



CFPB Proposes to Implement FAST Act Exception for Annual Privacy Notices

On July 1, 2016 the CFPB issued a proposed rule that would amend Regulation P (12 CFR 1016) to implement a new limited exception to providing annual privacy notices. The Bureau also proposed to eliminate as unnecessary the alternative method for delivering annual privacy notices that it adopted in October 2014.

Statutory Amendments

The Gramm-Leach-Bliley Act (GLBA) requires financial institutions to give initial and annual privacy notices to consumers. In December 2015, the Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94) included an unrelated amendment to the GLBA to provide a limited exception to the annual privacy notice requirement. Requirements as to initial privacy notices (the ones given at account opening) were not changed. In general, under the amendment an institution is not required to provide an annual privacy notice to its customers if:

- The institution does not share nonpublic personal information (NPI) with nonaffiliated third parties except under the existing exceptions in GLBA. In other words, the institution must not engage in any types of sharing that give rise to an opt out; and
- The institution's policies and practices with regard to disclosing NPI set forth in the institution's most recent privacy notice have not changed.

Proposal

Statutory provisions. The Bureau is proposing to amend Regulation P to implement the FAST Act provision summarized above. The text of the proposed regulatory amendment mirrors the statutory amendment adding virtually nothing new.

The Bureau notes that the statutory amendments were effective upon enactment, that is December 4, 2015. Despite that the Bureau indicated that the proposed amendments to Regulation P would become effective 30 days after a final rule is published in the *Federal Register*. Thus, unless commenters are able to persuade the Bureau otherwise, the final rule would not be retroactive. Thus many institutions are continuing to give annual privacy notices until Regulation P is formally amended. (Member banks of the Federal Reserve System may be allowed by their regulator to operate under the FAST Act amendments immediately. For more information contact the law firm.)

Elimination of alternative delivery method. Recall that in October 2014 the Bureau revised Regulation P to provide an alternative delivery method for providing annual privacy notices. 79 FR 64057. In general, the alternative method permits institutions to post the annual privacy notice on the institution's website. However, certain conditions must be met, including that: (i) the institution may not disclose NPI to nonaffiliated third parties outside of the regulatory exceptions (in other words the institution may not share in any way that would trigger an opt out under GLBA or, with a limited exception, the Fair Credit Reporting Act); (ii) the information included in the annual notice must not have changed since the customer received the previous notice; and (iii) the annual notice must be in the model form provided in Regulation P.

The Bureau is proposing to further amend Regulation P to eliminate the alternative delivery provisions. According to the Bureau, the alternative would no longer be necessary in light of the new statutory exception which is similar to it.