

Before the
DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
Washington, D.C. 20219

In the Matter of

Model Privacy Form
12 CFR Part 40
Docket ID OCC-2007-0003
RIN 1557-AC80

Comment on the Notice of Proposed Rulemaking (NPR)
Requesting Comment on a Model Privacy Form

To: The Department

The New York State Consumer Protection Board ("CPB") hereby respectfully submits the following comment to the Department of the Treasury, Office of the Comptroller of the Currency as well as the other regulatory agencies involved in regard to the request for comment on a "prototype privacy notice" that financial institutions can use for their privacy notices to consumers as required under the Gramm-Leach-Bliley (GLB) Act.

The CPB would like to express its gratitude to the Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Department of the Treasury, Office of Thrift Supervision; National Credit Union Administration; and Federal Trade Commission (FTC) for undertaking the task of proposing a "model privacy form" to provide a standard notice of a consumer's privacy rights in a format that is easy to read and understand.

ABOUT THE CPB

The New York State Legislature created the CPB in 1970. As New York State's top consumer watchdog, the CPB is involved in a wide array of consumer issues. The CPB conducts consumer investigations, research and analysis; develops consumer education programs and materials; responds to individual complaints by working to mediate disputes between consumers and businesses; and, represents the interests of consumers before the Public Service Commission (PSC) and other State and federal agencies.

The CPB is especially interested in any action taken with regard to the banking, credit card and financial services industries that will have an effect on consumers. To respond to concerns expressed by consumers, the CPB is currently in the process of creating a Credit Card Practices Task Force and is participating in an Interagency Task Force on Sub-prime Lending. The Task Forces will examine issues related to the practices of financial lenders. Therefore, the FTC's leadership in working with financial and banking regulators to improve notices relating to policies and practices given to consumers is not only laudable but also timely.

THE GLB

The GLB, often referred to as the Financial Modernization "Act" of 1999, imposes a number of requirements on financial institutions on how they safeguard a consumer's personal and financial information. Under the Financial Privacy Rule, financial institutions are required to provide consumers with a written document

explaining how they collect and disclose their customers' financial and/or personal information and what rights a customer may have in this regard if they do not wish to have their information shared. The Safeguards Rule sets guidelines on how a financial institution must have in place a comprehensive design to keep a customer's information secure from unauthorized sources and a plan of action if a security breach occurs. The Pretexting provisions of the GLB are designed to protect consumers from individuals or companies who may try to obtain personal financial information about an individual under false pretenses which is illegal under this Act¹ and punishable as a criminal act.²

These protections are especially important in today's cyberspace world of "computer-hacking" and due to recent news reports of large customer databases being breached.

It is also important to note that under the GLB, the definition of "financial institution" encompasses many more entities than traditional banks, securities firms and insurance companies.³ The CPB is also concerned with privacy disclosure as it relates to the use of credit cards, debt collection agencies, financial services and any other institutions affecting consumers' financial affairs.

¹ 15 U.S.C. 6821 (2007).

² 15 U.S.C. 6823 (2007).

³ 15 U.S.C. 6809(3)(A) (2007); 12 U.S.C. 1843(k) (2007).

The credit card industry is a growth industry that shows no sign of slowing down. Statistics illustrate the burgeoning number of credit cards⁴ and debt per household⁵ make the proposed improvement of the privacy notices mandated under the GLB even more crucial. While financial institutions are currently meeting the minimum requirements mandated by Title V of the GLB by providing privacy policies to their customers, it is apparent to the CPB that this is not adequate protection for consumers. Often the privacy notices sent by financial institutions contain extremely technical jargon in such fine print that many consumers cannot understand or are not able to read.⁶ In addition, opt-out provisions, which would allow a consumer to choose not to have their personal financial information shared with other entities, are often hidden within pages of credit card terms, conditions and perplexing terminology.⁷ Large blocks of overly complex language often lead to the consumer either becoming confused or throwing the notice away before reading it.⁸

The CPB believes there should be a clearer and more simplified privacy policy notice for consumers so that they can understand exactly how a company with whom they

⁴ According to Robert Manning, Research Professor of Consumer Finance and Director of the Center for Consumer Financial Services at the Rochester Institute of Technology, nearly seventy-five percent (75%) of United States households have a bank credit card user, up from (54%) in 1989. Between 1980 and 2005, consumers increased their yearly credit card charges from an estimated \$69 billion per year to more than \$1.8 trillion. This has resulted in an increase in household debt, which grew from \$59 billion in 1980 to approximately \$880 billion in 2007.

