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MEMORANDUM

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Summary of Final Privacy Rules Under The Gramm-Leach-Bliley Act

The Federal financial supervisory agencies are in the process of finalizing the rules that they had proposed to implement the privacy provisions of the Gramm-Leach-Bliley Act. We understand that the rules will provide for the following:

Effective Date

The rules will be effective on November 13, 2000. However, financial institutions will not be required to comply with them until July 1, 2001. Accordingly, for all practical purposes, the effective date has been extended to July 1, 2001.

Examples and Model Clauses

The rules contain model clauses and examples that financial institutions may use. The rules provide that compliance with an example or model clause constitutes compliance with the rule.

Definitions

The definitions in the final rules are very similar to those proposed. For example, a “consumer” includes a person who applies for credit for personal, family or household purposes even if the person is declined. However some important changes have been made.

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- An individual is not a “customer” of a financial institution solely because the customer has designated the financial institution as a trustee for a trust. However, a consumer is a customer of a financial institution which acts as custodian for the consumer’s IRA.

The examples provided in the rules in respect of certain definitions are essentially the same as those proposed, although an effort has been made to clarify them.

- One significant change relates to the definition of “customer” in the context of servicing. The rules clarify that a financial institution that holds ownership or servicing rights to an individual’s loan has a “customer” relationship with that person even if the ownership and servicing rights are held in conjunction with other financial institutions.
- However, a financial institution that provides processing or other services to another financial institution is not required to treat the customers of the other financial institution as its customers.

The definitions of “nonpublic personal information” and “personally identifiable financial information” reflect Alternative B. This means that virtually all information which is otherwise publicly available is not “nonpublic personal information.”

- Names, addresses and telephone numbers will not be regarded as “personally identifiable financial information” if the financial institution has a reasonable basis for believing that they are available from a telephone directory. (A financial institution has a “reasonable basis” if it has located the telephone number in a telephone book or has been informed by the consumer that the number is not unlisted.)
- Customer lists will be regarded as nonpublic personal information. Accordingly, a financial institution could not provide a list of customers to an unaffiliated third party unless it had previously provided its customers with notice and an opportunity to opt out.
- The rules also treat any information collected through an Internet “cookie” placed on a consumer’s computer as nonpublic personal information.

Initial Notice

A financial institution must provide an initial notice to a consumer at the time the consumer becomes a customer, *i.e.*, when the financial institution and the customer enter into a continuing relationship. (The proposed rule required that disclosures be provided prior to entering into a customer relationship.)

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- The initial notice can be provided within a reasonable time after establishing the customer relationship if the customer agrees to receive it at a later time and the requirement for earlier delivery of the notice would substantially delay the transaction.
- A financial institution may also provide notice at a later time if an independent third party arranges the customer relationship without the financial institution's prior knowledge.
- The rules provide for the use of a short form initial notice for a consumer who is not a customer.
- Affiliated financial institutions may provide joint initial and annual notices.
- Notices must be provided to consumers who are not customers before the financial institution discloses nonpublic personal information about the consumer. This is unchanged from the proposal.
- A financial institution that sells the servicing rights to a loan to another financial institution does not need to treat the consumer as its customer. In this instance, the servicer is responsible for providing the required disclosures. A loan servicer may agree with the owner of the loan to assume the customer relationship.
- Only one notice need be sent to joint accountholders.
- New privacy notices need not be sent to an existing customer who obtains an additional product or service if the notice which had previously been delivered continues to be accurate.

Annual Notice

The rules clarify that an annual notice can be sent at anytime during the calendar year. Consequently, if a customer opens an account during the year 2001, the annual notice may be sent at anytime during the year 2002. This represents a clarification of the proposed rules which suggested that an annual notice was required to be sent at least once during every 12 month period.

Types of Information to Be Included in Notices

- The type of information which must be included in the initial and annual notices is essentially unchanged from the proposed rules.
- The notice may include categories of information which the financial institution does not currently disclose, but may in the future disclose. This also applies to the categories of third parties to whom information may be disclosed in the future.

Opt Out Methods

- The requirements and methods with regard to providing consumers and customers with an opportunity to opt out are essentially unchanged from the proposal. A financial institution may not require a consumer to write a letter in order to opt out.
- The rules clarify that a financial institution may treat an opt out from one joint account holder as being effective for all account holders.
- The rule provides that a financial institution provides a consumer with a reasonable period of time to opt out if it waits 30 days from the date of mailing before disclosing nonpublic personal information to nonaffiliated third parties.
- A financial institution is required to comply with a consumer's direction to opt out as soon as reasonably practicable after receiving it.
- A consumer's decision to opt out continues in effect until revoked in writing or electronically.

Redisclosure and Reuse

- A financial institution generally may reuse information it has obtained from a nonaffiliated third party as a result of an exception by providing it to its affiliates, or to carry out the activity covered by the exception under which it received the information.
- A financial institution generally may reuse information it has obtained from a nonaffiliated third party other than as a result of an exception by providing it to its affiliates, or to any other person if the disclosure would otherwise be permitted had it been made directly by the financial institution which had provided the information.

- A third party which receives information pursuant to an exception generally may disclose it to its affiliates and to others in order to carry out the activity covered by the exception under which it had received the information.

Sharing of Account Numbers

- The final rules clarify that a financial institution may disclose an account number or access code to its agent or service provider solely to perform marketing of the financial institution's products or services so long as the third party cannot directly initiate charges to the customer's account.
- A financial institution may disclose an account number or access code to a participant in a private credit card program or an affinity program.
- The rules provide that an account number or access code does not include a number or code in an encrypted form so long as the financial institution does not provide the recipient with a means to decode the number or code.
- The rules state that a transaction account includes an account to which a third party may initiate a charge.

Exceptions

- The exceptions for service providers and joint marketing remain essentially unchanged from the proposal.
- The definition of a joint agreement is unchanged. A joint agreement is a written contract whereby two or more financial institutions jointly offer, endorse or sponsor a product or service.
- The general exceptions contained in the proposed rules, which follow the exceptions in the Gramm-Leach-Bliley Act, remain unchanged.

Protection of the Fair Credit Reporting Act

The rules state that they do not affect the FCRA.

Relation to State Laws

The rules provides that the Federal Trade Commission will determine whether a state law, rule, order or interpretation is inconsistent with the rule adopted by the federal agencies. State provisions that are inconsistent with the federal rules are preempted.

Grandfathering of Existing Contracts

Financial institutions are given two years to modify existing contracts with service providers in order to bring them into compliance if the financial institution is required to enter into a confidentiality agreement with the third party service provider under section 502(b)(2) of the act.