



May 29, 2007

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attn Docket No. OCC-2007-0003

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1280

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attn: Model Privacy Form,
FTC File No. P034815

Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: Model Privacy Form

Eileen Donavan
Acting Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
Re: Model Privacy Form

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: OTS-2007-0005

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Re: File No. S7-09-07
Model Privacy Form

Re: Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act:
Proposed Rule 71 FR 14940 (March 29, 2007)

Dear Sir or Madam:

America's Community Bankers (ACB)¹ is pleased to comment on the Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act (the "Proposed Rule") issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System,

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.acb.us.

Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission, and the Securities and Exchange Commission (collectively, the “Agencies”).

ACB Position

ACB supports efforts to protect the nonpublic, personal information privacy of consumers of financial services. ACB supports public policies that balance the legitimate information sharing needs of a financial institution with the obligation to protect customer information privacy.

We believe banks should be given relief from the annual disclosure notice required under the Gramm-Leach-Bliley Act. Therefore, ACB does not believe that the Proposed Rule addresses the most pressing issue with respect to privacy notices: unnecessary regulatory burden. For example, a financial institution that shares information under the law and discloses it when the account is opened and does not change this information sharing practice is still required to issue an annual notice of its policies. This is a burden operationally and financially on financial institutions and does not provide a benefit to the consumer.

A more extreme example can be found with a financial institution that does not share information at all, but is still required to annually reaffirm that position. This is not an effective use of resources and ACB supports the repeal of this requirement as part of a comprehensive regulatory relief initiative.

The intent of this Proposed Rule is to enable the consumer to compare information on information sharing practices from one institution to another. This is a noble goal. However, the Proposed Rule, as currently drafted, imposes a large administrative burden on financial institutions that will be required to comply with it. The Proposed Rule does not balance the needs of the consumers with the demands placed upon the financial institutions to meet the requirement.

The Proposed Rule would replace the currently acceptable notice that has been granted safe harbor status by the Agencies. Under the Proposed Rule, the presentation of the information in privacy notices must meet new standards, but the information itself remains unchanged.

Changing these disclosure forms would be costly for banks, and we do not believe that there will be benefits to consumers that outweigh the regulatory burdens associated with the proposed changes.

We strongly recommend that this Proposed Rule be reconsidered by the Agencies, be revised substantially, and be resubmitted for public comment again as a proposed rule. The proposed format for the new privacy notice is not reasonable and represents one more layer of expense and burden on top of an already cumbersome requirement of questionable value for the consumer.

We have identified the following areas of concern. Its implementation can be made more practical by increasing the flexibility of the requirements as described below.

Recommendations

General Comments

ACB recognizes that a great deal of effort and focus group research was invested in this proposal to allow for side-by-side comparisons of financial institution policies. ACB member financial institutions have not indicated that consumers have been seeking this information for comparison purposes. However, the costs of these standards will be absorbed by the financial institutions that must distribute the forms. The cost of paper, printing, and mailing the forms is significant.

The Proposed Rule would preclude a financial institution from providing the same information in a standard brochure format that is suitable for distribution in bank branches and mailings. The requirement that three separate sheets of standard 8.5x11 inch paper be used, and that printing appear only on one side is overly prescriptive and will result in large additional expenses for development, postage, and printing. The perceived benefit, allowing customers to use the separate sheets of paper to make bank-to-bank comparisons, is unclear.

- ACB recommends that the Agencies allow for additional flexibility regarding the physical forms, specifically discretion with respect to 8.5x11 inch paper, printing only on one side, and a clear release from the “general guidelines” regarding the font, type size, and type style of the printed words.

The tables provided in the sample forms do not allow enough flexibility for financial institutions to describe their information sharing practices.

- ACB recommends that the tables be revised to allow for more detailed and customized descriptions appropriate to individual financial institutions without jeopardizing the safe harbor status of the disclosure.

Footnote 24 in the preamble relates concerns that consumers have about financial institutions making changes to policies without full disclosure. ACB agrees that policy changes require full disclosure. However, many financial institutions have not changed their information sharing policies since the disclosure requirement was first enacted, yet they are required to send out the same notices year after year containing the same information. The utility of an annual notice of this type is negligible.

- ACB recommends that disclosures relating to information sharing and privacy be required at the initial opening of the account, and then only when the privacy policy changes, not annually as the current system requires.

As a result of the annual disclosure requirement, some banks have large stocks of disclosure statements in their inventory. Since the substance of their information sharing policies remains unchanged, these banks should not bear the financial burden of disclosing the same information merely because a new format has been proposed.

- ACB recommends that financial institutions be allowed to use inventories of disclosures that meet the current standard by extending the effective date of the Final Rule to a 24-month period instead of the current 12-month time frame.

Form Page One

The table on Page One of the form includes a field labeled “For our affiliates to market to you” under the column titled “Reasons we can share your information.” This will cause confusion when the terms of the Fair Credit Reporting Act (FCRA) are considered. Under the FCRA, the consumer does not have authority to limit the sharing of information among affiliates. However, the consumer does have authority to prohibit the affiliate from marketing to the consumer. The table is incorrect in its suggestion that the customer has the option of limiting the sharing of information.

- ACB recommends modifying this section to state that the financial institution may share information with affiliates and the customer can limit related marketing by completing the corresponding section of page three.

Form Page Three

In the section titled “If you want to limit our sharing” ACB has two suggested changes.

- ACB recommends a clarification that it is not necessary for a financial institution to provide all three means of communication access to customers wishing to limit the sharing of information. Any final rule should clarify that providing customers with telephone access or Internet access or U.S. mail access is sufficient.
- ACB recommends allowing financial institutions to modify the section of the form that states that customers have 30 days to contact the financial institution to limit information sharing. The inclusion of this language in an initial notice makes sense. However, if the notice is provided to an established customer whose information is already being shared, as part of the required, annual notice, it would be incorrect. Financial institutions should be allowed to modify this language. Customers may not recall if they have selected to “opt in” or “opt out” at previous times and could resubmit duplicate requests when they receive the annual notice. This is another example of problems that arise when annual notices are required even though the policies remain unchanged.

ACB appreciates the opportunity to comment on the Proposed Rule and supports the Agencies in ongoing efforts to help consumers make informed decisions regarding the privacy of financial information. Please contact the undersigned at 202-857-3148 or via email at skenneally@acbankers.org or Patricia Milon at 202-857-3121 or via email at pmilon@acbankers.org if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Stephen K. Kenneally". The signature is written in a cursive style with a large, stylized initial 'S'.

Stephen K. Kenneally
Vice President, Payment and Technology Policy