, community banks lack the scale to automate annual privacy notice mailings. Most of their mailings "are a manual, labor intensive process." Testimony of B. Doyle Mithchell Jr. on behalf of the Independent Community Bankers of America (http://smallbusiness.house.gov/uploadedfiles/12-3-2013_mitchell_testimony.pdf).

The Associations agree that an institution's privacy notices should be accessible through means that are customary mechanisms for financial institutions to share general information with their customers about their rights or benefits. For example, more and more communications are electronic instead of paper. As the CFPB itself stated, internet access has changed since the 2000 rulemaking. As of 2012, 74.8% of U.S. households had internet access at home and 80% of U.S. adults were using the internet.[14] The broad availability of home internet access, along with other free access to internet, such as through libraries, coffee shops, and other venues, makes clear this is becoming a more common method of communicating with one's bank. It is therefore appropriate for the CFPB to identify web posting as a clear means of "providing" privacy notices. However, different consumers in different communities served by different financial institutions may still choose other methods for conducting their banking business and interacting with their respective institutions. The rule should accommodate this variability and provide flexibility rather than be prescriptive regarding bank operations.

First, the Proposal would require financial institutions using the alternative delivery method to include a posting of the notice that is continuously available on a company's webpage and can be viewed without the customer needing to log on or agree to terms. We ask the CFPB provide clarity on situations where a customer may need to accept terms to access a website initially, particularly since access may be conditioned on meeting security standards to secure and protect customer data from unwarranted access; if a privacy policy is accessible through the customer's account information, this is critical to protecting the customer.

Second, the final rule should clarify that when a financial institution complies with the terms of the alternative delivery method, a website posting is sufficient evidence that the notice has been delivered.

Third, the proposal would require that when a customer calls the toll-free number to request a copy of the full privacy disclosure, the financial institution must *mail* the disclosure. In keeping with other steps that are encouraging consumers and financial institutions to take advantage of electronic delivery, if a customer has otherwise agreed to receive notices by electronic means or provides at the time of request an electronic delivery contact (e.g., email address), then it should be permissible to provide the full privacy disclosure electronically.

Finally, the Associations request the CFPB to affirm that "continuously" means that the notice is posted on the institution's website and readily available to consumers when the website is available, taking into account outages due to unforeseen circumstances or routine maintenance.[15] Moreover, we believe requiring the privacy web page to be available "continuously" is an unrealistic standard. Financial institutions do not post standard material intermittently. When it is posted, it is available as continuously as the website itself is available. In this era of digital technology, it is important that financial institutions update and maintain their online presence to

[14] Federal Register Vol. 79, No. 92 page 27218 citing U.S. Census data, "households with a computer and Internet Use: 1984 to 2012"

[15] For example, with the various cyber-threats that confront financial institutions, there may be times when a website has to be taken offline to avoid unnecessary compromise of consumer accounts. With natural disasters such as Hurricane Sandy, financial institutions may not have the capability to maintain a webpage until utilities and other emergency operations are restored.

minimize the threat of increased data breaches, cyber threats, malfunctions and utility outages. The update process itself may cause temporary delay in site access. It is practically impossible to maintain a webpage without any interruption given the various technological threats. We urge the CFPB to drop the modifier "continuously" rather than try to articulate all the service interruptions that might cause a website's accessibility to be suspended. In other words, do not overcomplicate the alternative delivery method.

Streamlining Other Annual Privacy Notices

The Associations believe that just as the CFPB has the statutory authority to eliminate the annual privacy notice requirement for institutions that do not share information under GLBA or FCRA in a way that generates an opt-out right, the CFPB has the statutory authority to provide an alternative to the annual mailed notice for institutions that must offer an opt-out.

FCRA Affiliate Sharing

A significant hurdle that will inhibit financial institutions from taking advantage of the Proposal is the prohibition against using the alternative delivery method when the financial institution shares information with affiliates in such a way that the customer must be given notice and an opportunity to opt out under the FCRA.

Affiliate sharing within a holding company, which is governed by FCRA, is conceptually different from the third-party sharing that is the focus of GLBA and it is under GLBA that the privacy notices were developed. Many customers appreciate that they are doing business with a family of financial services companies that have common standards for respecting privacy and protecting information. The affiliated family has a franchise interest in respecting customers' information. It also is important to understand that affiliate relationships are not limited to large institutions. Even small community banks are likely to have affiliates; for example, a community bank may have a dual-employee shared with a securities brokerage or an insurance agency affiliate. While CFPB cites a study in the Proposal that concludes that seventy-five percent of banks do not share information in a way that gives rise to consumer opt-out rights, that does not mean that consumers will see fewer privacy notices. Since institutions with affiliates will be unable to take advantage of the Proposal as it stands, the number of consumers who will continue to receive the annual notice will still be significant and the Proposal without change will have minimal consumer impact. If the goal is to reduce the number of privacy notices received by consumers, the important point to consider is the number of customers served by institutions which share information with their affiliates. For large institutions, that will impact a significant number of consumers. At the same time, since smaller institutions also have affiliates, some have suggested they may alter their practices to let them use the alternative delivery method, which could disadvantage their customers through reduced services.

Consequently, the Associations urge the CFPB to expand the proposal to permit institutions that share with affiliates and that offer an opt-out under the FCRA to use the alternative method. After all, the FCRA does not require delivery of an annual notice and the CFPB should not create such a requirement by regulation, just as the legislative proposals do not condition relief on the existence of an FCRA opt-out.