⁵ In an article by CNNMoney.com, it was reported that the average American household carries almost \$10,000 worth of credit card debt. From 1978 to 1996, consumer credit card debt grew from \$50 billion to \$378 billion, multiplying six-fold. In 2004, the Federal Reserve estimated that American consumers carry approximately five (5) credit cards each.

⁶ United States Government Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Needs for More Effective Disclosures to Consumers 2 (2006).

⁷ Id.

⁸ According to the United States Government Accountability Office, "disclosures from the largest credit card issuers were often written well above the eighth-grade level at which about half of U.S. adults read." Id.

are doing business is collecting and possibly sharing their personal financial information. As it is a well established fact that the average American consumer reads at various levels of understanding, the CPB is concerned as to whether the model privacy form will reflect this reality. When formulating the proposed notice, the Board hopes that the techniques of consumer testing and focus groups were utilized to ensure that the notices are consistent with the average consumer's reading comprehension.

The call for a more uniform privacy notice by the FTC highlights the need for an improved format for privacy notices under the GLB. From a consumer protection standpoint, we believe it would be more desirable to actually provide the consumer with genuine privacy rights when it comes to the sharing of their personal information. Until that time comes, the CPB recommends a uniform, attention-grabbing, easily readable and comprehensible form at the beginning of the privacy notice which makes very clear what rights the customer has or does not have in the sharing of their personal information with third parties and affiliates.

MODEL PRIVACY NOTICE

The CPB finds the examples of the model privacy form (identified as Neptune and Mars) contained in the interagency proposal would be of great benefit to consumers. Those forms would enable a consumer to compare the privacy notice practices of different financial institutions when deciding with whom they would like to do business which may ultimately lead to increased competition in the marketplace. In addition, for

those companies providing the ability to opt-out, the model Neptune form makes the directions to do so straightforward, easily understandable and uncomplicated.

In addition, a new GLB disclosure that consumers find clear will hopefully encourage those institutions with less than stellar practices to model after companies providing a higher degree of privacy. Comparing disclosure practices is currently very difficult for consumers to do because of the complex notices in use. The CPB believes once consumers are empowered with this information, they will have greater ability to conduct business with companies with whom they are more comfortable and familiar.

RECOMMENDATIONS

Notwithstanding the laudable objectives stated above, the CPB calls for the following recommendations or guiding principles which would further enhance the model privacy forms developed by the six regulatory agencies and included in the request for comment.

Format:

- Notices should be dated to make consumers aware of the most current practices employed by the disclosing company.
- Changes to the policy made from a previous notification should be highlighted so that consumers are not required to reread the entire disclosure to try to ascertain what changes have actually been made.

- A larger, clearer font for senior citizens and the visually impaired should be used throughout the entire form.

Content:

- An explanation of creditworthiness should be included in addition to the definitions already provided.
- On page 2 of the sample form, fourth box down, a website should be recommended where consumers can ascertain information about protections that may additionally be provided by State law (For example: <http://www.ncsl.org/programs/lis/privacy/financeprivacy.htm>).
- On page 3 of the sample form, the sentence "Unless we hear from you, we can begin sharing your information 30 days from the date of this letter" should be modified to reflect the fact that the company may already be sharing the consumer's information.
- The opt-out form should include a notice of how long the opt-out is in effect, as well as when the opt-out will become effective. For example, "Please allow thirty (30) days for your choice to take effect. Your instructions shall remain in effect for X years." The second option currently reflects the end of the effective period, but the other options do not.

CONCLUSION

The proposed privacy notice format is a positive step in our pursuit to improve the nature and method by which information is conveyed to consumers. Until consumers know what rights they do or do not have they cannot make informed choices or ask the proper questions in relation to the sharing of their personal information with third parties. When it comes to financial institutions and credit cards, understanding privacy rights is just as important to a consumer as being aware of all contract terms, conditions and fees.

Thank you for this opportunity to address the Department of the Treasury along with the other regulators involved in the model privacy notice proposal.