



May 29, 2007

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

RE: Comments on Interagency Proposal for Model Privacy Form under
Gramm-Leach-Bliley Act

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the National Credit Union Administration's (NCUA) request for comment on proposed amendments to 12 C.F.R. 716 to add a Model Privacy Form.

The Financial Regulatory Relief Act of 2006 (Regulatory Relief Act) required the financial regulators to develop an optional model form for disclosures required by section 503 of the Gramm-Leach-Bliley Act (GLB Act). The proposed Model Privacy Form is jointly issued by the National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC) (collectively, the Agencies).

The proposed rule would create a model privacy form in Appendix A of Part 716 of NCUA's regulations. Use of the model form would constitute compliance with the notice content requirements of §§ 716.6 and 716.7. The current Appendix to Part 716, which contains Sample Clauses, would be re-designated as Appendix B. The Sample Clauses in Appendix B would provide a one-year safe harbor for privacy notices issued within one year of publication of a final model privacy form. After one year from the publication of a final rule, the Sample Clauses would be removed and the only safe harbor available to financial institutions would be through use of the model privacy form.

NAFCU generally agrees with the proposed model form, but suggests a few minor changes and clarifications as detailed below:



Format of the Model Privacy Form

NAFCU appreciates the Agencies' development of a clear and conspicuous model form that includes all the elements required by the GLB Act. NAFCU believes the proposed model form gives consumers sufficient information, as well as explanations of the information, without overwhelming them.

The Agencies have provided detailed information on the acceptable style and size of the model form. NAFCU believes this information is sufficient and, along with the examples, provides financial institutions with clear guidance for developing their notices.

Use of Business Logos and Colors

NAFCU agrees with the level of flexibility given to financial institutions in order to include logos and/or colors so long as they do not take away from the readability of the notice. NAFCU believes that a majority of FCUs would likely include their logos; as such, it would benefit these credit unions if the Agencies included an example of an acceptable use of a corporate logo on one of the sample privacy notices included in the preamble to the rule.

Requirement of Separate One-Sided Pages

The proposed rule requires the model form to be on separate, one-sided pages of 8.5 by 11 inch paper because consumer testing showed that consumers benefited from being able to place the pages side-by-side when reviewing them. NAFCU believes, however, that this potential benefit is outweighed by the costs of requiring separate pages.

A primary reason for the Regulatory Relief Act's requirement for a joint issuance of a proposed model privacy form was to allow consumers to easily compare the privacy notices of different institutions. However, the ability to compare *among institutions* does not require separate sheets.

The Agencies stated reason for the proposed page format requirement is to allow consumers to view the information on pages one and two concurrently. Although this may be an initial benefit to consumers, NAFCU does not believe this benefit outweighs the annual cost to financial institutions (and the environment) of printing on separate sheets.

For these reasons, NAFCU suggests the Agencies allow institutions to print pages one and two back-to-back on a single piece of paper with institutions providing an opt-out form including a second page. Alternatively, because the benefit to consumers of side-by-side pages is a short-term benefit that will likely decrease as consumers become accustomed to institutions' use of the model form, NAFCU recommends that the Agencies, at minimum, allow back-to-back printing of the model form beginning two



years after publication of the final rule. This would allow consumers to familiarize themselves with the model form while minimizing implementation costs to credit unions. NAFCU believes that allowing back-to-back printing would remove a potential disincentive to financial institutions' voluntary use the model privacy form.

Creation of a Downloadable Model Form

The Agencies specifically requested comment on whether to develop a web-based design for financial institutions to use on their Internet websites. NAFCU strongly encourages the Agencies to develop a web-based model form for institutions to use and modify. Further, NAFCU strongly endorses providing an Adobe PDF template that institutions could download and fill-in with their specific information. Providing a fillable web-based form would encourage the adoption of the model form; in particular, smaller institutions would be greatly aided by the availability of a downloadable, customizable form.

Elimination of Safe Harbor for Use of the Sample Clauses

The proposed rule would phase out the use of the Sample Clauses in the current Appendix to Part 716, which the Agencies believe are confusing. The proposed rule provides a one year safe harbor for privacy notices issued during the initial transition period following the publication of a final rule.

