1303 J Street, Suite 600, Sacramento, CA 95814-2939 T: 916/438-4400 F: 916/441-5756

May 25, 2007

Office of the Comptroller of the Currency
250 E Street, SW
Public Reference Room, Mail Stop 1–5
Washington, DC 20219
regs.comments@occ.treas.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
regs.comments@ots.treas.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. & Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov

Re: Interagency Proposed GLBA Model Privacy Form

Ladies and Gentlemen:

The California Bankers Association appreciates this opportunity to submit comments to the federal banking agencies' proposal to adopt a model form privacy notice under the Gramm-Leach-Bliley Act or GLBA. CBA is a non-profit organization established in 1891 and represents most of the depository financial institutions in the state of California. The agencies' proposal is

a good one in concept in that it offers a safe harbor for banks who voluntary use the model notice. Normally, CBA is a supporter of the use of model forms in connection with compliance regulations. They provide banks with certainty and protection against regulatory sanctions and civil liability, and in most instances they help simplify regulatory compliance. But, as explained below, creating a model form of a notice in this instance that is usable by a wide variety of financial institutions will be a challenge. Unless the form helps to improve customer understanding of banks' information sharing practices, and at the same time reduces regulatory burden for furnishers of the notice, it is unlikely that banks would adopt the model.

Comments

The GLBA privacy notice differs from other regulatory notices because it conveys information about banks' practices that are perceived to be of high importance to consumers. A bank looks at the notice as an important form of communication of its values that affect the bank's reputation. It would be difficult to produce a model form that could be broadly used given the variety of information sharing practices in the industry. Any model form would have to be flexible enough to permit customization. We do not believe any single narrative could be used broadly without sacrificing accuracy and effectiveness.

In California, some banks make reference in their GLBA privacy notice to applicable state privacy laws. Other items of information that CBA members may incorporate include ID theft prevention tips and information regarding do-not-call registration. Some banks describe their information security practices in their notices.

Since many banks provide privacy notices online. The agencies should clarify that the model form may be delivered electronically or online. Please be aware that banks have a strong interest in maintaining the look and feel of their internet-based notices, and thus would prefer to have flexibility not only as content but as to form.

The agencies propose to impose a 30-day information sharing freeze following delivery of the notice to allow consumers to opt out. Since the notice must be delivered annually, the effect of the requirement is that banks must institute a freeze at least once every year. There is no statutory basis for this proposal, and we urge that it be dropped.

We are also concerned about the rigid formatting requirements in the proposal. The notice should not be required to be printed on 8½ by 11 inch paper, single-sided, one page per sheet. On top of that, the agencies are considering whether each page of the form should be required to be on a separate piece of paper, and is proposing that the notice be delivered separately and not as an insert or enclosure. These standards would result in significant costs to the industry. A modest-sized bank sending just 10,000 notices would incur an additional $3,000 to $4,000 just on postage.

Safe harbor is inadequate. The proposed safe harbor is inadequate because it does not encompass information sharing activities governed by the FCRA. The model form itself is intended to cover affiliate sharing and the distinction between transaction and experience

information made under the FCRA. The safe harbor provision should specifically cover FCRA Sections 603(d)(2) and 624. We also ask that the safe harbor specifically protect banks from private causes of action, and to specify that the notice may not form the basis of a state unlawful or deceptive acts and practices law violation.

Conclusion

CBA recognizes and appreciates the agencies' intent to balance the dual interests of enhancing consumer awareness of financial institutions' information sharing practices on the one hand, and reducing banks' regulatory burden on the other. We support the concept of adopting a voluntary model form that provides a safe harbor. But any model form must be flexible enough to allow banks to furnish information accurately and in a manner that reflects banks' individual marketing philosophies. As discussed above, we are very concerned about the detailed formatting requirements that will certainly result in significant new costs the industry. For these reason, we do not believe that the form, as proposed, would be used despite the safe harbor. We suggest that the agencies proceed to conduct more testing.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Leland Chan
SVP/General Counsel