

Client Alert

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Congress Close to Approving Limited GLBA Regulatory Relief

By Nathan D. Taylor

On December 1, 2015, House and Senate conferees reached a deal on a long-term highway bill, the “Fixing America’s Surface Transportation Act” ([H.R. 22](#)). House and Senate conferees had been negotiating compromise legislation to resolve differences between the transportation bills passed by the House in January and by the Senate in July. While the bill’s more than 1,300 pages are largely focused on highway, transportation, and safety issues, the bill includes amendments to two federal financial privacy laws, the Gramm-Leach-Bliley Act (“GLBA”) and the Fair Credit Reporting Act (“FCRA”). In particular, the GLBA amendment would provide an exception to the annual privacy notice requirement for a financial institution that meets certain conditions. This amendment could provide those financial institutions that do not share customer information with nonaffiliated third parties outside of GLBA exceptions (*i.e.*, those that do not provide an opt out for sharing with nonaffiliated third parties) with significant regulatory relief. The House and Senate are each expected to vote on and approve the compromise bill this week before the current surface transportation reauthorization expires on Friday.

GLBA AMENDMENT

Section 75001 of H.R. 22 (in a standalone Title LXXV) would amend Section 503 of the GLBA to provide an exception to the annual privacy notice requirement. Section 75001 is identical to a bill passed by the House in April ([H.R. 601](#)).

The GLBA and its implementing regulations provide that a financial institution must provide each customer, on an annual basis over the course of the customer relationship, with notice concerning the institution’s privacy policies and practices. *See, e.g.*, 12 C.F.R. § 1016.5 (Consumer Financial Protection Bureau). Although the GLBA provides a financial institution with multiple options for delivering annual privacy notices to its customers, financial institutions largely mail privacy notices in order to ensure that customers can reasonably be expected to receive notice, as required. With more than 300 million individuals residing in the United States, many of whom have relationships with multiple financial institutions (*e.g.*, a consumer may have relationships with different financial institutions with respect to a wide variety of financial products, including a credit card, checking account, auto installment loan, mortgage, investment account, and other accounts), the volume of annual privacy notices that are mailed each year is massive. Doing “back-of-the-napkin” math, it is not inconceivable that financial institutions mail a billion privacy notices per year. Regardless of the actual number, it is clear that the GLBA annual notice requirement is a significant burden on the financial industry.

Section 75001 would alleviate this burden for some financial institutions. Specifically, Section 75001 would provide that a financial institution that meets the following two conditions would not be required to provide its customers with an annual privacy notice:

- 1) the financial institution provides nonpublic personal information about customers to nonaffiliated third parties only pursuant to GLBA exceptions permitting such disclosure (*i.e.*, the financial institution is not

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required to provide customers with a GLBA opt out for sharing with nonaffiliated third parties); and

- 2) the financial institution has not changed its policies and practices relating to disclosure of nonpublic personal information from the policies and practices that were disclosed in the most recent GLBA privacy notice sent to consumers.

A financial institution, however, would be required to resume providing annual privacy notices if it failed to continue to meet these conditions.

Section 75001 is an approach to regulatory relief far superior to the rule issued by the CFPB in October 2014 that permits financial institutions to provide annual privacy notices online (as opposed to by mail) if they meet a lengthy list of conditions and requirements, including mailing a privacy notice to a customer within 10 days of the customer's request. Specifically, the CFPB's rule includes a number of conditions beyond those included in Section 75001, including that a financial institution does not include an FCRA affiliate sharing opt out in its annual GLBA privacy notice and uses the CFPB's model privacy form for its annual notice. See 12 C.F.R. § 1016.9(c). In effect, the CFPB's rule denies relief to all but the smallest financial institutions. In fact, although cast as regulatory relief, the conditions imposed under the CFPB's rule actually appear designed to constrain the information-sharing practices of financial institutions.

In contrast, Section 75001 would provide significant regulatory relief to financial institutions that do not share customer information with nonaffiliated third parties outside of GLBA exceptions and have not changed their privacy notice. Although Section 75001, if enacted, would be an important step in the regulatory relief direction, the regulatory relief provided would not be available to financial institutions that share customer information with nonaffiliated third parties outside of GLBA exceptions.

FCRA AMENDMENT

Section 80001 of H.R. 22 (in a standalone Title LXXX) includes a limited amendment to the FCRA permissible purpose provision that permits state and local child support enforcement agencies to obtain consumer reports. For example, Section 80001 would permit child support enforcement agencies to obtain consumer reports in connection with enforcing a child support order, award, agreement, or judgment (in addition to the other purposes for which they may obtain consumer reports under existing law). Section 80001 also would remove the obligation for a child support enforcement agency to provide prior notice to the relevant consumer before a consumer report is requested. Although Section 80001 amends the FCRA, the amendment would have no impact outside of the child support context or for entities other than child support agencies and the consumer reporting agencies from whom they obtain consumer reports.

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