First, it should be recognized that a financial institution that wanted to elect to use separate notices for GLBA and FCRA - which is permissible under the law - would be deprived of using the streamlined alternative delivery method because the structure of the model form includes both FCRA and GLBA notices, and the proposal mandates use of the model. There is no valid policy reason for this handicap. The two different notices can stand on their own and the existence of the FCRA opt-out should not be a barrier for GLBA streamlining.

Second, even if the GLBA model notice (or other combined disclosure) is used by the financial institution to cover both GLBA and FCRA opt-outs, the fact that the notice is readily accessible on an institution's website or otherwise available can only improve a customer's awareness of his or her FCRA rights in sharing with affiliates "within the family." There is simply no reason under current law to make the FCRA opt out that has no annual notice requirement an obstacle to making use of the alternative delivery method for GLBA annual notices.

GLBA Sharing with Third-Parties Beyond the Exceptions

GLBA also recognizes that financial institutions share information with unaffiliated third parties for many reasons. To ensure that information can be shared to conduct certain transactions, provide information for regulators and other government authorities, and to protect consumers and financial institutions from fraud, GLBA permits financial institutions to share information without notice and a right to opt out. However, as FCRA allows information to be shared with affiliates for marketing purposes after a consumer is given notice and a right to opt out, so does GLBA allow institutions to share with unaffiliated third parties after a consumer is given a notice and right to opt out outside the statutory exceptions.

The Associations believe that an alternative delivery method to the annual mailed notice should also be made available in GLBA opt-out circumstances. The reality that customers tend not to change behavior based on annual written notices that inform them of GLBA opt-out rights or else ignore or dismiss the notices out of hand should be instructive about the value of annual mailed notices even when institutions share beyond the GLBA exceptions. We believe that this reality is sufficiently noteworthy to support extending the alternative delivery method to financial institutions that offer GLBA opt-out since the posting of the privacy notice on the webpage will likely be a more effective avenue of customer access than ongoing paper notices. As CFPB Director Richard Cordray has noted, self-protection is often the best form of consumer protection. Customers who are motivated by current events or other interests will use the webpage posting to inform themselves of their options and assert them as desired.

If the CFPB is not prepared to extend the alternative to GLBA opt-out financial institutions, another alternative may still be feasible. To this end the Associations suggest that a simplified reminder option could be feasible for this group of institutions as long as it does not create undue compliance details that would deter adopting it as a superior alternative to annual mailing. As we have remarked earlier, the nature of the reminder notice should not create burdensome complications.

In this particular situation, the reminder could be an abbreviated notice to alert consumers to the fact that the privacy notice has been posted on the institution's website and that the customer has a right to opt out from information sharing, as more fully explained on the website. This would be more efficient, would reduce regulatory burden, and more importantly would eliminate confusion for consumers and highlight their rights to control their nonpublic personal information. It may actually more efficiently inform customers of actionable rights than under the largely customer-ignored mailing methodology.

Regulatory Coordination

Rulemaking authority for GLBA was formerly spread among several agencies, including the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). The Dodd-Frank Act transferred GLBA rulemaking authority from the Federal Reserve, OCC, FDIC, and NCUA to the CFPB effective July 21, 2011.[16] However, entities under the jurisdiction of the SEC are subject to similar authority provided for under Regulation S-P,[17] which implements the privacy provisions of GLBA with respect to "investment companies" under the Investment Company Act of 1940.[18]

The division in rule writing authority between the CFPB and the SEC has the potential to cause divergent responsibilities with respect to the delivery of annual privacy notices. For example, an institution wanting to utilize the alternative delivery method may not be able to do so due to compliance requirements under both Regulation P and Regulation S-P. Going forward, the Associations urge the CFPB to encourage other federal agencies to develop similar alternative delivery methods of annual privacy notices.

Conclusion

The Associations appreciate the efforts of the Bureau to provide an alternative delivery method by posting a privacy notice online. We believe that doing so is an efficient and effective way to provide information to consumers. We appreciate the recognition of the Bureau that the current requirements have a high degree of waste and redundancy and are ripe for reform. We also believe that the conditions and qualifications that are included in the Proposal, however, will make this unavailable or unappealing to a significant universe of financial institutions. For example, the requirement to provide a notice about the notice merely substitutes a new burden for the existing burden, and many of our members believe that the risks associated with the Proposal make it unlikely it will be useful or used. With some adjustments, however, the Bureau's goals can be achieved.

[16] The Dodd–Frank Wall Street Reform and Consumer Protection Act - Pub. L. 111–203

[17] 17 C.F.R. §248

[18] *See* GLBA, §§ 504(a) (1), 505(a)(4). GLBA also gave the SEC regulatory authority under the Securities Exchange Act of 1934 with respect to broker-dealers, and under the Investment Advisers Act of 1940 with respect to investment advisers registered with the Commission. *Id*. §§ 504(a)(1), 505(a)(3), (5).

In order to move toward a more cost-effective and efficient notice for consumers and the industry, we recommend it eliminate the annual privacy notice when institutions only share information within established restrictions, have not changed their information-sharing practices since the last privacy notice was delivered, and make the privacy disclosures readily available online.

Sincerely,

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David Pommerehn
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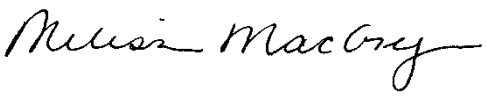

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