October 25, 2004

Ms. Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington D.C. 20551

Attention: Docket No. R-1206

Office of the Comptroller of the Currency
250 E Street, SW
Mailstop 1-5
Washington D.C. 20219

Attention: Docket 0418

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington D.C. 20552

Attention: No. 2004-35

Re: Request for Burden Reduction Recommendations; Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review
69 FR 43347 (July 20, 2004)

Dear Sir or Madam:

America's Community Bankers ("ACB")[1] is pleased to comment on the federal banking agencies' (the "agencies")[2] review of regulatory burden imposed on insured depository institutions.[3] Required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"),[4] the agencies are reviewing and identifying outdated, unnecessary, and unduly burdensome regulatory requirements. This comment letter responds to the request for comments regarding consumer protection regulations governing account/deposit relationships as well as other miscellaneous consumer rules.

---

[1] America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com.*

[2] Federal Deposit Insurance Corporation ("FDIC"), Federal Reserve Board (the "Board"), Office of the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS").

[3] 69 Fed. Reg. 43347 (July 20, 2004).

[4] Pub. L. 104-208, Sept. 30, 1996.

ACB Position

ACB strongly supports efforts to the reduce regulatory burden borne by insured depository institutions. Community banks are at the heart of cities and towns across the country, and eliminating unnecessary regulations will free up funds for community banks to invest in their communities and better serve their customers' financial needs. Moreover, reducing regulatory burden will enable insured depository institutions to compete with less regulated or unregulated financial service providers. Community banks must comply with an array of consumer compliance regulations. In many cases, these regulations are laudable in their intent, but are costly to implement and do not provide consumers with meaningful information or benefits.

Specifically, ACB suggests that the agencies:

- Eliminate the annual privacy notice requirement for depository institutions that do not share information with non-affiliated third parties.
- Develop simplified model language for privacy notices and/or short form privacy notices.
- Provide risk assessment models regarding the security of customer information.
- Issue additional guidance regarding third party service provider arrangements.
- Support efforts to strengthen the deposit insurance system.
- Eliminate the requirement that the FDIC symbol be placed at every teller window.
- Clarify when FDIC official advertising language is required.
- Amend Regulation DD's recordkeeping requirement.
- Treat unauthorized debit card transactions in a manner that is consistent with check law.
- Distinguish between stored value products that are designed to be treated like cash and products that have characteristics of traditional deposit accounts.

Privacy of Consumer Information

Title V of the Gramm Leach Bliley Act[5] ("GLBA") requires each financial institution to disclose its privacy policy to the consumers and customers it serves. In addition, institutions must restrict the sharing of nonpublic personal information with most non-affiliated third parties without first providing consumers the ability to prevent the exchange of their information ("opt-out"). Every institution must provide an initial disclosure of its privacy policy and an initial opt-out notice. Further, financial institutions must provide these costly notices and disclosures to their customers each year.

[5] Pub. L. 106-102, 113 Stat. 1338 (November 12, 1999).

At the end of 2001, ACB conducted a survey to measure the costs of complying with GLBA's privacy policy and opt-out disclosure requirements.[6] The survey concluded that the costs to comply with the GLBA's privacy provisions were significantly greater for community banks on both a per-customer and a percentage-of-expenses basis. The survey also found that customers rarely exercised the option of prohibiting their bank from sharing customer financial information with non-affiliated third parties, and that a majority of customers did not find the disclosures useful.

The average compliance cost for developing and mailing the disclosures was $1.37 per customer, with total estimated compliance costs per bank ranging widely from as little as $1,000 to more than $2 million. The survey found the cost per customer averaged 27 cents at banks with assets of $10 billion or more, compared with per customer costs of $2.37 at banks with assets of less than $50 million -- almost nine times as much. As a percentage of non-interest expenses salaries, employee benefits, occupancy costs, etc.), banks with less than $50 million in assets paid almost four times as much as the group of banks with assets of $10 billion or more. The survey interpreted these results to mean that larger banks with in-house legal and consulting staff were able to do most of the compliance work themselves, while smaller banks sought outside legal help and consultants.

