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Comments of the Information Technology and Innovation Foundation

Before the

Consumer Financial Protection Bureau

Washington, DC 20552

In the Matter of

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Amendment to the Annual Privacy Notice )  
Requirement Under the Gramm-Leach-Bliley Act ) Docket No. CFPB-2016-0032  
(Regulation P) )  
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## CONTENTS

Introduction and Summary .....	2
Allow Users to Choose Whether They Receive Privacy Notices .....	3
Make Electronic Notices the Default .....	5
Allow Financial Institutions to Charge Fees For Paper Notices.....	5
Conclusion .....	6

## INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation (ITIF) is pleased to submit these comments in response to the Consumer Financial Protection Bureau’s (CFPB) request for comment on a section of the Gramm-Leach-Bliley Act (GLBA) called Regulation P, which requires financial institutions—such as banks, credit card companies, insurance companies, and mortgage companies—to provide privacy notices to consumers at least once a year or if the privacy policy changes.<sup>1</sup> The GLBA requires financial institutions to provide consumers the ability to opt-out of data sharing with nonaffiliated third-party companies under limited circumstances. ITIF is a nonprofit, nonpartisan public policy think tank committed to articulating and advancing a pro-productivity, pro-innovation, and pro-technology public policy agenda that spurs growth, prosperity, and progress.

On December 4, 2015, Congress amended the GLBA to exempt financial institutions that meet certain conditions from providing annual privacy notices to customers.<sup>2</sup> To qualify for this exemption, a financial institution cannot share nonpublic personal information (i.e., personally-identifiable financial information that is not already publically available that a financial institution collects while providing a financial product or service) about customers with third parties, except in certain statutory exceptions (e.g., law enforcement requests) and cannot have changed its privacy policies and practices since the most recent privacy notice that it sent customers. With its proposed rule change, the CFPB is moving to implement this exemption. Furthermore, the Bureau proposes to amend Regulation P to require financial institutions to provide privacy notices after a certain period of time if they change their privacy policies in a way which no longer qualifies for an exemption and remove the alternative delivery method for annual privacy notices (e.g., posting a

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<sup>1</sup> Consumer Financial Protection Bureau, “Annual Privacy Notice Requirement under the Gramm-Leach-Bliley Act (Regulation P),” *Federal Register*, July 11, 2016, [https://www.regulations.gov/document?D=CFPB\\_FRDOC\\_0001-0471](https://www.regulations.gov/document?D=CFPB_FRDOC_0001-0471).

<sup>2</sup> FAST Act, Public Law 114-94, Section 75001.

privacy policy to the company’s website to fulfill the annual privacy notice requirement) because the CFPB thinks it is no longer necessary given this rule change.<sup>3</sup>

ITIF supports the CFPB’s decision to undertake reforms to Regulation P to improve how users get their privacy policies and reduce the burden that these privacy notices can pose on financial institutions and their customers. Indeed, as the CFPB has noted, a banking industry trade association estimated that 75 percent of banks do not alter their notices on a yearly basis and do not share consumer information beyond the exceptions outlined in the GLBA.<sup>4</sup> However, CFPB should make additional reforms. First, it should allow consumers to choose whether they want to receive GLBA privacy notices. Second, if consumers want to receive privacy notices—which we believe will be a small share of consumers—the Bureau should make electronic privacy notices the default option for consumers to reduce paper waste and associated costs. Finally, it should allow financial institutions to charge consumers fees for paper privacy policies, not to exceed the costs of providing paper notices, or offer consumers incentives to go paperless if electronic notices are not the default option.

### **ALLOW USERS TO CHOOSE WHETHER THEY RECEIVE PRIVACY NOTICES**

Under current rules, consumers are unable to make a choice about whether they want to receive GLBA privacy notices. While a small group of vocal individuals that value personal privacy above most other values—described by privacy researcher Alan Westin as “privacy fundamentalists”—have driven many policy debates around privacy, the vast majority of consumers put a higher premium on other things, such as convenience, time savings, and reduced clutter.<sup>5</sup> Privacy notices are an example of something very important to this small group, but unimportant to the majority of consumers. Most people choose not to read privacy notices because it may be too difficult, cumbersome, or time consuming to do so.<sup>6</sup> Current GLBA rules, therefore, often force many consumers to receive notices that they do not read or want.