Phase-out of Safe Harbor for Sample Clauses

NAFCU recommends that the Agencies clarify the description of the "sunset clause" in the proposed rule. The Agencies indicate an annual notice (using the Sample Clauses) sent within one year of a final rule on the model privacy form would obtain a one-year safe harbor from the date of the notice. A specific and informative example to illustrate the sunset clause is provided in footnote 46 of the proposal. NAFCU urges the Agencies to provide the example in the body of the preamble of the final rule to prevent confusion and to help institutions understand that that the one-year safe harbor will run from the date of the annual notice, as opposed to one year from the publication of the final rule.

Additionally, NAFCU believes the Agencies should clarify the safe harbor with regard to privacy policies posted on a website. In footnote 46, the Agencies state that institutions posting privacy policies online *in order to comply with Part 716.9(c)* will lose the safe harbor one year after a final rule is published. Currently, many credit unions provide their privacy notices on their website merely as a benefit and reference to existing and potential members. NAFCU encourages the Agencies to clarify that credit unions posting their privacy policy on their website as a supplement to their annual notice provided directly to their members pursuant to §§ 716.6 and 716.7 will retain a full one year safe harbor.



Potential Switch to the Model Privacy Form

NAFCU recognizes that use of the proposed model form is strictly voluntary; however, the benefits of clarity and comparability are more fully recognized when a substantial number of financial institutions decide to use the model.

In providing assurance of compliance with the GLB Act requirements, the availability of a safe harbor is an important consideration for institutions, especially smaller credit unions, to adopt the model form. NAFCU believes the removal of the safe harbor for use of the Sample Clauses will prompt many credit unions to switch to the model form to obtain the safe harbor. However, some credit unions may face transition costs that could inhibit their adoption of the model form and would therefore risk losing the safe harbor for compliance.

As noted above, NAFCU believes the development of a readily accessible and downloadable form that credit unions could fill-in and customize would reduce the considerable implementation costs, especially for smaller credit unions. The availability of a downloadable model form, along with the removal of the separate page requirement, would encourage greater adoption of the model form, resulting in a continued safe harbor for credit unions and improved clarity and comparability for consumers.

Retention of Sample Clauses A-1, A-3, and A-7 for Simplified Notice

NAFCU believes the Agencies should retain the Sample Clauses A-1, A-3, and A-7 for use by credit unions providing simplified notice under § 716.6(e)(5). The ability of credit unions who do not share nonpublic information to use a simplified format is beneficial not only to credit unions but to members as well.

NAFCU also encourages the Agencies to develop a model simplified notice to allow credit unions to easily communicate to their members their non-sharing policies. A model simplified notice would be especially useful to smaller credit unions and could provide similar clarity and comparability benefits to consumers as provided by the proposed model form. However, NAFCU encourages retention of the Sample Clauses until the Agencies develop a model simplified notice and make this available in a downloadable format on their websites.

Credit Union's Ability to Modify the Model Notice

NAFCU believes the Agencies have struck an acceptable balance which provides limited flexibility while creating a standardized form. More importantly, the Agencies have provided detailed explanations regarding which modifications are allowed while ensuring qualification for the safe harbor.



Requested Additional Modifications

NAFCU requests that NCUA explicitly allow credit unions to change the word ‘customer’ to ‘member’ in their privacy notices. Credit unions are unique in that they are member-owned cooperative financial institutions; expressly permitting credit unions to use the word ‘member’ would recognize this important difference.

NAFCU also requests clarification on credit unions’ ability to supplement the information (on page 2) regarding “How does [our credit union] protect my personal information?” Given the sensitive nature of the personal information and the financial industry’s efforts to prevent against identity theft and data breaches, NAFCU believes consumers would benefit from financial institutions’ ability to customize this section to describe the positive steps they are taking to protect consumers’ information.

Additionally, NAFCU suggests that clarification of the institution-specific information that may be customized for the definitions of affiliates, non-affiliates, and joint marketing (on page 2) would be beneficial. Because of the inclusion of the words “include” and “such as” in Example 1, Neptune Model Privacy Form provided in the preamble (e.g. “Our affiliates *include*...*such as*...”), NAFCU interprets the proposal to allow credit unions to modify the definitions to provide some, but not necessarily all, specific examples of the credit union’s affiliates, non-affiliates, and joint marketing partners. NAFCU believes, however, that the final rule should clarify that credit unions may opt to list broad categories of certain types of entities as opposed to specific companies and/or entities and that an *all-inclusive list* of affiliates, non-affiliates, and joint marketing partners need not be provided.

NAFCU would like to thank you for this opportunity to share its views on this proposed rulemaking. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU’s Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,



Fred R. Becker Jr.
President/CEO

FRB/py/svb