A 2002 survey found that while compliance costs were reduced significantly, as initial policies and procedures developed in 2001 became institutionalized, they remained high. In 2002, ACB found that the estimated average compliance per customer was about $0.65 per customer. While printing and postage are part of these costs, ACB members report that the greatest costs come from staff and management time needed to ensure full compliance. ACB believes that these privacy related compliance costs will continue to be absorbed by financial institutions for the foreseeable future and that they are only likely to increase in response to additional requirements being considered at the state level.

While the current disclosure scheme is well intentioned, we strongly urge the agencies to explore other, more efficient and more effective means of informing consumers of an institution's privacy policy. ACB suggests 1) eliminating the annual privacy notice requirement for depository institutions that do not share information with non-affiliated third parties and 2) developing simplified model language for privacy notices.

Annual Notice Requirement Should be Eliminated. ACB believes that annual privacy notices for community banks that do not share information with non-affiliated third parties outside the limited exceptions found in the GLBA are an unnecessary and redundant burden to both banks and consumers. Such privacy notices do not contain any opt-out election for a customer to make and will most often be duplicative of previous notices. Therefore, we urge the agencies to eliminate the annual privacy notice requirement for institutions that do not share information with non-affiliated third parties. Institutions with limited information sharing practices should be

[6] See Attachment A.

allowed to provide consumers with an initial notice, and provide subsequent notices only when the terms of that notice are modified.

ACB believes that the initial privacy notice is important and is helpful to consumers. However, it is unnecessary, duplicative, and costly for community banks to send thousands of privacy notices to their customers year after year when the institution does not share consumer information with non-affiliated third parties and when the institution's privacy policy remains unchanged. Redundancy in this case does not enhance consumer protection. Rather, consumers are numbed with volume.

In the past, the banking agencies have stated that the need to provide annual privacy notices is a statutory mandate that the agencies do not have discretion to address.[7] ACB urges the agencies to reconsider this position. Section 504(b) of GLBA may allow the agencies some discretion to establish more flexible disclosure requirements. Section 502(a) of GLBA defines when privacy disclosures must be provided and states that such notices must comply with section 503, which requires banks to provide privacy notices to their customers "not less than annually." Because the agencies are allowed to grant exceptions to Section 502(a), there may be a basis for the establishment of more flexible disclosure requirements without usurping Congressional intent. Should the agencies determine that they do not have the authority to revise the annual disclosure requirement, we strongly urge the agencies to recommend Congressional action to address this costly burden on community banks with limited information sharing practices.

We believe an annual notice requirement is appropriate for institutions with more complex information sharing practices. Under these circumstances, the annual notice requirement is more consistent with Congressional intent because consumers are given an opportunity to control how their information is shared with third parties.

The Agencies Should Develop Simplified Model Language. ACB believes that the agencies can help community banks make privacy notices more effective. In order for privacy notices to be useful, they must be readable and easy for consumers to understand. Research indicates that many consumers do not find the privacy notices to be helpful and most disregard the notices entirely. The complexity of the statements – which is dictated by GLBA and the implementing privacy regulations – certainly contributes to consumers' disregard of the notices. For example, many institutions currently use terms such as "nonpublic personal information" and "nonaffiliated third parties" because the current regulations do not provide explicit flexibility regarding disclosure language. Accordingly, ACB strongly urges the agencies to develop model privacy notices and/or standardized clauses that are concise and easy to read. We also urge the agencies to provide safe harbor protections for institutions that use the model notices, provided that they accurately reflect an institution's privacy policy.

