

Comments of Consumer Federation of America and Privacy Rights Clearinghouse

To the Consumer Financial Protection Bureau

Docket No. CFPB-2014-0010

July 14, 2014

Introduction

We welcome the opportunity to comment on the proposal by the Consumer Financial Protection Bureau (CFPB) to revise Regulation P (Privacy of Consumer Financial Information) in regard to the delivery of annual privacy notices. We generally support the proposal because it recognizes the importance of the privacy disclosures required under the Gramm-Leach-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA) and encourages financial institutions to limit sharing of customers' nonpublic personal information by allowing them to use an alternative method of providing those disclosures if they do so. In these comments we will elaborate on why we support the proposal and offer suggestions for additional changes that the CFPB should consider.

We believe that the annual privacy notice is an important tool to educate consumers about what personal information is collected by their financial institutions, how it is used, their choices in that regard, and how the information is safeguarded. The CFPB proposal is meant to reduce "information overload" for consumers and unnecessary expense for financial institutions. Both are worthy goals, but the most important consideration should be how to provide the information about privacy and security in ways that would be most beneficial to consumers.

Financial institutions have always been able to send the annual privacy notices electronically, with their customers' prior consent, thereby reducing their delivery costs. We do not know how many financial institutions actually seek customers' consent for electronic delivery or how the option is presented. Customers who do not use the Internet, whose Internet service is slow, or who are worried about security are unlikely to consent to receive the annual privacy notices electronically if it also requires them to forgo mailed statements and access their accounts online. On the other hand, they may be quite willing to receive the annual privacy notices by email if it does not oblige them to go completely "paperless" and will not result in emails for other purposes, such as marketing solicitations.¹

¹ For example, in 2010 the Pew Research Internet Project found that many older people were using email but far fewer were engaging in online banking and other types of online activities compared to younger people, see charts from *Generations 2010* at <http://www.pewinternet.org/2010/12/16/online-activities/>. While the percentage of older who bank online may have increased since then, there is probably still a significant gap. Pew has also found disparities in broadband adoption based on age, race and income. See *Digital Differences*, 2012 at <http://www.pewinternet.org/2012/04/13/digital-differences/>.

While electronic delivery of important disclosures should always be a choice, not a requirement, for consumers, it can provide convenience and reduce waste. The CFPB's proposal for an alternative delivery method is narrowly tailored. **For those situations in which the alternative delivery method would not apply, the CFPB could help to promote electronic delivery of the annual privacy notice by requiring financial institutions that offer electronic delivery to give consumers the choice of receiving the privacy notice by email as a stand-alone option.**

Criteria for ability to use the alternative delivery method

The CFPB would allow financial institutions to stop mailing the annual privacy notice to customers and use an alternative method as described in the proposal to provide that information only if:

- They do not share the customer's nonpublic personal information with nonaffiliated third parties in ways that trigger GLBA opt-out rights;
- The information in their privacy policy has not changed from the previous year;
- They do not use the annual privacy notice to give customers notice of their right under the Fair Credit Reporting Act to opt out of information that would otherwise be considered a credit report being shared with affiliates;
- Their annual privacy notice is not the only notice they give under the Fair Credit Reporting Act of a consumer's right to opt out of eligibility information received from an affiliate being used for marketing purposes; and
- The financial institution uses the Regulation P model privacy notice.

We agree that this is the right approach given the fact that the alternative delivery method would not entail *direct* delivery of the annual privacy notice; it would simply alert customers that this privacy information is *available*. It would be up to the customers to go to the institution's website to see the information or call to request that it be mailed. Some will take the extra step to get the information, but many probably will not. Therefore, it would be inappropriate to use the alternative method in situations where the notice includes the only call to action that consumers would receive to exercise their opt-out rights or in which the privacy policy has changed. In those instances the annual privacy notice should continue to be delivered directly, by mail or electronically.

We also strongly support the proposal that financial institutions that are able to avail themselves of the alternative delivery method should use the Regulation P model privacy notice. Privacy policies that are written using legal jargon and complex vocabulary are difficult for consumers to read and comprehend. The model notice was developed to make it easier for customers to understand their financial institutions' privacy practices and requiring its use in this case will encourage its adoption.

