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Congress Eases Regulatory Burden On Financial Institutions In Complying With Gramm-Leach-Bliley Act's Privacy Rules

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On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act of 2015 (the "FAST Act"). A transportation bill is an unusual place to find Congress regulating financial privacy, but buried deep in the FAST Act is an amendment to Section 503 of the Gramm-Leach-Bliley Act (the "GLB Act"), which regulates the sharing of nonpublic personal financial information by financial institutions. This amendment eases the regulatory burden on some financial institutions that share nonpublic personal financial information with nonaffiliated third parties.

Section 503 of the GLB Act (15 U.S.C. § 6803) requires a financial institution that shares nonpublic personal financial information of its customers with nonaffiliates to provide customers with an initial notice regarding its privacy and information sharing policies at the time of establishing the customer relationship, and a notice each year thereafter. Under certain circumstances, the financial institution must provide the customer with an opportunity to opt-out of the sharing of their nonpublic personal financial information. Before the FAST Act, a financial institution was required to send to a customer an annual privacy notice, even if the information in that notice was identical to the information in the prior notice sent to the customer, whether it was an initial notice or an annual notice. Such disclosure is unnecessary and, obviously, very expensive for large financial institutions.

Buried on page 1268 of the FAST Act, Section 750001 amends Section 503 of the GLB Act to provide that a financial institution need not send an annual privacy notice to its customers provided that the financial institution "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" Section 503, and does not share nonpublic personal information of its customers with nonaffiliated third parties except under certain exceptions outlined in the GLB Act.

Specifically, financial institutions may take advantage of the FAST Act's amendment to Section 503 only if they share nonpublic personal information of customers with nonaffiliates (1) under the Section 502(b)(2) exception for sharing of information to perform services for or functions on behalf of the financial institution (including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions), (2) under the complicated exceptions in Section 502(e), including sharing information as necessary to effect, administer or enforce a transaction requested or authorized by the customer, or (3) under exceptions adopted by the Consumer Financial Protection Bureau pursuant to Section 504(b) of the GLB Act in Regulation P promulgated thereunder.

While the new amendment to Section 503 is limited to financial institutions that share nonpublic personal information with nonaffiliates under certain exceptions under the GLB Act,

it will provide much-needed relief to at least some financial institutions from the regulatory burdens of the GLB Act and Regulation P.

For more information regarding the Gramm-Leach-Bliley Act's privacy regulations, the privacy regulations promulgated by the various states related to that Act, or Section 750001 of the FAST Act, please contact Joseph W. Guzzetta at

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