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<sup>3</sup> Under the proposed rules, if a financial institution were to change its policies in a way that it would lose the exception, thus triggering its notice requirement, it would need to provide a revised notice to its customers in advance of changing its policies. The financial institution could then treat that notice as the initial notice for its first year, and it would then have to provide the first annual notice after losing the exception by the end of its second year. See Consumer Financial Protection Bureau, “Annual Privacy Notice Requirement under the Gramm-Leach-Bliley Act (Regulation P).”

<sup>4</sup> Consumer Financial Protection Bureau, “Annual Privacy Notice Requirement under the Gramm-Leach-Bliley Act (Regulation P).”

<sup>5</sup> Alan Westin, “Social and Political Dimensions of Privacy,” *Journal of Social Issues*, Vol. 59, No. 2, 2003, <http://www.privacysummersymposium.com/reading/westin.pdf>.

<sup>6</sup> See Harris Interactive study in Sheila Anthony, “The Case for Standardization of Privacy Policy Formats,” Federal Trade Commission, July 1, 2001, <https://www.ftc.gov/public-statements/2001/07/case-standardization-privacy-policy-formats>; The United Kingdom Information Commissioner’s Office did a study that found 71 percent of U.K. adults did not read or understand privacy policies (See “Regulators Demand Clearer Privacy Policies,” *Out-law.com*, February 16, 2009,

The CFPB currently requires financial institutions to deliver paper copies of privacy notices to customers when they establish their relationship and then each year thereafter, unless a customer affirmatively agrees to electronic delivery. Because consumers receive at least one notice from each financial institution they use, GLBA can result in consumers receiving multiple paper privacy notices each year. Over 90 percent of U.S. households have at least one bank account.<sup>7</sup> However, many consumers use multiple banks. One 2016 survey of 3,000 U.S. adults found that consumers use an average of 3.7 financial organizations (e.g., banks and credit unions).<sup>8</sup> These numbers do not account for privacy notices from insurance companies, debt companies, financial advisors, mortgage companies, and other institutions that must meet GLBA requirements. This situation can be confusing for consumers who do not have the time or stamina to read through each privacy notice from each organization and likely contributes to most consumers simply ignoring their annual notices altogether and tossing them in the trash. Furthermore, the material costs from this process are ultimately passed on to the consumer, raising prices and taking a toll on the environment.<sup>9</sup> To be sure, the proposed rule change will decrease the number of paper documents sent to consumers, but CFPB should go further to reduce this requirement.

Given that many consumers choose to not read privacy notices and the notices come at a cost, the CFPB should remove the GLBA privacy notice requirement for financial institutions and instead require financial institutions to post their privacy notice online and allow consumers to opt-in to receiving privacy notices when they sign up for financial accounts. This will allow the small number of consumers with strong privacy preferences to still receive privacy notices, while exempting the majority of consumers who do not want to receive these notices. This is a more balanced approach to privacy notices that considers both the needs of

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<http://www.out-law.com//default.aspx?page=9795>); See Golden Bear Omnibus Survey in Joseph Turow et al., “The Federal Trade Commission and Consumer Privacy in the Coming Decade,” *I/S: A Journal of Law and Policy for the Information Society*, January 1, 2007,

<http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1934&context=facpubs>.

<sup>7</sup> This estimate was determined from the Federal Deposit Insurance Corporation’s 2013 study on unbanked U.S. households (“FDIC National Survey of Unbanked and Underbanked Households,” Federal Deposit Insurance Corporation, October 2014, <https://www.fdic.gov/householdsurvey/2013report.pdf>) and the U.S. Census Bureau’s 2015 estimate of total U.S. households (U.S. Census Bureau, *America’s Families and Living Arrangements: 2015 (Households by Type and Tenure of Householder for Selected Characteristics*; accessed August 8, 2016), <http://www.census.gov/hhes/families/data/cps2015H.html>).

<sup>8</sup> Fiserv, “Banks and Credit Unions Can Fill the Financial Management Gap by Helping People with Advice and Tools, Shows Fiserv Research,” news release, April 25, 2016, [http://files.shareholder.com/downloads/FISV/0x0x887550/784D9E8D-44FB-4795-BDA3-7AF6A1D8110B/FISV\\_News\\_2016\\_4\\_25\\_General.pdf](http://files.shareholder.com/downloads/FISV/0x0x887550/784D9E8D-44FB-4795-BDA3-7AF6A1D8110B/FISV_News_2016_4_25_General.pdf).

<sup>9</sup> Daniel Castro, “Bank Privacy Notices Cost Consumers Over \$700M Annually,” *Innovation Files*, June 22, 2012, <http://www.innovationfiles.org/bank-privacy-notices-costs-consumers-over-700m-annually/>.

consumers and the impact on the economy and society, rather than focusing exclusively on the demands of a few individuals.

