

PRIVACY NOTIFICATION TECHNICAL CLARIFICATION ACT

DECEMBER 4, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2396]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2396) to amend the Gramm-Leach-Bliley Act to update the exception for certain annual notices provided by financial institutions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Privacy Notification Technical Clarification Act”.

SEC. 2. EXCEPTION TO ANNUAL NOTICE REQUIREMENT.

Section 503 of the Gramm-Leach-Bliley Act (15 U.S.C. 6803) is amended by adding at the end the following:

“(g) **ADDITIONAL EXCEPTION TO ANNUAL NOTICE REQUIREMENT.**—

“(1) **IN GENERAL.**—A financial institution that has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section shall not be required to provide an annual disclosure under this section if—

“(A) the financial institution makes its current policy available to consumers on its website and via mail upon written request sent to a designated address identified for the purpose of requesting the policy or upon telephone request made using a toll free consumer service telephone number; and

“(B) the financial institution conspicuously notifies consumers of the availability of the current policy, including—

“(i) with respect to consumers who are entitled to a periodic billing statement, a message on or with each periodic billing statement; and

“(ii) with respect to consumers who are not entitled to a periodic billing statement, through other reasonable means such as on its website or with other written communication, including electronic communication, sent to the consumer.

“(2) TREATMENT OF MULTIPLE POLICIES.—If a financial institution maintains more than one set of policies described under paragraph (1) that vary depending on the consumer’s account status or State of residence, the financial institution may comply with the website posting requirement in paragraph (1)(A) by posting all of such policies to the public section of the financial institution’s website, with instructions for choosing the applicable policy.”.

PURPOSE AND SUMMARY

Introduced by Representative David Trott on May 4, 2017, H.R. 2396, the “Privacy Notification Technical Clarification Act,” amends the Gramm-Leach-Bliley Act to exempt from its annual privacy policy notice requirement any financial institution which: (1) has not changed its policies and practices with regard to the disclosure of nonpublic personal information from those disclosed in the most recent disclosure sent to consumers; (2) makes its current policy available to consumers on its website and via request; (3) notifies customers of the availability on periodic billing statements or electronically; and (4) posts all notices if it maintains more than one policy.

BACKGROUND AND NEED FOR LEGISLATION

The Gramm-Leach-Bliley Act of 1999 (GLBA) [Pub. Law No. 106–102] requires financial institutions to issue privacy disclosure notices to consumers that detail the institution’s privacy policies if it shares customers’ non-public personal information with affiliates or third parties. GLBA also requires financial institutions to notify both existing and potential customers of their right to opt out of sharing non-public personal information with third parties. Financial institutions must make such disclosures when it first establishes a customer relationship and then annually in written form as long as the relationship continues, even if the financial institution makes no changes to the disclosure policies.

On October 20, 2014, the Consumer Financial Protection Bureau (CFPB) finalized a rule that allows financial institutions to post its annual privacy notices online instead of physical delivery to individuals if the financial institution meets a series of conditions, to include not sharing the customer’s nonpublic personal information with nonaffiliated third parties.

On December 4, 2015, President Obama signed into law the Fixing America’s Surface Transportation Act (FAST Act) [Pub. Law No. 114–94]. Section 75001 of the FAST Act amended the GLBA to add an exception to the annual notice delivery requirement for any financial institution that does not share information with non-affiliated third parties and does not change its privacy policy from the last time it was disclosed.

H.R. 2396 improves on these FAST Act changes as it exempts from the annual privacy policy notice requirement any financial institution that has not changed its policies for the sharing of non-public information and has not changed its privacy policy from the most recent disclosure. A number of financial institutions are unable to meet the conditions included in the current annual notice

delivery exemption, including financial services providers such as captive auto finance companies because of activities related to their interaction with auto dealerships.

H.R. 2396 provides additional flexibility for financial institutions to use alternative delivery methods, and would allow them to both make privacy policies available to customers on the institution's website, and notify customers of the statement's availability via any billing statements they already receive (including electronic billing statements), or, if the customer does not receive billing statements, a financial institution may use other reasonable means to provide the policy notice on the financial institution's website or in other communications that the customer may receive from the institution.