In December 2003, the agencies requested comment on whether they should consider amending the regulations that implement sections 502 and 503 of the GLBA to allow or require financial

[7] 65 Fed. Reg. 8770 (Feb. 22, 2000).

institutions to provide alternative types of privacy notices, such as a short privacy notice, that would be easier for consumers to understand.[8] ACB appreciates agency efforts to develop a model privacy notice that would be short and simple. We urge the agencies to continue working to develop a short form notice that is more concise than the sample clauses provided in the GLBA. However, we urge the agencies to remain cognizant that any changes to the GLBA privacy notices should simplify, not further complicate, the process for community banks and their customers.

First, in developing a short privacy notice, the agencies should pay special attention to ensure that differences between federal and state laws do not add additional burdens on institutions based on geography. For example, because the GLBA requirements do not preempt state laws, several states impose stricter requirements on information sharing practices and policies (such as so-called "opt-in" requirements) than does the federal law. Compliance with these state law requirements is mandatory for institutions in those states. In such situations, institutions should not be required to develop and provide more than one privacy notice for customers, nor should the new short notice requirements be different for institutions in one state than for those in another.

To help protect institutions from being discriminated against based on geography, we urge the agencies to consider providing "safe harbor" provisions, such as explicit sample clauses, that are broad enough to encompass any differences that arise between federal and state law requirements.

Second, any new short privacy notice should not require any elements beyond those established in the GLBA. The key elements of GLBA privacy notices are: (1) the categories of customer information that an institution collects; (2) the categories of third parties to whom an institution discloses customer information; (3) the types of information sharing practices with third parties that trigger the opt-out requirement under the GLBA; and (4) the types of information sharing practices with third parties that do not trigger the opt-out requirement, such as joint marketing activities and disclosures of information to service providers. A short privacy notice should not include a statement advising customers that an institution's complete privacy policy will be provided upon request. This requirement would impose a significant burden on community banks, while providing little corresponding customer benefit. Many privacy notices already include contact numbers and e-mail addresses that customers may use if they have additional questions about an institution's privacy policies.

Third, ACB believes short form notices should not mandatory. Community banks implement many different policies and procedures to safeguard customer information. Information sharing practices vary widely from institution to institution. ACB believes that many institutions—including community banks—would be interested in using a short form privacy notice, but trying to impose a "one size fits all" notice requirement would be counterproductive.

---

[8] 68 Fed. Reg. 75164 (Dec. 30, 2003).

Furthermore, ACB does not believe that an institution should be required to deliver both a short privacy notice and a more comprehensive disclosure form. This would impose a tremendous burden on community banks and confuse customers.

Fourth, under the GLBA, financial institutions that do not have affiliates, do not engage in information sharing practices that trigger the opt-out requirement, and do not engage in joint marketing activities are already permitted by law to use simplified privacy notices. We urge the agencies to allow for an explicit exemption allowing these institutions to continue using their original simplified notices, if they so choose. An exemption would be preferable and more cost-effective than issuing a special short notice for these institutions to use.

Finally, we remind the agencies that any changes to the existing notice requirement under the GLBA privacy rule will result in additional costs to community banks, including but not limited to the costs of developing, designing, and producing new notices and training staff. In developing a proposal we request that the agencies be cognizant that additional requirements translate into additional costs and burdens on community banks. Moreover, costs will also increase if the use of a short notice requires financial institutions to make supplemental privacy information available upon request.

Summary. We believe that eliminating the annual disclosure notice for institutions that do not share information with unaffiliated third parties and developing model privacy language will provide a more efficient and effective means of implementing the intent of Congress. We believe that these actions will make privacy notices more meaningful to consumers while easing regulatory burden for community banks.

Protection of Consumer Information

Community banks have long understood the importance of protecting customer information and work hard to ensure that they do not compromise the trust of their customers. Recent increases in fraud and identity theft have placed renewed emphasis on the importance of information security. As a result, the GLBA and its implementing regulations require all financial institutions to take security precautions to the next level.

