



3138 10th Street North
Arlington, VA 22201-2149
703.842.2215 | 800.336.4644
F: 703.522.2734
dberger@nafcu.org

B. Dan Berger
President & Chief Executive Officer

National Association of Federal Credit Unions | www.nafcu.org

December 18, 2015

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: Annual Privacy Notices

Dear Director Cordray:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding changes to the annual privacy notice requirements of the *Gramm-Leach-Bliley Act* (GLBA) made by the recent passage of H.R. 22, the *Fixing America's Surface Transportation Act* (FAST Act) (Pub. L. No. 114-94). NAFCU and our members believe the Consumer Financial Protection Bureau (CFPB) should act swiftly to implement these statutory changes and clarify the controlling law through a formal announcement or the promulgation of an interim final rule.

Annual Privacy Notices

GLBA and its implementing regulation, Regulation P, require credit unions to provide each member with privacy notices on an annual basis over the course of the customer relationship. In October 2014, the CFPB issued a final rule amending Regulation P to allow credit unions, under certain conditions, to post their annual privacy notices online rather than deliver them individually. However, to take advantage of this provision, the Bureau requires the credit union to comply with a number of specific conditions. It is important to highlight that Regulation P still requires a credit union to provide a privacy notice to its members on an annual basis, regardless of the method of delivery. In the preamble to this final rule, the Bureau cited its inability based on then-federal law to entirely eliminate the annual privacy notice requirement. Now this regulation is in conflict with the controlling statute.

Earlier this month, President Barack Obama signed into law the FAST Act, which included in Section 750001 the text of H.R. 601, the "*Eliminate Privacy Notice Confusion Act*." This language amends GLBA to clarify that consumers will receive privacy notices after opening a new account and when their providers' privacy policies change – a change from the current

annual notice requirement. Specifically, Section 750001 provides that a financial institution would not be required to provide an annual privacy notice if it meets two conditions:

- (1) The institution “provides non-public personal information only in accordance with” GLBA exemptions permitting their disclosure; and
- (2) The institution “has not changed its policies and practices with regard to disclosing non-public personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers.”

This new statutory exemption to the annual privacy notice requirements will provide a significant number of credit unions with regulatory relief by allowing them to avoid expending the costs and resources associated with distributing redundant annual notices. In addition, the elimination of duplicative annual notices will reduce the likelihood of consumer confusion.

As you can see, this statutory change has created an inconsistency between the language of GLBA and current version of Regulation P. Meanwhile, NAFCU has already begun to receive questions from credit unions asking for clarification and expressing confusion as to which law controls. Many of these credit unions have imminent printing or mailing deadlines for their 2016 distribution of annual privacy notices and are in need of CFPB action. While the statute is controlling, NAFCU is recommending that the Bureau take the necessary administrative action to implement these changes through a formal announcement or the promulgation of an interim final rule. Such an action would prevent credit unions from incurring significant financial expense and expending valuable staff resources on regulatory requirements that have been statutorily eliminated.

Formal CFPB Announcement

Earlier this year, the National Credit Union Administration (NCUA) faced a similar situation after the passage of the “*Credit Union Share Insurance Parity Act*” (Insurance Parity Act). This created an inconsistency between the *Federal Credit Union Act* and NCUA’s regulations governing share insurance. In response, NCUA Chairman Debbie Matz issued a statement announcing that certain provisions of the Insurance Parity Act were effective immediately while the Agency worked to bring its regulations into conformity with the statutory language. NAFCU encourages you to employ a similar proactive approach to make regulatory relief a reality for a substantial number of credit unions.

Interim Final Rule

Barring a formal announcement, NAFCU recommends the CFPB use its authority provided in Section 553(b)(B) of the *Administrative Procedure Act* (APA) to issue an interim final rule to incorporate the amended GLBA into Regulation P. Section 553(b)(B) permits an agency to dispense of the APA’s general notice and comment requirement in circumstances “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

Conclusion

NAFCU appreciated the opportunity to share its thoughts on the changes to Regulation P's annual privacy notice requirements and urges the CFPB to provide regulatory clarity. Should you have any questions or would like to discuss these issues further, please feel free to contact me, or Alicia Nealon, NAFCU's Director of Regulatory Affairs at (703) 842-2266 or anealon@nafcu.org.

Sincerely,



B. Dan Berger
President/CEO

*Thanks for any & all
consideration.*