

May 29, 2007

Via E-mail

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219

Re: Docket ID OCC-2007-0003

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN 3064-AD16

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

Re: RIN 3133-AC84

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number S7-09-07, Model Privacy Form

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1280

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: OTS-2007-005

Re: Docket ID OTS-2007-0005

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, DC 20585

Re: Model Privacy Form, FTC File No. P034815

Ms. Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: RIN 3038-AC04

Re: Interagency Proposal for Model Privacy Form

Ladies and Gentlemen:

USAA appreciates the opportunity to submit comments on the proposed rule pertaining to the simplification of privacy notices. We are pleased with this effort and would appreciate your careful consideration of the following recommendations:

- Provide companies with greater flexibility to explain unique policies and to apply company brand guidelines;
- Allow for the use of commonly understood words in place of legal terms like "affiliates;"
- Clarify the scope of the opt outs for affiliate sharing and affiliate marketing;
- Eliminate the sentence about the 30-day waiting period for sharing;
- Address conflicts with state laws; and
- Clarify the scope of the safe harbor regarding state laws and the FCRA.

About USAA

USAA is a member-owned company that provides financial services products to military members and their families. This includes: property and casualty and life insurance; annuities; no-load mutual funds; discount brokerage; trust services; deposit and savings accounts; mortgages and relocation services; and credit cards.

The association is well known for its exceptional customer service and the trust it has earned from its membership of more than 6.1 million members. This trust is illustrated through recognition from:

- **BusinessWeek:** Rated No. 1 by BusinessWeek for outstanding customer service, earning recognition as BusinessWeek's "Customer Service Champ" (2007).
- **Forrester Research:** Highest-scoring financial services firm in customer advocacy rankings (2004-2006).
- **J.D. Power and Associates:** Highest customer satisfaction score on National Auto Insurance Study (2006).
- **J.D. Power and Associates:** No. 1 in customer satisfaction among the largest national home mortgage lenders (2004).

Our members rely on the convenience, efficiency and accessibility of USAA's integrated suite of financial services. It is crucial that we are able to ensure rapid service for our deployed members at critical points in their lives. Our ability to share information among affiliates is a fundamental tool for providing the highest level of service.

The simplification of privacy notices: USAA's perspective

USAA honors requests to opt out of affiliate sharing. We believe it is our duty to communicate clearly in our privacy notice so members do not opt out of affiliate sharing due to a misunderstanding. It is from this perspective that USAA submits the following comments.

USAA supports the letters submitted by Financial Services Roundtable, American Council of Life Insurers, the Coalition for the Implementation of the FACT Act, and American Insurance Association. In particular, areas in which we agree with them include: the model form should allow more flexibility to ensure accuracy and compliance with state laws; the requirement for three separate pages and a separate document should be eliminated; and institutions should be able to modify the examples on page one of the form to accurately reflect their information collections, sharing and opt out practices.

We would like to emphasize a few additional points that are critical to ensure USAA ability to serve the military community.

Provide Greater Flexibility.

Companies need greater flexibility to give information that more accurately describes their privacy practices. Flexibility does not impair comparability of notices; to the contrary it is essential to preserve comparability. If institutions with divergent practices all use the exact same words to describe them, consumers will be unaware of the differences in these practices. The agencies should identify those elements of the format that enhance comparability, while giving institutions maximum flexibility to describe their practices, including the right to add relevant explanatory information.

Most institutions have brand guidelines and design standards for all communications they send to their customers. These guidelines usually specify font types, color choices and the proper use and placement of trademarks. These guidelines are intended to ensure communications are clear and understandable and that customers quickly identify the source of the materials. Customers will be reluctant to provide the personal information required in the opt out form unless they are able to clearly identify the source of the materials. The agencies should specifically allow companies to follow brand guidelines that they use for their general communications with customers as long as those guidelines do not interfere with the readability or comparability of notices.

Use commonly understood words in place of legal terms like "affiliates."