Financial institutions must implement a comprehensive written information security program that includes written policy and operational procedures that protect confidential customer information and bank proprietary information.[9] An institution's information security program must be board approved must address reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information. Institutions must also document the measures they take to mitigate the risk they identify.[10] Review of the

[9] Interagency Guidelines Establishing Standards for Safeguarding Customer Information, 12 CFR Part 30, App. B, 12 CFR part 208, App. D-2, 12 CFR Part 364 App. B, 12 CFR 570, App. B, 12 CFR 225.4(h), 12 CFR Part 225, App. F.

[10] These measures may include, but are not limited to encryption of customer information, access control restrictions, intrusion detection monitoring, and appropriate procedures for security breaches.

information security program is part of the regular safety and soundness examination of every insured depository institution.

While the Guidelines are intended to provide direction to institutions in developing and maintaining their information security programs, we suggest that the agencies clarify ambiguous matters and provide additional clarification regarding third party relationships.

The Agencies Should Provide Risk Assessment Models. Community banks have expressed frustration identifying and quantifying possible threats to customer information. Accordingly, we request the agencies to ease this requirement by providing risk profiles of hypothetical financial institutions. Alternatively, we request the agencies to suggest a list of factors or considerations that institutions should consider when conducting their risk assessment.

The Agencies Should Clarify Their Expectations Regarding Third Parties. ACB requests the agencies to clarify the scope of the information security requirements regarding non-affiliated third parties. The Information Security Guidelines require all depository institutions to take steps to oversee service provider arrangements where customer information may be shared with non-affiliated third parties. All financial institutions must have contractual provisions that require service providers to have programs to ensure the security and confidentiality of customer information. While these requirements are reflective of the realities of the modern world, the risk analysis, documentation requirements, and vendor due diligence requirements are challenging for community banks.

The information security guidelines are vague, and community banks are frequently left guessing how to comply and whether their compliance efforts are satisfactory. For example, the Guidelines could be interpreted to include all parties with whom a community bank shares information, ranging from the IRS to real estate appraisers. For example, a $200 million community bank interpreted the guidelines very broadly and mailed over 100 contracts to various vendors with whom it has a business relationship, including surveyors and appraisers. Because the Information Security Guidelines are ambiguous, this community bank spent hundreds of hours of staff time managing the contract process in order to meet a compliance requirement that may not be applicable.

Accordingly, we urge the agencies to give examples of the types of non-affiliated third parties that are and are not covered by the Guidelines. We request the agencies to take a rational approach and include those types of non-affiliated third parties that have access to private, sensitive customer information.

In addition to reporting frustration with the lack of clarity provided in the Guidelines, community banks have encountered difficulty persuading vendors to sign the institution's service provider contracts. ACB has heard antidotally that some vendors refuse to sign a contract presented by a financial institution and in turn request the institution to sign the vendor's own contract. Small institutions report that they simply elected to sign a contract provided by the vendor in order to meet compliance and examination requirements.

Deposit Insurance

ACB supports a number of measures to strengthen the deposit insurance system. While these changes would require Congressional action, we urge the agencies to support these measures to improve the deposit insurance system.

The BIF and the SAIF Should be Merged. ACB believes that merging the Bank Insurance Fund and the Savings Association Insurance Fund is the most actuarially sound approach to insuring deposits and the most effective way to protect taxpayers from future exposure. In addition, the merger will prevent the recurrence of a disruptive disparity between premiums charged by the BIF and the SAIF.

Growth Related Premiums Should be Assessed on Rapidly Growing Institutions. ACB believes that the FDIC should have the authority to impose a special fee on free riders that grow at rates that substantially exceed the norm and significantly dilute the reserve ratio. Excessive deposit growth fueled by free riders undermines the federal deposit insurance system. Free riders can add an unlimited amount of insured deposits to the system at any time by shifting funds from uninsured accounts into banks that they control. This lowers the reserve ratio even if the absolute amount of money in the fund stays the same or even if it grows modestly through earnings. Therefore, ACB believes that rapidly growing institutions that materially dilute the reserve ratio should be assessed growth-related premiums. These premiums would avoid dilution of the fund and prevent the imposition of unnecessary premiums on other institutions.