Requiring financial institutions to continue to physically mail and prepare annual privacy notices even when no policy changes have been made are redundant, unnecessary, and can be confusing. Considering that many consumers often ignore these mailings, producing and mailing these notices cost institutions millions of dollars. Eliminating the annual physical delivery requirement would remove an additional expense for financial institutions, and allow institutions devote valuable staff and technological resources to other projects and reduce the overall cost of financial services. When a financial institution actually alters its privacy policy, consumers would receive material information and the mailing the consumer received would be more significant.

Appearing before the Committee on March 18, 2015, Adam J. Levitin, Professor of Law, Georgetown University Law Center, testified:

One thing that I think should go the way of the Dodo bird are the Gramm-Leach-Bliley privacy notices. Nobody reads them. If anything, the only effect they have would be to lull consumers into thinking they actually have some privacy rights. There is no reason anyone should—even the large banks, should [be] spending money on giving those notices.

In a letter of support for H.R. 2396 dated October 10, 2017, the American Financial Services Association wrote:

Annual privacy notices without policy changes are redundant, unnecessary, and confusing. They contain several pages of small-print legalese, which have little value for consumers. In fact, they are largely discarded—unread—immediately upon receipt. However, producing and mailing these notices costs millions of dollars.

In a letter of support for H.R. 2396 dated October 10, 2017, the American Bankers Association wrote:

[H.R. 2396] would simplify the notice requirements for financial institutions that have not changed their privacy policies. In addition to the relief provided by the FAST Act for financial institutions that only share information within the statutory exceptions, it would create a simple disclosure mechanism using the Internet for financial institutions that have not changed their privacy practices.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 2396 on April 26, 2017, and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on 10/11/2017, 10/12/2017, and ordered H.R. 2396 to be reported favorably to the House as amended by a recorded vote of 40 yeas to 20 nays (Record vote no. FC-77), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Trott, and an amendment to the amendment in the nature of a substitute, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 40 yeas to 20 nays (Record vote no. FC-77), a quorum being present.

Record vote no. FC-77

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer		X	
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2396 will end the practice of sending annual privacy disclosures to consumers that are redundant, unnecessary, and confusing, by exempting financial institutions from the requirement to send such disclosures in certain circumstances.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2396, the Privacy Notification Technical Clarification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2396—Privacy Notification Technical Clarification Act

Once each year, under current law, financial institutions are required to disclose to all customers their policies and practices regarding the collection of customers' private personal information and the disclosure of such information to affiliates and third parties. The Consumer Financial Protection Bureau (CFPB), Securities and Exchange Commission (SEC), Commodity Futures Trading

Commission (CFTC), and Federal Trade Commission (FTC) are authorized to promulgate rules to enforce those requirements.

H.R. 2396 would exempt financial institutions from that annual disclosure requirement, if they:

- Have not changed their policies and practices related to the disclosure of private personal information since their most recent disclosure;
- Make those policies available online and upon request through the mail or over the telephone; and
- Periodically notify customers of the availability of information on those policies and practices.

Using information from the FTC, CBO estimates that implementing H.R. 2396 would cost less than \$500,000 for the FTC and CFTC to update agency guidance documents related to the disclosure of customer information. That spending would be subject to the availability of appropriated funds. The SEC also would incur costs of less than \$500,000. However, because the SEC is authorized to collect fees sufficient to offset its annual appropriation, CBO estimates that the net effect of the bill on discretionary spending by the SEC would be negligible, assuming appropriation actions that are consistent with that authority.

Using information from CFPB, CBO estimates that enacting H.R. 2396 would increase direct spending by less than \$500,000 for the agency to update its guidance documents. Because H.R. 2396 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2396 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2396 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 2396 as the “Privacy Notification Technical Clarification Act”.

Section 2. Exemption to annual notice requirement

This section amends Section 503 of the Gramm-Leach-Bliley Act to create an exception to the annual privacy notice requirement so long as a financial institution: (1) has not changed its policies and practices with regard to disclosing nonpublic personal information from those disclosed in the most recent disclosure sent to consumers; (2) makes its current policy available to consumers on its website and via request; (3) notifies customers of the availability on periodic billing statements or electronically; and (4) posts all notices if it maintains more than one policy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

GRAMM-LEACH-BLILEY ACT

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TITLE V—PRIVACY

**Subtitle A—Disclosure of Nonpublic
Personal Information**

* * * * *

SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.

