

**Summary of Presentation by the  
Independent Community Bankers Association (ICBA) and  
the America's Community Bankers (ACB)  
GLB Interagency Meeting on the ANPR on Privacy Notices  
February 4, 2004  
Federal Trade Commission**

Participants:

Rob Rowe (ICBA)  
Peter Hong (ACB)  
Rob Drozdowski (ACB)

Comments:

The ACB reported on two recent surveys of their membership regarding privacy notices. Its 2001 compliance survey on privacy opt-outs indicated that the majority of consumers are not opting out or not finding the notices helpful. The 2001 survey also indicated that the costs of implementing the notice requirement has been disproportionately high for members. The ACB added that the costs of redesigning notices would be particularly burdensome on those institutions that do not share outside of the exceptions. Some members have suggested that the privacy rules should be amended to require one-time notices with subsequent notices provided only when a material term changes.

The ICBA commented that while the concept of short-form notices is enticing, the devil is in the details. Tweaking or minor adjustments to privacy notices are very costly, requiring new software and additional training of personnel. Members are concerned that they will not be able to use their old notices if the agencies mandate use of a short form. Consequently, a regulatory fix might cost more than any benefits that consumers might receive. Also, members may want to tailor their notices based on their individual customer base, and may not want to use a standardized notice. For example, while smaller banks might prefer a standardized model form, large banks might prefer a form like Appendix C which provides more flexibility for customizing the policy.

According to the ICBA, the key for any model form that could be accepted by industry is flexibility. Model notices, safe harbors, best practices are all positives, but industry is concerned about potential rigidity. The ICBA added the concern that a model short form would not be beneficial if institutions still had to provide a long form. Also, if a form is developed for institutions that do not share outside of the exceptions, it should not say "as permitted by law."

The ACB supports the short-form project and revisions of the sample clauses, so long as use of the short-form or model clauses are not mandatory. Members do not want to be prohibited from using current notices, which in some cases may be shorter. Also, the ACB would not want a privacy notice that discriminates between a large bank that

shares within an affiliate structure and small banks that have to engage in a lot of third-party sharing to provide the same level of service.

The ICBA stated that complaints received most frequently are that a member is not providing an opt-out because it only shares under the exceptions in .14 and .15, so the short form must address this situation. Also, members need guidance as to what to do with an opt-out form when the bank did not offer an opt-out.

The ICBA does not believe that privacy notices are a shopping tool for consumers. While privacy considerations may be a factor in choosing a bank, such considerations will not drive a consumer's decision. Even if notices are simplified, consumers will not shop based on privacy.

With regard to the forms provided in the ANPR, both trade associations had favorable reactions to Appendices A and B, but had concerns about requiring use of a standardized form. Also, the forms did not appear to contemplate other state requirements that might apply (e.g., the Illinois opt-in).

About the degree of testing undertaken by members, the ICBA stated that generally, only the larger banks have conducted any consumer testing (e.g., Washington Mutual, Bank of America). Smaller banks are more interested in compliance.

Regarding goals of privacy notices, the ICBA stated that notices should reaffirm that trust and confidence of customers is well placed in the institution. The ACB believed that notices should be able to give choices beyond those permitted by law, since some institutions are offering opt-outs even though they are not sharing outside of the exceptions.

On the costs of redesign, the ACB stated that in 2001, the average compliance cost for notices (including development) was \$1.37 per customer. In 2002, after the notices were already created, costs of providing notices dropped to \$0.65 a customer.

***Excerpts From ACB February 11, 2003 Comment Letter to OTS  
Highlights from 2002/2003 Unpublished Privacy Compliance Survey***

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- ACB conducted a survey of its membership in November 2001. A follow-up survey of a representative sample of ACB members was conducted in January 2003 to assess the compliance burden in 2002;
- Both surveys revealed that the overwhelming majority of community banks with less than \$1 billion in assets do not share customer information with nonaffiliated third parties except to the extent needed to service and process customer account transactions pursuant to the limited exceptions provided in GLBA.
- ACB found that with the exception of minor aesthetic changes to the form, the overwhelming majority (90 percent) of community banks under \$1 billion in assets made no changes to their privacy policy from the initial notice sent the prior year.
- Institutions that reported receiving customer feedback on the privacy notices indicate that the majority of customers find the information not useful.
- More than 63 percent of customers reported that they found the information in the privacy notice of no value, while only 37 percent found the information somewhat useful, and none reported finding the information very useful.
- ACB found that in 2001, the average compliance cost for community banks of all sizes was approximately \$1.37 per customer.
- In 2002, ACB found that the estimated average compliance per customer dropped significantly to about \$0.65 per customer as initial policies and procedures developed in 2001 have become institutionalized.