We do not believe that special growth premiums should be imposed on smaller de novo institutions.

The FDIC Should Have Flexibility to Manage the Fund. Current law requires the FDIC to impose a minimum 23-basis point premium if a fund falls below 1.25 percent and is expected to remain there for at least one year. This would come at the worst possible time, when the industry is under financial pressure and the economy is weak. The FDIC should be able to spread recapitalization over a reasonable period.

A Rebate System Should be Established. Current law does not provide for rebates, making it possible that the funds could reach excessive levels. ACB supports a mandatory rebate system. We do not believe that resources not needed for reasonably foreseeable deposit insurance purposes should remain in Washington. Banks and savings institutions will be able to deploy the funds rebated in local communities for home lending, business development, and consumer needs.

Deposit Insurance Coverage Should be Indexed for Inflation. Currently, the general insurance coverage stands at $100,000 per ownership category. ACB supports indexing the $100,000 for inflation going forward. We also support increasing retirement account coverage as a way to encourage and protect personal retirement savings. As more Americans have begun to take

responsibility for funding their own retirement, IRA's and other savings vehicles often exceed the current $100,000 coverage limit by substantial amounts.

Advertisement of FDIC Membership

The FDIC Logo Requirement Should Be Revised. The FDIC should remove the requirement that the FDIC symbol be posted at every teller window. Currently, insured depository institutions are required to "continuously display" official FDIC signage at each station or window where insured deposits are received.[11] We believe that this requirement is redundant. Institutions should be deemed to adequately notify customers that the institution is FDIC insured so long as this information is posted on the door of the institution or elsewhere in the lobby. Placing a sign on every teller window is unnecessary and creates clutter along the teller line. These signs have become so commonplace that customers simply look past them.

The FDIC Should Clarify When FDIC Official Language is Required. Examiners have criticized community banks for not including the FDIC's official language or the FDIC logo on promotional items that are associated with sponsorship of community events. In these situations, institutions are not promoting specific bank products. Rather, they are being recognized for helping to underwrite a community function.

The FDIC requires each insured depository to include the FDIC's official advertising statement in all advertising materials, except as provided in the exemptions listed in section 328.3 of the FDIC's rules and regulations. Specifically, advertising material of insured depository institutions must include the language "Member of the Federal Deposit Insurance Corporation."[12] However, certain kinds of advertisements, including bank stationery, radio or television advertisements that are 30 seconds or less, and advertisements "which are of the type or character making it impractical to include thereon the official advertising statement including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains"[13] are exempt from this requirement.

We do not believe that it is appropriate to require community banks to ensure that the FDIC language or logo is included on promotional T-shirts, signs, and other items that recognize an institution's sponsorship of a particular event. In this situation, financial institutions are not promoting a particular bank product. Further, in most instances, community banks are not responsible for designing the promotional materials that recognize their sponsorship contributions. While some community banks may elect to make the FDIC logo or tagline part of the institution's branding efforts, we urge the FDIC to expressly permit flexibility in this area.

---

[11] 12 CFR 328.2.
[12] The short title "Member of FDIC" or "Member FDIC" or a reproduction of the "symbol" may be used by insured banks at their option as the official advertising statement.
[13] 12 CFR 328.3(c)(10).

Regulation DD

The Federal Reserve Should Amend Regulation DD's Recordkeeping Requirement. The Federal Reserve should amend Regulation DD to provide that institutions that are examined more than every two years are only required to keep records of their compliance for one examination cycle.

