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CFPB's Proposed Rule Promotes More Efficient and Effective Privacy Disclosures

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The Consumer Financial Protection Bureau (CFPB) has proposed a rule that would promote more effective privacy disclosures from financial institutions to its respective customers. Currently, the Gramm-Leach-Bliley Act (GLBA) holds that financial institutions such as national and regional banks must provide their customers with initial and annual privacy disclosure statements regarding any and all privacy policies that apply to their customers. Additionally, if the financial institution participates in data sharing with third parties, the institution must also provide its customers with a notice and opportunity to "opt out" of such sharing.

However, with the newly proposed rule, financial institutions that do not engage in certain types of information sharing activities may stop mailing these annual disclosures if they provide them on their websites and meet certain other conditions.

What does an institution need to do to qualify? Specifically, the CFPB has laid out five cardinal requirements to be eligible for the proposed amendment:

1. The financial institution must not share its customers' non-public personal information with non-affiliated third parties in a manner that triggers the required GLBA opt-out opportunity.
2. The financial institution cannot include on its annual privacy statement an opt-out notice pursuant to the Fair Credit Reporting Act (FCRA).
3. The financial institution's annual privacy statement must not be the only notice provided to its customers regarding the requirements of section 624 of the FCRA.
4. The information included in the institution's privacy statement has not changed since the customers received the previous statement.
5. The financial institution must use the model form provided in the GLBA's implementing Regulation P.

If the financial institution satisfies the requirements above, it need only provide to its customers, in writing once a year, a notice that the institution's privacy notice is available online and will be mailed to any customer upon request by the use of a toll-free number. Notably, there are distinct benefits to this proposed rule for both the customers affected and the financial institutions that qualify.

By making privacy disclosure statements available online, customers will have unlimited and constant access to the respective privacy policy. Also, the online privacy disclosure would be available to all consumers and thereby would not require a login to view. Additionally, it does not affect a consumer's right to a written opt-out notice if the institution participates in data sharing activity, thereby maintaining the customer's right to maintain the privacy of their non-public information. Under this proposal, financial institutions opting to use online privacy disclosures must use the GLBA Regulation P form. This model disclosure would allow customers who are concerned about privacy to "comparison shop" when determining which financial institution to use. Lastly, this proposed rule clearly reduces the cost for institutions that currently provide written privacy notices. The Bureau estimates that about $17 million could be saved annually in the entire industry if institutions choose to use the proposed online disclosure method.