CONSUMER MORTGAGE COALITION

May 29, 2007

Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room
Mail Stop 1-5
Washington, DC 20219
RE: Docket No. OCC-2007-0003
regs.comments@occ.treas.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave, NW
Washington, DC 20551
RE: Docket No. R-1280
regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RE: RIN 3064-AD16–Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act
comments@fdic.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: OTS-2007-0005
regs.comments@ots.treas.gov

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314-3428
RE: Comments on Proposed Rule Part 716 (Model Form for Privacy Notice)
regcomments@ncua.gov

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, NW.,
Washington, DC 20580
RE: Model Privacy Form, FTC File No. P034815
Filed via
https://secure.commentworks.com/ftc-modelform

101 Constitution Ave., NW, 9th Floor West; Washington, DC 20001
TEL: (202) 742-4366 FAX: (202) 403-3926

Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581
RE: Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act
secretary@cftc.gov

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549-1090
RE: File Number S7-09-07 – Model Privacy Form
rule-comments@sec.gov

Re: **Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act, 72 Fed. Reg. 14940 (Mar. 29, 2007)**

Dear Sirs and Madams:

The Consumer Mortgage Coalition (the "CMC"), a trade association of national residential mortgage lenders, servicers, and service-providers, appreciates the opportunity to submit these comments on the Interagency Proposal for a Model Privacy Form under the Gramm-Leach-Bliley ("GLB") Act (the "Proposal"), published in the *Federal Register* on March 29, 2007, by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission, and Securities and Exchange Commission (collectively, the "Agencies").

The Proposal implements Section 728 of the Regulatory Relief Act, Pub. L. 109-351 (Oct. 13, 2006), which amends the GLB Act to add a new Section 503(e), 15 U.S.C. § 6803(e). That provision requires the Agencies to "jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under [section 503 of the GLB Act]," *i.e.*, the initial and annual disclosures of the financial institution's privacy policy. The statute states that the model form will provide a safe harbor from liability for violating the GLB Act for financial institutions that choose to use it. The amendments did not change the existing required disclosures or the exceptions to those requirements.

The CMC commends the Agencies for producing the Proposal in the short time allotted to it under the Regulatory Relief Act. We agree that the existing model disclosures in the GLB Act implementing regulations have significant weaknesses and could be improved by the use of professionally-designed forms that are tested by consumers. We are concerned, however, that the Proposal does not meet the goals of the Regulatory Relief Act because it (1) requires many disclosures that are not mandated by the GLB Act and are not helpful to consumers; (2) does not permit institutions to comply with the GLB Act by disclosing their actual information-sharing practices; and (3) imposes rigid and unnecessary formatting and delivery requirements that would be very burdensome to industry.

CMC believes that the model forms must be substantially revised and republished as a new proposal for public comment so that they meet the goals of the Regulatory Relief Act in a way that is helpful to consumers and industry and consistent with the GLB Act.

Disclosures Should Reflect GLB Act Disclosure Requirements

The Regulator Relief Act provides:

> (1) The agencies referred to in section 504(a)(l) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section [Section 503(c) of the GLB Act, 15 U.S.C. § 6803(e)].
>
> (2) A model form developed under paragraph (1) shall—
>
> (A) be comprehensible to consumers, with a clear format and design;
>
> (B) provide for clear and conspicuous disclosures;
>
> (C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and
>
> (D) be succinct, and use an easily readable type font.

15 U.S.C. § 6803(e).

The model form mandates disclosures beyond those required by Section 503(c) of the GLB Act, while at the same time failing to provide for, or even permit, some disclosures that are required. The Proposal does not, however, meet the goals stated in Section 503(e)(2) as set forth above. The material is presented in an order that does not focus on the key consumer rights provided by the GLB Act. The use of defined terms that are explained on a separate sheet is inconsistent with basic principles of clear presentation; moreover, the definitions are not all accurate, they are used inconsistently, and they include elements that are unnecessary for consumers to understand an institution's privacy policies. The requirement to show information that is typically collected or shared by financial institutions, even if the institution making the disclosure does not collect or share that type of information, will result in confusing and misleading disclosures.

The Proposal would require an institution that wants to take advantage of the safe harbor provided by the Regulatory Relief Act to disclose the consumer's right to opt-out from sharing with third parties under the GLB Act, which is a required disclosure under the GLB Act and the Agencies' privacy regulations. It would also go beyond the disclosures required by the Act and regulations in several ways, such as by requiring:

- A description of the financial institution's policies of sharing of information "for everyday business purposes" such as processing transactions, account maintenance,

and reporting to credit bureaus. All institutions would also have to indicate that they do not allow consumers to opt-out of sharing such information.

- Discussions of federal law, including explanations of when the institution must provide privacy notices and of why the consumer cannot limit all sharing of information.

General Issues

Allow Institutions to Present Their Entire Privacy Policy in One Document

At the same time that the Proposal requires disclosure of much information that is not required by the GLB Act, it does not allow institutions to go beyond federal law and present their entire privacy policy and it does not emphasize the aspects of financial institutions' privacy practices that are most important to consumers.

The heart of the GLB Act's privacy rules is the requirement that a financial institution that wishes to share nonpublic personal information with unaffiliated third parties give consumers the right to opt-out of such sharing. State laws, such as California's S.B. 1, impose additional requirements before information can be shared with third parties. Many institutions also voluntarily provide a right to opt-out of sharing of information with affiliates. Institutions also often voluntarily allow consumers to opt-out of direct marketing by the institution through certain channels such as e-mail.