Regulation DD, which implements the Truth in Savings Act,[14] requires financial institutions to provide account disclosures containing information regarding interest rates, minimum balance requirements, fees, transaction limitations, features of time accounts, and bonuses associated with a deposit account. This information must be disclosed at account opening, upon request of the consumer, when there is a change in the terms of the account, and in advertising materials. In addition, institutions must retain evidence of their compliance with the Act for two years after the date the disclosures are required to be made. Institutions comply by demonstrating that they have 1) established procedures for paying interest and providing timely disclosures and 2) retained sample disclosures for each type of account offered to consumers, such as account-opening disclosures, copies of advertisements, and change-in-terms notices as well as information regarding the interest rates and annual percentage yields offered.

However, some financial institutions are examined more than every two years. For example, Section 337.12 of the FDIC rules and regulations requires an annual full-scope on-site examination of every insured state nonmember bank at least once during each 12-month period. Annual examination intervals may be extended to 18 months for well-managed institutions.[15] In addition, OTS regulated institutions are examined based upon their size and their compliance ratings. Some institutions may be examined every twelve to eighteen months, while others will be examined every 24 to 36 months.

We believe that the two-year record retention requirement is unnecessary and that financial institutions should not be required to keep copies of this information for more than one examination cycle. Accordingly, we request the Federal Reserve to amend Regulation DD to provide that financial institutions examined more than every two years are only required to keep evidence of compliance until the next examination is completed. We urge the Federal Reserve to retain the two-year requirement for all other institutions.

---

[14] Pub. L. 102-242, 105 Stat. 2236 (December 19, 1991).

[15] Annual examinations may be extended it an institution has total assets of $250 million or less; is well capitalized as defined in Section 325.103 of the FDIC Rules and Regulations; at the most recent FDIC or applicable state banking agency examination, the FDIC found the bank to be well managed; at the most recent FDIC or applicable state banking agency examination, the FDIC assigned the insured state nonmember bank a composite rating or 1 or 2 under the Uniform Financial Institutions Rating System; is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and if no person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for the above noted exceptions. In addition, examinations may be conducted in alternate 12 (or 18) month periods if the FDIC determines that a full-scope, on-site examination completed by the appropriate state supervisory authority during the interim period is acceptable.

Regulation E

The Electronic Funds Transfer Act[16] (EFTA) and its implementing regulation, Regulation E, provide a basic framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems such as automated teller machine transfers, telephone bill-payment services, point-of-sale (POS) terminal transfers in stores, and preauthorized transfers from or to a consumer's account (such as direct deposit and social security payments). The term "electronic fund transfer" (EFT) generally refers to a transaction initiated through an electronic terminal, telephone, computer, or magnetic tape that instructs a financial institution either to credit or to debit a consumer's asset account.

Debit Card Liability Should be Equitably Apportioned. The EFTA and Regulation E limit a consumer's liability for unauthorized transactions. Regulation E specifies that a consumer's liability for unauthorized transactions cannot exceed $50, as long as the consumer notifies his or her financial institution within two business days after learning that his or her credit or debit card has been lost or stolen.[17] Current law protects a consumer from additional liability even if he or she acts negligently.

As a general matter, ACB believes that consumers should not be forced to pay for transactions that they do not authorize. It would be unfair to require consumers to bear the liability for unauthorized transactions that are initiated by unscrupulous persons perpetrating fraud. While it is important to protect consumers from unauthorized transactions, it is incumbent upon consumers to treat their debit cards and PIN numbers responsibly. Community banks should not be required to pay for losses associated with unauthorized transactions when a consumer does not adequately protect access to his or her account.

For example, suppose a consumer writes the PIN on the back of his or her debit card. Subsequently, the card is lost or stolen and a dishonest individual finds the card and corresponding PIN and makes ATM withdrawals and point of sale (POS) transactions that drain all of the funds from the consumer's account. In this scenario, the consumer's liability cannot exceed $50, provided that the financial institution is notified in a timely manner. The customer's financial institution will be required to replace the stolen funds (minus $50) even though the consumer negligently wrote the PIN number on the card.

A more equitable solution would apportion liability in a manner that is similar to check law. Generally speaking, the Uniform Commercial Code uses a comparative negligence standard to allocate liability. We request the Federal Reserve to explore similar options that would more equitably apportion liability for unauthorized transactions when a consumer fails to protect access to his or her account.