### **MAKE ELECTRONIC NOTICES THE DEFAULT**

When a consumer does want to receive privacy notices (or if the Bureau decides to keep the current proposed rules), the CFPB should promote electronic notices as the default for financial institutions. Rather than only making the incremental changes proposed in this rulemaking to reduce the burden of GLBA privacy notices on financial institutions, the CFPB should create flexible rules that “nudge digital” by requiring financial institutions to adopt digital delivery of all privacy notices by default.<sup>10</sup> The CFPB should reduce paper notices by requiring financial institutions to post this information online and send electronic notices to customers who have requested to receive these at a registered email address. Consumers without easy access to the Internet could still specifically opt-in to receive paper notices from financial institutions.

Moving to electronic notices would also keep in line with the general trend towards online banking. A survey in 2014 by Fiserv estimated that 80 percent of U.S. households with Internet access use online banking services, and this number is growing incrementally each year.<sup>11</sup> A 2015 report found that 50 percent of U.S. consumers do more than half their banking on their computer or laptop and 13 percent use their mobile device.<sup>12</sup> By going digital by default, CFPB would modernize the GLBA requirements, promote more efficient choices for financial institutions, and reduce unnecessary costs associated with paper-based privacy notices.

### **ALLOW FINANCIAL INSTITUTIONS TO CHARGE FEES FOR PAPER NOTICES**

The CFPB should allow financial institutions to charge fees to send privacy notices to customers in the mail. These fees should not exceed the costs of providing paper notices. If a bank wants to offer the option, customers that want to receive these privacy notices by mail should be able to choose to do so, but the bank should be allowed to recoup the associated cost directly from these customers. Under the current rules, customers that choose to use digital delivery are subsidizing those receiving paper notices. Many banks have already gone this route for account statements, imposing a fee on customers who choose to receive paper statements. For example, Citizens Bank charges \$2 per statement to send customers a paper statement.<sup>13</sup> By allowing financial institutions to charge small fees on paper statements, the costs and benefits of providing privacy policies would be better aligned for all consumers.

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<sup>10</sup> Daniel Castro and Rob Atkinson, “Ten Ideas for Policymakers to Drive Digital Progress,” *IEEE Internet Computing*, Vol. 13. No. 2, March 2009, <http://www.itif.org/files/IC-TenIdeas.pdf>.

<sup>11</sup> “Digital Banking More Essential to Consumers than Ever Before,” Fiserv, October 2014, [https://www.fiserv.com/resources/Consumer\\_Trends\\_Survey\\_Results\\_2014.pdf](https://www.fiserv.com/resources/Consumer_Trends_Survey_Results_2014.pdf).

<sup>12</sup> “Mobile Banking – US,” Mintel, January 2015, <http://store.mintel.com/mobile-banking-us-january-2015>.

<sup>13</sup> “Personal Deposit Account Fees and Features Guide,” Citizens Bank, accessed July 19, 2016, [https://www.citizensbank.com/apps/personaldeposits/legal/Personal\\_Fees.pdf](https://www.citizensbank.com/apps/personaldeposits/legal/Personal_Fees.pdf).

At a minimum, if the CFPB does not allow customers to choose whether they receive privacy notices and does not promote electronic notices by default, the Bureau should allow financial institutions to offer incentives to those who do not wish to receive paper privacy notices. This strategy would follow trends in the banking industry for e-statements. Most banks already offer e-statements and have implemented various incentives to get customers to adopt paperless statements, such as by waiving certain account fees or providing other bonuses. For example, U.S. Bank's basic checking account offers a discounted monthly maintenance fee for customers that choose online statements.<sup>14</sup> This strategy would provide additional flexibility for financial institutions to delivery their privacy notice requirement, cut down on paper waste, and encourage digital options for businesses and consumers.

## **CONCLUSION**

Promoting privacy disclosures at any cost is not in the best interests of consumers. This does not mean that the CFPB should minimize the importance of privacy disclosures, but it does mean CFPB should be cognizant about the costs of its privacy disclosure regulations on the economy, and ultimately, on banking consumers. Paper privacy notices are not free. To this end, the CFPB should reduce costs on financial institutions and their customers by allowing consumers to choose if they want to receive notices, requiring electronic notices by default, and letting banks charge fees for paper notices.

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<sup>14</sup> "Compare Checking Accounts," U.S. Bank, accessed July 19, 2016, <https://www.usbank.com/bank-accounts/checking-accounts/compare-checking-accounts.aspx>.