



July 14, 2014

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

Submitted electronically via www.regulations.gov

Re: **Amendment to the Annual Privacy Notice Requirement Under
the Gramm-Leach-Bliley Act (Regulation P), RIN 3170-AA39**

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Dear Ms. Jackson:

The American Civil Liberties Union writes today in support of the Bureau of Consumer Financial Protection (CFPB) modifications of the annual notice requirements under the Gramm-Leach-Bliley Act.¹ While these changes would reduce the notice certain consumers receive regarding their privacy rights, that limited harm is more than balanced by enhancements to other privacy rights. Specifically, the proposal creates incentives for banks and other financial institutions to limit the amount of personal information they share and to standardize their privacy policies in a short, easy to understand format.

The CFPB proposal modifies the type of notice consumers receive regarding the sharing of their personal financial information and their opt-out rights. These rules are known as Regulation P. It would allow banks and other financial institutions to forgo mailing an annual written notice to consumers regarding their privacy policies, but only when it meets the following key criteria:

1. The privacy practices of the financial institution haven't changed during the previous year;

¹ For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally.

2. The financial institution only shares information in areas where customers do not have opt out rights and
3. The financial institution uses a standard short form privacy notice.

Banks and other financial institutions are still required to notify consumers that the notice exists though a clear notice shared through another type of notification. Customers are also given the opportunity to view the notice – either through an online notice available 24 hours a day or through the mail after a call to a toll-free number. Consumers would continue to receive an initial notice when opening an account or first engaging in a transaction with a financial institution.

Allowing banks to forego an annual notice in exchange for meeting these requirements has two main benefits. The first is that it encourages banks to limit the amount of information they share for some types of marketing purposes. The second is that it promotes the use of a common short form notice, allowing consumers to more easily understand a financial institution's practices and compare policies between institutions.

a. Sharing limitations

As required by the Graham-Leach-Bliley Act, Regulation P allows for the sharing of customer information for a wide range of purposes. For some functions – such as a financial institution's own marketing, for joint marketing with other financial institutions and for its own and its affiliates business purposes – the consumer still has no control over sharing

However, in other areas – such as sharing creditworthiness with affiliates and allowing non-affiliate marketing – consumers have the ability to opt out. The proposed rule would reward financial institutions that chose not to engage in information-sharing in this latter category by allowing them to forego notice (assuming they meet the other requirements of the proposed rule).

Information sharing between financial institutions and their affiliates and partners is already widespread and overbroad. It includes salary information, debt and credit information, payment history and a wide variety of other revealing personal information. As the ACLU and others said when Graham-Leach-Bliley was passed in 1999, “this bill will allow banks and other firms to claim falsely that the bill protects consumer privacy, when in fact, it enshrines into law the right of financial firms to exploit and profit from the sharing of confidential and private customer information. Consumers deserve real privacy protection. Financial institutions should not be allowed to share and sell confidential customer records without consent.”²

No regulatory proposal can cure deficiencies enacted into law by Congress. However the proposal will be an incentive to reduce these sharing practices.

² American Civil Liberties Union, Center for Democracy and Technology, Consumer Federation of America, Consumers Union, Eagle Forum, Electronic Privacy Information Center, Free Congress Foundation, Privacy Times, U.S. Public Interest Research Group, *Coalition Letter to Final Conferees on Financial Privacy*, October 19, 1999.

b. Short form notice

The Gramm-Leach-Bliley Act also authorized the creation of model short form notices to describe how financial institutions share customer information.³ These voluntary forms provide easy to understand language which conveys what information institutions share about consumers. Because the form is standardized, it also allows for simple comparison across institutions. For example, in the model form, questions include “What does [financial institution] do with your personal information?”, “Why can’t I limit all sharing?” and a list of the types of information that can be shared.⁴

These forms also clarify when a consumer can or cannot opt out of certain types of sharing through a three column chart which lists “Reasons we can share your personal information”, “Does [name of financial institution] share?” and “Can you limit this sharing?” This standardization creates real value for the consumer by improving notice through a simplification of complex rules. It also allows comparison between institutions. Consumers can put these forms side by side and make decisions regarding where to bank, based on differences in sharing policies.

Unfortunately, consumers are not yet able to enjoy the full privacy value of these notices. Researchers at Carnegie Mellon University built an automated program to discover and compare policies across the internet.⁵ Their research reveals two barriers to exploiting the full value of short form notices. The first is that standardized short form policies have only been adopted by 3,422 of 6,701 financial institutions surveyed.⁶ Hopefully the proposed rule would increase that number.

The second barrier to fully utilizing these policies is that they are not kept in a central location or stored in such a way that allows for easy comparison. While this type of central website is beyond the scope of this rulemaking, we encourage the CFPB to remedy this in the future by creating a central website of short form policies with the functionality to compare policies between banks and other institutions in the same geographic area. The Carnegie Mellon research demonstrated that sharing practices differed substantially even between banks offering similar services and in similar regions. This suggests that this type of mechanism would actually allow for meaningful comparisons and create some competition on the basis of privacy practices.

³ 12 C.F.R. 1016.2 authorizes the use of this short form which can be found in an appendix to Part 1016. One example of this form can be found here: <https://www.bankofamerica.com/privacy/consumer-privacy-notice.go>

⁴ *Id.*

⁵ Craner, L.F., Idouchi, Kelly, Leon, P.G., Sleeper, Manya, Ur, Blase, June 2013, Are They Actually Any Different? Comparing Thousands of Financial Institutions’ Privacy Practices, *The Twelfth Workshop on the Economics of Information Security*. Available at: <http://weis2013.econinfosec.org/papers/CranorWEIS2013.pdf>

⁶ *Id.* The study estimates that there are 7,072 total financial institutions in the country

For the foregoing reasons the ACLU supports the CFPB changes to the Graham-Leach-Bliley Regulation P rules. Please contact Legislative Counsel Chris Calabrese at ccalabrese@aclu.org with any questions.

Sincerely

A handwritten signature in black ink that reads "Laura W. Murphy". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Laura W. Murphy
Director, Washington Legislative Office

A handwritten signature in black ink that reads "Chris R. Cal". The script is cursive and somewhat abbreviated, with the last name partially cut off.

Christopher R. Calabrese
Legislative Counsel