---

[16] Pub. L. 90-321, 82 Stat. 146 (May 29, 1968), Title IX, as added by Pub. L. 95-630, 92 Stat 3728 (November 10, 1978, as amended.

[17] If the consumer fails to notify the depository institution in a timely fashion, the consumer may be liable for $500 or even an unlimited sum of unauthorized transactions, depending on the circumstances.

Regulation E Should Not Apply to Stored Value Cards That Are Designed to be Treated Like Cash. Community banks face mounting regulatory burden requirements, and ACB strongly opposes unnecessary regulation that would stifle product development. However, we acknowledge that the stored value card arena is growing and that questions have arisen as to whether stored value cards should be subject to Regulation E.

As this dialogue continues, we urge the Federal Reserve to distinguish between stored value products that are designed to be treated like cash and products that have characteristics of traditional deposit accounts. If there is no evidence that a stored value card represents account ownership at a depository institution, Regulation E should not apply.

Some stored value cards are designed to be the functional equivalent of cash and should be treated as such. In this circumstance, financial institutions do not maintain deposit account records, such as signature cards or account balances. Employers often select payroll cards as a cash equivalent for day laborers. These cards are not designed to function like a traditional bank account that identifies a specific individual with a specific account number and account balance.

On the other hand, some stored value arrangements mimic traditional deposit accounts. These types of arrangements clearly attribute funds to a particular cardholder. In addition, the cardholder's name may be printed on the face of the card, the card may have a PIN or signature based security feature, the cardholder may be able to make additional deposits to the card, use the card at an ATM, or use the card to pay for goods at merchants that accept traditional credit and debit cards. We believe that it would be more appropriate to subject these types of cards to Regulation E.

Conclusion

ACB appreciates the opportunity to participate in this important endeavor to reduce outdated, unnecessary, and unduly burdensome regulatory requirements. We are prepared to help the agencies accomplish this important task.

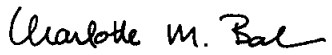
In conclusion, we respectfully request that the agencies:

- Eliminate the annual privacy notice requirement for depository institutions that do not share information with non-affiliated third parties.
- Develop simplified model language for privacy notices and/or short form privacy notices.
- Provide risk assessment models regarding the security of customer information.
- Issue additional guidance regarding third party service provider arrangements.
- Support efforts to strengthen the deposit insurance system.
- Eliminate the requirement that the FDIC symbol be placed at every teller window.
- Clarify when FDIC official advertising language is required.

- Amend Regulation DD's recordkeeping requirement.
- Treat unauthorized debit card transactions in a manner that is consistent with check law.
- Distinguish between stored value products that are designed to be treated like cash and products that have characteristics of traditional deposit accounts.

Should you have any questions, please contact the undersigned at 202-857-3121 or via email at cbahin@acbankers.org or Krista Shonk at 202-857-3187 or via email at kshonk@acbankers.org.

Sincerely,



Charlotte M. Bahin
Senior Vice President
Regulatory Affairs

Appendix A

ACB Privacy Compliance Survey

America's Community Bankers conducted a survey of its membership to evaluate the costs and customer response relating to compliance with the Gramm-Leach-Bliley Act's (GLBA) privacy provisions. As of July 1 of this year, all depository institutions were required to create and distribute a statement to each customer that accurately reflects the institution's privacy policies and practices. GLBA also requires institutions to refrain from sharing nonpublic personal information with nonaffiliated third parties (except under limited circumstances) unless customers are provided with the ability to "opt-out" of such information sharing.

ACB's survey concludes that the costs to comply with the GLBA privacy provisions were significantly greater for community banks on both a per-customer and percentage of expenses basis. The survey indicates that when adjusted for size, the costs to comply with GLBA were inversely proportional to the size of the institution. In other words, the compliance burden on smaller community banks was significantly greater than that of larger banks. ACB's survey also observed that only a small fraction of those customers who were given the opportunity to opt-out actually elected to do so. Finally, institutions which reported receiving feedback from their customers found overwhelmingly that customers did not find the privacy statement provided useful information.

