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Regulation P Final Rule on Annual Notices

The Consumer Financial Protection Bureau (CFPB) initially published their Regulation P in December 2011. The regulation governs the treatment of nonpublic personal information about consumers by certain financial institutions. In October 2014, the CFPB amended Regulation P with regard to the delivery of certain privacy notices. Subsequently, the CFPB published a final rule in August 2018, making further amendments.

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Links: [Final Rule - 10/28/14](#)
[Final Rule - 08/17/18](#)

Regulation P establishes rules financial institutions must follow when handling nonpublic personal information about consumers. More specifically, the regulation applies to information about individuals who obtain financial products or services primarily for personal, family or household purposes. At a high level, the regulation establishes required notices, limits certain disclosures, provides exceptions and includes a model form.

In October 2014, a new final rule was published which amended the regulation by establishing an “alternative delivery method” for providing certain annual notices. In August 2018, the CFPB published another final rule which amends the annual privacy notice requirements.

What is Happening with the “Alternative Delivery Method?”

Prior to the effective date of the 2014 rule, Regulation P required (among other things) that financial institutions provide a clear and conspicuous **annual** notice to a customer that accurately reflects their privacy policies. The 2014 rule allowed financial institutions to use an “alternative delivery method” to provide annual privacy notices through posting the notice on their websites, if certain conditions and requirements are met.

In 2015, Congress amended the Gramm-Leach-Bliley Act (GLBA) as part of the Fixing America’s Surface Transportation Act (FAST Act). Part of that amendment added section 503(f) to GLBA. In 2016, the CFPB proposed amendments to Regulation P to reflect the change in GLBA. Finally, in August 2018, a final rule was published which amended Regulation P.

As a result of the 2018 final rule, the CFPB is removing the regulatory provision that allows for the use of the “alternative delivery method” for annual privacy notices. As the CFPB clarified in the rule’s preamble, *“Because financial institutions that met the conditions in Regulation P to use the alternative delivery method will also meet the conditions for the statutory exception in section 503(f), the Bureau proposed to remove the alternative delivery method from Regulation P by removing § 1016.9(c)(2) and renumbering existing § 1016.9(c)(1) as § 1016.9(c).”*

How are the Annual Privacy Notice Provisions Being Adjusted?

Regulation P (1016.5) contains a long-standing general rule that you must provide a clear and conspicuous privacy notice to customers not less than annually. With regard to the 2018 rule, the annual notice requirement applies except as permitted within the regulation. Under the new rule, you are not required to deliver an annual privacy notice if you:

- Provide nonpublic personal information to nonaffiliated third parties **ONLY** in accordance with the provisions of:
 - 1016.13 [exception to opt out requirements for service providers & joint marketing],
 - 1016.14 [exceptions to notice & opt out requirements for processing & servicing transactions] or
 - 1016.15 [other exceptions to notice & opt out requirements, such as with the consent of the consumer]; and
- Have not changed your policies and practices with regard to disclosing nonpublic personal information (NPI) from the policies and practices that were disclosed to the customer (under 1016.6(a)(2) through (5) and (9)) in the most recent privacy notice. The citations referenced include:
 - (a)(2) [categories of NPI that you disclose]

- (a)(3) [categories of affiliates and nonaffiliated third parties to whom you disclose NPI, other than those parties to whom you disclose information under 1016.14 and 1016.15]
- (a)(4) [categories of NPI about former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose NPI about your former customers, other than those parties to whom you disclose information under 1016.14 and 1016.15]
- (a)(5) [if you disclose NPI to a nonaffiliated third party under 1016.13 (and no other exception in 1016.14 or 1016.15 applies) a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted.
- (a)(9) [any disclosure that you make under paragraph (b), which includes a description of nonaffiliated third parties subject to exceptions]

Institutions are cautioned that if the exception applies now, that future changes to your policies and practices can cause the institution to no longer meet the exception requirements. When changes occur, a review should be performed to determine whether you continue to meet the exception or whether you must provide an annual privacy notice.

Are the Delivery of Notice Provisions Being Adjusted?

Yes. With regard to the delivery of notices, the 2018 final rule amends Regulation P by clarifying that you may reasonably expect that a consumer received notification of your annual privacy notice if:

- The consumer uses your website to access products and services electronically and agrees to receive notices at the website, and you post your current privacy notice continuously in a clear and conspicuous manner on the website; or
- The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

Recommendations for Next Steps

1. Review your institution's board approved privacy policy (not the notice) and revise as needed, looking for areas that address annual notice provisions.
2. Review privacy-related procedures and update to address the new annual notice provisions. This should include the removal of any reference to the alternative delivery method as well as the inclusion of the annual notice exception provisions.
3. Inform applicable staff of the adjustment to internal policies and procedures.