Statement about the availability of the annual privacy notice

Under the CFPB's proposal, a financial institution using the alternative delivery method would be required to insert a clear and conspicuous statement not less than once a year in any notice or disclosure that it is required or expressly permitted to make by law, such as an account statement. The statement would:

- Inform customers that the annual privacy notice is available on the financial institution’s website and provide the specific web address that would take them right to it;
- Inform customers that they can call a toll-free number to request that the privacy notice be mailed to them and provide that number; and
- Inform customers that the financial institution’s privacy policy has not changed since the previous year.

We agree that the statement informing customers that the privacy information is available must be clear and conspicuous and provide both the specific web address to find it and a toll-free number to request it. Since the alternative delivery method does not entail *direct* delivery of the annual privacy notice, it must be made as easy as possible for customers to see how they can obtain it and to do so if they wish.

We believe that it is insufficient, however, to allow financial institutions to provide this statement “not less than annually.” **Since the statement will be included in notices or disclosures that financial institutions are sending to customers anyway, we suggest that there is no reason why it should not be required to be provided in each such notice or disclosure, or at least more frequently than once a year, such as on a quarterly basis.**

This would help to ensure that customers do not miss the important information about the availability of the annual privacy notice. We do believe that this would be unduly burdensome. More frequent reminders about the availability of the annual privacy notice would not necessarily prompt customers to seek the notice more often than once a year, especially since the statement would include the fact that the privacy policy has not changed. Of those who might want to look at the notice more often, only a very small number would be likely to ask for it to be mailed to them. Therefore the potential cost to financial institutions resulting from more frequent reminders would be minimal.

As noted previously, financial institutions can send the annual privacy notice electronically if the customer has consented, and that ability would continue under the CFPB proposal. **We suggest that financial institutions that use the alternative delivery method and have the capacity to provide the annual privacy notice via email could include in the statement that customers who are not already receiving the notice by email may choose to do so and provide instructions for how to exercise that option.**

Placing the privacy notice on financial institutions’ websites

The CFPB proposes that financial institutions that can use the alternative delivery method must place the annual privacy notice, using the Regulation P model, on their websites:

- On a page that only has that information;
- In a place that does not require a login to access; and
- Continuously.

We agree that these requirements are essential. The annual privacy notice must be as easily accessible as possible and not be obscured by other information that is not relevant. Furthermore, consumers

should be able to find information about financial institutions' privacy practices anytime they wish, no matter whether those institutions are using the alternative delivery method or not. **We suggest that the CFPB require all financial institutions to provide conspicuous links to their annual privacy policies on their home pages.**

Mailing the privacy notice

Under the CFPB proposal, when customers call financial institutions that can use the alternative delivery method to request that the annual privacy notice be mailed to them:

- The notice must be sent to them promptly; and
- The notice must be provided free of charge.

We strongly support these requirements. Financial institutions that use the alternative delivery method will be reaping significant savings in printing and postage expense. Customers who want to obtain the annual privacy notice and are online will probably use that means to access it; only a small number are likely to request that the notice be mailed to them, especially if there is an additional option to receive it via email. There would be no justification for delaying the mailing until the next regular statement is sent or charging for it. **We also suggest that the CFPB prohibit any other information, such as sales solicitations, to be included in the mail (or in an email) containing the annual privacy notice to avoid distracting consumers with irrelevant information.**

Creating a central source for privacy notices

In addition to making it easier for customers to understand their financial institutions' privacy practices, the model annual privacy notice can facilitate their ability to learn about other institutions' practices and use that information as a factor in decisions about opening new accounts and maintaining existing ones. Researchers at Carnegie Mellon University have found that the privacy practices of financial institutions that use the model notice vary widely.² The standardized nature of the model notice makes side-by-side comparisons easy.

We suggest that the CFBP create a central web-based repository of all of the model annual privacy notices that financial institutions use. Financial institutions should be required to provide their notices and update them as necessary.

² 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*, available at <http://weis2013.econinfosec.org/papers/CranorWEIS2013.pdf>.