We agree with the agencies that it is helpful to conduct research on the readability of privacy notices. USAA conducted research to better understand how its members respond to various word choices in privacy notices. One finding from this research is that members do not read privacy notices carefully and often draw incorrect conclusions based on certain assumptions. One commonly misunderstood word is "affiliates." Even when presented with a definition, some members believed this word included companies outside of the USAA family of companies – e.g. nonaffiliated companies that participate in joint marketing relationships. Many members in the research group wanted to opt out of what they perceived to be "affiliate" sharing to prevent their personal information from being shared with nonaffiliated third parties for joint marketing purposes. Yet, these same consumers were quite comfortable with their information being used within the USAA group of affiliated companies. We must be able to clearly explain the difference to our members to ensure they fully understand. USAA requests that the safe harbor be revised to allow a group of affiliated companies that use a common brand to use terms such as "within Acme" or "among the Acme companies" instead of "affiliates."

Clarify the scope of the affiliate sharing and affiliate marketing opt outs.

Another area of potential confusion is the scope of the affiliate sharing and affiliate marketing opt outs. The proposed notice has an opt-out form with checkboxes for these choices. To reduce the potential for confusion, we suggest instead of “Do not share information,” the notice should state “Limit the sharing of information.” “Do not share” is very absolute and does not appear to allow for authorized exceptions such as sharing of transaction and experience information. Members who checked a box with the “Do not share” language could feel betrayed if a company continued sharing transaction and experience information with affiliates, as permitted by the FCRA.

We also suggest that the affiliate marketing opt out be revised to read “I want to limit the use of my financial and insurance information for the [Acme] companies to offer products. This limitation does not apply to offers for the type of products I already own, such as banking, insurance or investment products.” This language more accurately describes the scope of the opt out by describing the type of information affected and the exception for offering products in the same line of business. As discussed above, it also uses the word “limit” instead of “do not” which more accurately allow for exceptions to the opt out. Since FACTA allows companies to provide partial opt outs of affiliate marketing, the model form should also allow for this flexibility.

Avoid confusion about a 30-day waiting period for sharing.

We recommend that the agencies delete the reference to a 30- day waiting period. We are concerned that the statement “Unless we hear from you, we can begin sharing your information 30 days from the date of this letter” will be misleading in many circumstances. The greatest area for confusion is that this 30-day period does not apply in the case of annual privacy notices. It implies that companies will stop sharing for 30 days after the annual notice is given. Also, for companies that do not provide a Gramm Leach Bliley Act opt out, it could mislead consumers into thinking that the sender of the notice is going to start sharing their information with non-affiliated third parties for marketing in 30 days.

Address conflicts with state laws.

USAA, like many institutions, gives a single notice on behalf of all its affiliated companies. The model notice should specifically allow the addition of information for compliance with state laws and to avoid confusion by consumers. For example, addition of the following phrase should not destroy safe harbor status. “You may have additional rights under state law.” Some states require consent for sharing of information; the form should allow inclusion of consent for sharing when required by state law (e.g. California, Minnesota, Montana, New Mexico and New Jersey and Vermont).

Clarify the scope of the safe harbor regarding state laws and the FCRA.

The agencies should clarify the scope of the safe harbor as applied to compliance with state laws that are consistent with GLB. For example, it is unclear whether use of the phrase “for everyday business purposes” will be deemed compliant with a consistent state law that allows use of the phrase “as permitted by law” to describe sharing pursuant to the GLB exceptions. One approach the agencies should consider is the retention of the current safe harbor since many states (e.g. Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming) have laws or regulations incorporating the sample clauses in the existing safe harbor provision. To the extent the proposed safe harbor is meant to apply to notices provided under consistent state laws, the agencies should clarify their jurisdiction and intent to make such an application. Since the Model form includes notices required by the FCRA, the agencies should clearly state that the safe harbor applies to the privacy notice requirements under the FCRA.

Thank you for considering our recommendations.

At USAA we vigorously protect our members’ privacy. We are committed to the highest level of customer service and quality communications. With this in mind, we would like to thank you for considering our recommendations.

Sincerely,

Judy K. McCormick
Senior Vice President, Chief Privacy officer