(a) **DISCLOSURE REQUIRED.**—At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, of such financial institution's policies and practices with respect to—

- (1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed;
- (2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and
- (3) protecting the nonpublic personal information of consumers.

(b) **REGULATIONS.**—Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 504.

(c) **INFORMATION TO BE INCLUDED.**—The disclosure required by subsection (a) shall include—

- (1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

- (2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

(d) **EXEMPTION FOR CERTIFIED PUBLIC ACCOUNTANTS.**—

(1) IN GENERAL.—The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

- (A) a certified public accountant;
- (B) certified or licensed for such purpose by a State; and
- (C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) LIMITATION.—Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) DEFINITIONS.—For purposes of this subsection, the term “State” means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) MODEL FORMS.—

(1) IN GENERAL.—The agencies referred to in section 504(a)(1) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) FORMAT.—A model form developed under paragraph (1) shall—

- (A) be comprehensible to consumers, with a clear format and design;
- (B) provide for clear and conspicuous disclosures;
- (C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and
- (D) be succinct, and use an easily readable type font.

(3) TIMING.—A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after the date of enactment of this subsection.

(4) SAFE HARBOR.—Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) EXCEPTION TO ANNUAL NOTICE REQUIREMENT.—A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

(g) *ADDITIONAL EXCEPTION TO ANNUAL NOTICE REQUIREMENT.*—

(1) *IN GENERAL.*—A financial institution that has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section shall not be required to provide an annual disclosure under this section if—

(A) the financial institution makes its current policy available to consumers on its website and via mail upon written request sent to a designated address identified for the purpose of requesting the policy or upon telephone request made using a toll free consumer service telephone number; and

(B) the financial institution conspicuously notifies consumers of the availability of the current policy, including—

(i) with respect to consumers who are entitled to a periodic billing statement, a message on or with each periodic billing statement; and

(ii) with respect to consumers who are not entitled to a periodic billing statement, through other reasonable means such as on its website or with other written communication, including electronic communication, sent to the consumer.

(2) *TREATMENT OF MULTIPLE POLICIES.*—If a financial institution maintains more than one set of policies described under paragraph (1) that vary depending on the consumer's account status or State of residence, the financial institution may comply with the website posting requirement in paragraph (1)(A) by posting all of such policies to the public section of the financial institution's website, with instructions for choosing the applicable policy.

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MINORITY VIEWS

H.R. 2396, the “Privacy Notification Technical Correction Act,” would ease the annual privacy notice requirements for financial institutions that share or sell a customer’s personal information with an unaffiliated third party in instances where a customer has the right to opt-out from having their information shared.

Under the Gramm-Leach-Bliley Act (GLBA), customers are generally entitled to an annual privacy notice from their financial institutions. During the 114th Congress, legislation was enacted to narrowly exempt financial institutions from having to provide an annual privacy notice if the privacy policy and practices had not changed from the last time the customer received a copy, and if the institution does *not* share or sell a customer’s personal information with an unaffiliated third party. In those instances, the customer does *not* have the ability to opt-out from having their information shared by a financial company with its affiliated companies. Without clarifying language, H.R. 2396 would eliminate meaningful, clear disclosures to consumers about their privacy rights, including their ability to opt-out from having their information sold to unaffiliated third party companies.

Furthermore, the current form of H.R. 2396 would expand flexibility to comply with, if not minimize, annual notice requirements under the GLBA to all financial institutions, including payday lenders, rent-to-own companies, and potentially bad actors. It would be prudent to narrow the scope of the bill to just financial institutions that obtain and share customer information only with close, but unaffiliated third parties. Specifically, captive automobile finance companies maintain a unique relationship with their parent manufacturing company and automobile dealerships that are technically unaffiliated third parties for purposes of the GLBA.

Before advancing H.R. 2396 further in the legislative process, the bill should be further refined to limit its scope and to improve the notices that customers will receive.

For these reasons, we oppose H.R. 2396, in its current form.

MAXINE WATERS.
MICHAEL E. CAPUANO.
KEITH ELLISON.
AL GREEN (TX).
CAROLYN B. MALONEY.
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ED PERLMUTTER.
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