## **ACB PRIVACY COMPLIANCE SURVEY**

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America's Community Bankers conducted a survey of its membership to evaluate the costs and customer response relating to compliance with the Gramm-Leach-Bliley Act's (GLBA) privacy provisions. As of July 1 of this year, all depository institutions were required to create and distribute a statement to each customer that accurately reflects the institution's privacy policies and practices. GLBA also requires institutions to refrain from sharing nonpublic personal information with nonaffiliated third parties (except under limited circumstances) unless customers are provided with the ability to "opt-out" of such information sharing.

ACB's survey concludes that the costs to comply with the GLBA privacy provisions were significantly greater for community banks on both a per-customer and percentage of expenses basis. The survey indicates that when adjusted for size, the costs to comply with GLBA were inversely proportional to the size of the institution. In other words, the compliance burden on smaller community banks was significantly greater than that of larger banks. ACB's survey also observed that only a small fraction of those customers who were given the opportunity to opt-out actually elected to do so. Finally, institutions which reported receiving feedback from their customers found overwhelmingly that customers did not find the privacy statement provided useful information.

### **Survey Background:**

During the month of October ACB sent the survey to each of our member institutions. We received 186 responses from institutions with total assets as small as \$10 million to several institutions with assets exceeding \$10 billion. These diverse institutions represent approximately \$400 billion in industry assets.

### **Cost of Compliance:**

Overall, estimated compliance costs were approximately \$1.37 per customer, with total estimated compliance costs for individual institutions varying widely from as little as \$1,000, to more than \$2 million. The survey data revealed one constant: the burden of compliance with the GLBA privacy requirements was most significantly felt by smaller institutions. When comparing the amount institutions spent to comply with the privacy provisions of GLBA against their reported non-interest expenses (e.g., salaries, employee benefits, occupancy costs, etc.) the results are particularly striking. As a percentage of non-interest expenses, the smallest group (less than \$50 million) of institutions paid almost four times as much as the largest group in the survey (greater than \$10 billion). Whether the data are evaluated on a per customer basis, or on a percentage of dollars spent, smaller institutions paid more.

This is likely due to the amount of set costs all institutions incurred to comply with GLBA. Larger institutions with in-house legal and consulting staff were able to do most of the compliance work themselves, while many smaller institutions sought outside legal help and consultants in order to comply.

Institution Type	% Reporting	Avg. Total Compliance Cost	Avg. Per Customer Cost	Privacy / Non-Interest Expenses Ratio
\$10b and above	3%	\$658,012	\$0.27	.1443%
\$1b - \$10b	11%	\$ 79,419	\$1.38	.2209%
\$500m - \$1b	11%	\$ 25,301	\$1.07	.2219%
\$100m - \$500m	46%	\$ 16,861	\$1.46	.3765%
\$50m - \$100m	17%	\$ 6,599	\$1.70	.3765%
<\$50m	12%	\$ 4,569	\$2.37	.5529%
Total	100%		\$1.37	

**Information Sharing / Opt-Out:**

The survey found that the great majority of institutions with less than \$1 billion in assets do not share customer information with non-affiliated third parties beyond the basic exceptions provided under GLBA. Approximately one of every two institutions with assets greater than \$1 billion shares information with non-affiliated third parties (subject to the opt-out provisions) to offer products and services they believe their customers would find of value. Of those institutions that offer their customers the choice to opt-out, the overwhelming majority (60%) report that less than 1% of their customers elected to opt-out. ACB believes that this reflects the trust consumers place in their financial institution.

**Customer Response Rate / Opt-Out**

Type	# Reporting	Offer Opt-Out	Customer Response Rate / Opt-Out					
			< 0.5%	.5 - 1%	1 - 5%	5 - 10%	10 - 20%	> 20%
> \$10b	6	4 (67%)	0	0	2	1	1	0
\$1b - \$10b	20	10 (50%)	1	3	5	1	0	0
\$500m - \$1b	20	5 (25%)	1	2	1	1	0	0
\$100m - \$500m	85	15 (18%)	9	1	2	2	1	0
\$50m - \$100m	32	6 (19%)	6	0	0	0	0	0
<\$50m	23	3 (13%)	2	0	0	0	0	1
Total	186	43 (23%)	19/44%	6/14%	10/23%	5/12%	2/5%	1/2%

**Customer Response:**

Customer response to the privacy policies have been mixed. Of those institutions that reported receiving customer feedback, the majority indicated that their customers did not find the privacy policies useful. This may be due to the high degree of specificity required under the GLBA privacy regulations. About one third of the institutions reporting indicated they had not received any feedback from their customers.

**Privacy Policy Customer Feedback**

Response	% Reporting Feedback
Very Useful	3%
Somewhat Useful	40%
Not Useful	57%
No Customer Feedback	N/A