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DATA PRIVACY DEVELOPMENTS IN THE MORTGAGE INDUSTRY

This article considers the implications for the mortgage industry of the growing patchwork of enacted and proposed consumer privacy legislation at the state and federal level. Most state laws exempt financial institutions subject to the Gramm-Leach-Bliley Act, but some exempt only the personal information collected pursuant to that statute. A proposed federal consumer privacy statute would preempt inconsistent state laws, set a federal standard, and deem financial institutions in compliance if they complied with other, existing federal privacy laws, such as the GLBA.

By Theodore P. Augustinos *

California and 17 other states have recently enacted legislation to (1) impose requirements on businesses that process information that identifies, or can reasonably be identified with, an individual and (2) grant individuals significant rights concerning this information.¹ These consumer privacy laws will continue to roll out across the United States, as many other states have some form of consumer privacy legislation at some stage of consideration for enactment.² In addition, there has been apparent bipartisan interest at the federal level to address

the increasing interest in consumer privacy and to avoid a patchwork of different state laws on this topic.

What implications do these developments have for the mortgage industry?

FEDERAL CONSUMER PRIVACY FOR MORTGAGE CONSUMERS: GLBA, FCRA, AND THE CONSUMER FINANCIAL PROTECTION BUREAU

For nondepository consumer mortgage lenders and brokers, the Consumer Financial Protection Bureau (“CFPB”) has rulemaking authority pursuant to Title V of the Gramm-Leach-Bliley Act of 1999 (“GLBA”),³

¹ This information is broadly defined by many of these statutes, and for purposes of this article, as “personal data.”

² See ANDREW FOLKS, US STATE PRIVACY LEGISLATION TRACKER, <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/> (May 28, 2024).

³ 15 U.S.C. §§ 6801–6809.

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