Survey Background:

During the month of October ACB sent the survey to each of our member institutions. We received 186 responses from institutions with total assets as small as $10 million to several institutions with assets exceeding $10 billion. These diverse institutions represent approximately $400 billion in industry assets.

Cost of Compliance:

Overall, estimated compliance costs were approximately $1.37 per customer, with total estimated compliance costs for individual institutions varying widely from as little as $1,000, to more than $2 million. The survey data revealed one constant: the burden of compliance with the GLBA privacy requirements was most significantly felt by smaller institutions. When comparing the amount institutions spent to comply with the privacy provisions of GLBA against their reported non-interest expenses (e.g., salaries, employee benefits, occupancy costs, etc.) the results are particularly striking. As a percentage of non-interest expenses, the smallest group (less than $50 million) of institutions paid almost four times as much as the largest group in the survey (greater than $10 billion). Whether the data are evaluated on a per customer basis, or on a percentage of dollars spent, smaller institutions paid more.

This is likely due to the amount of set costs all institutions incurred to comply with GLBA. Larger institutions with in-house legal and consulting staff were able to do most of the compliance work themselves, while many smaller institutions sought outside legal help and consultants in order to comply.

November 2001

Appendix A

ACB Privacy Compliance Survey

Institution Type	% Reporting	Avg. Total Compliance Cost	Avg. Per Customer Cost	Privacy / Non-Interest Expenses Ratio
$10b and above	3%	$658,012	$0.27	.1443%
$1b - $10b	11%	$79,419	$1.38	.2209%
$500m - $1b	11%	$25,301	$1.07	.2219%
$100m - $500m	46%	$16,861	$1.46	.3765%
$50m - $100m	17%	$6,599	$1.70	.3765%
<$50m	12%	$4,569	$2.37	.5529%
Total	100%		$1.37	

Information Sharing / Opt-Out:

The survey found that the great majority of institutions with less than $1 billion in assets do not share customer information with non-affiliated third parties beyond the basic exceptions provided under GLBA. Approximately one of every two institutions with assets greater than $1 billion shares information with non-affiliated third parties (subject to the opt-out provisions) to offer products and services they believe their customers would find of value. Of those institutions that offer their customers the choice to opt-out, the overwhelming majority (60%) report that less than 1% of their customers elected to opt-out. ACB believes that this reflects the trust consumers place in their financial institution.

			Customer Response Rate / Opt-Out					
Type	# Reporting	Offer Opt-Out	< 0.5%	.5 – 1%	1 – 5%	5 – 10%	10 – 20%	> 20%
> $10b	6	4 (67%)	0	0	2	1	1	0
$1b - $10b	20	10 (50%)	1	3	5	1	0	0
$500m - $1b	20	5 (25%)	1	2	1	1	0	0
$100m - $500m	85	15 (18%)	9	1	2	2	1	0
$50m - $100m	32	6 (19%)	6	0	0	0	0	0
<$50m	23	3 (13%)	2	0	0	0	0	1
Total	186	43 (23%)	19/44%	6/14%	10/23%	5/12%	2/5%	1/2%

ACB Privacy Compliance Survey

Customer Response:

Customer response to the privacy policies have been mixed. Of those institutions that reported receiving customer feedback, the majority indicated that their customers did not find the privacy policies useful. This may be due to the high degree of specificity required under the GLBA privacy regulations. About one third of the institutions reporting indicated they had not received any feedback from their customers.

Privacy Policy Customer Feedback

Response	% Reporting Feedback
Very Useful	3%
Somewhat Useful	40%
Not Useful	57%
No Customer Feedback	N/A

America's Community Bankers is a member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com*.

November 2001