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Sent: Tuesday, March 15, 2016 10:08 AM
To: Rietchek, Sara (DFI)
Subject: WA DFI Consumer Loan Act Rulemaking

The following comments are offered on behalf of the Washington State Financial Services Association (WSFSA), an association of Consumer Loan licensees, regarding the Consumer Loan Act rule making currently underway.

The Washington Department of Financial Institutions, Division of Consumer Services (“DFI”) is proposing a new WAC related to initial and annual privacy notices required by the federal Gramm-Leach-Bliley Act (“GLBA”) and Regulation P. The DFI’s proposed WAC states:

WAC 208-620-572 Consumer financial information privacy under the Gramm-Leach-Bliley Act (Regulation P). (1) Licensees must comply with Regulation P. At a minimum, licensees must:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's privacy policy has not changed, additional notices may not be required.

(2) See Regulation P at 12 C.F.R. Part 1016 for the required details.

Disconcertingly, the WAC does not refer to the requirements and exceptions in the GLBA statute, but only the requirements in the GLBA’s implementing regulation, Regulation P. This is concerning because the GLBA (not Regulation P) was recently amended to add an exception to the annual privacy notice requirements.

Prior to December 4, 2015, the GLBA required financial institutions to mail an annual privacy notice to their customers that states how they collect, use and disclose those customers’ nonpublic personal information (“NPI”) and whether customers may limit such sharing. On December 4, 2015, President Obama signed the Fixing America’s Surface Transportation (“FAST Act”). The FAST Act, which is aimed at improving the country’s surface transportation infrastructure, contains an exception providing that a financial institution does not have to provide an annual privacy notice if the financial institution (1) only shares NPI with nonaffiliated third-parties in a manner that does not require an opt-out right be provided to customers (e.g., if the institution discloses NPI to a service provider or for fraud detection and prevention purposes) and (2) has not changed its policies and practices with respect to disclosing NPI since it last provided a privacy notice to its customers. The FAST Act amendment was effective immediately.

In sum, the GLBA now contains an exception excluding financial institutions from the annual delivery of privacy notices to customers so long as there are no changes to the financial institution’s privacy policy. As noted above, the FAST Act only amended the GLBA statute. There is no similar exception in Regulation P and there will not be until that regulation is amended by the Consumer Financial Protection Bureau to be consistent with the GLBA.

Some WSFSA members' privacy policy practices fall within the new GLBA exception and therefore some WSFSA members may now stop sending annual privacy policy notices until they make a change to privacy policy. Because the proposed WAC references only the privacy policy notice requirements under Regulation P, the DFI could deem these WSFSA members in violation of the WAC for not complying with Regulation P. A simple fix would be to add the following language to the proposed WAC:

WAC 208-620-572 Consumer financial information privacy under the Gramm-Leach-Bliley Act and Regulation P. (1) Licensees must comply with **the Gramm-Leach-Bliley Act (GLBA), as amended, and Regulation P. Unless subject to an exception under the GLBA, as amended,** licensees must, at a minimum:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's privacy policy has not changed, additional notices may not be required.

(2) See **the GLBA, as amended, and Regulation P** at 12 C.F.R. Part 1016 for the required details.

Thank you for your consideration.

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