All of these "opt-out" rights can be viewed as implicating "privacy" in some sense and many institutions currently use a single disclosure to present all of the consumer's opt-out alternatives. A single disclosure is also helpful to the consumer, who is unlikely to be interested in whether the institution allows opt-outs in certain situations because of federal or state law or voluntarily. But by strictly limiting variations from the standard disclosure, the Proposal would prohibit institutions from providing a comprehensive explanation of the institution's information-sharing policies and the consumer's right to prohibit sharing.

CMC is concerned that the rigid format requirements of the proposed model form will result in consumers being provided an inaccurate or overly simplistic view of a particular financial institution's privacy policies. As the Agencies are aware, the privacy and information-sharing policies of financial institutions are often complex. The Agencies should allow non-deceptive modifications and additions to the form so that financial institutions can provide consumers with accurate and important details of their privacy policies.

Safe Harbor

Under the proposal, the current sample clauses would be deleted from the regulations, and financial institutions would lose the safe harbor provided by use of those clauses after a one-year transition period. CMC strongly opposes the elimination of the safe harbor for institutions that use the sample clauses. When the GLB Act was enacted and the Agencies issued the current regulations, financial institutions invested significant resources in fine-tuning their privacy notices to comply with the federal law and regulations. They have also made a major effort to reconcile the federal requirements

with state privacy laws as well as other federal and state statutes. There is no reason that disclosures that the Agencies have previously found to be in compliance with the GLB Act, because they properly use the existing sample clauses, should lose their validity

Therefore, CMC urges the Agencies to preserve the existing safe harbor for institutions that use the sample clauses.

Paper Size, Number of Pages, and Use with Other Disclosures

The Proposal would require financial institutions to print the Model Form on 8 ½" by 11" paper. CMC believes that consumers will be able to understand the information presented in the model form on other sizes of paper. Many consumer disclosures are presented on smaller-sized paper. It appears that the reason for this requirement is that the Agencies used 8 ½" by 11" paper to test the disclosures, not that testing showed that smaller-sized paper would be ineffective. CMC members have found that the size of the paper is not as significant as how information is presented and the nature of the information the document contains. Using smaller-sized paper also enables financial institutions to economize on paper costs, reducing the impact of compliance on natural resources. Therefore, the Agencies should not impose requirements as to paper size.

Similarly, the rules should not require that the model form appear on two separate, single-sided pages, with any opt-out form on a third page. The Agencies stated that separate pages are required because testing has indicated that consumers have a preference for notices that enable them to view the information on pages one and two side-by-side. This evidence of consumer preference does not outweigh the significant increase in expenses financial institutions will incur as a result of increased costs for paper, handling, and processing. The Agencies' research apparently did not demonstrate a significant increase in consumer comprehension or usability from this burdensome requirement; on the contrary, the *Federal Register* notice states that the researchers concluded that page 1 of the model form alone was adequate for consumer comprehension and usability. *See* 72 Fed. Reg. at 14944. Therefore, CMC opposes the requirement that the model form be printed on separate pages.

Finally, the Proposal provides that institutions may not incorporate other information into the form, but does not make clear whether the form could be mailed with other material presented separately. The regulation should make it clear that the model form may be sent to customers in a mailing that contains other material, such as a periodic statement. The Agencies should also allow inclusion of the model form as part of an integrated document that also includes other information about the general features of the financial product or products that the consumer is obtaining. Customers review and retain these documents because they are important documents that conveniently summarize the customer's relationship with the institution. Therefore, CMC believes that institutions should be allowed to incorporate the model form into a document that includes other material relating to the customer's relationship with the institution.

Affiliates

The model form allows financial institutions to include the names of the financial institutions or a group of affiliated institutions providing the notice. CMC strongly

supports allowing affiliated institutions to provide a joint notice. In some cases, however, the form may not allow all of the affiliates to be shown on the form. Financial institutions should also be allowed to show the names of affiliates in connection with the definition of the term "affiliates" on page 2 of the model form.

Logos and Color

The Agencies ask whether financial institutions will use corporate logos and color in connection with the model form. Financial institutions use corporate logos to provide a consistent corporate identity that customers easily recognize and identify with. The use of color and logos increases the likelihood that customers will read the information the institution provides Accordingly, financial institutions should be allowed to use logos and color on the model form.

Testing

The Agencies indicate they plan to test the next version of the model form with consumers. CMC recommends that the Agencies also convene an advisory group composed of representatives of financial institutions with expertise in privacy matters, as well as other privacy experts, to review the model form and advise on whether the next version provides useful information to consumers, is understandable, is consistent with the disclosure requirements of the GLB Act, and conveys meaningful information in a clear manner.

State Requirements

Because several states have adopted additional privacy and disclosure requirements, institutions doing business with residents of those states have modified their privacy policies to accommodate the additional state requirements. The model form does not provide flexibility to permit financial institutions to address varying state requirements. The final rule should allow financial institutions to modify the model form to incorporate reflect differing state requirements.

Specific Comments on Elements of the Model Form

CMC believes that the form can be significantly improved by removing unnecessary details that are not required to be disclosed under the GLB Act and giving institutions the flexibility to disclose their actual practices.

Information Collected and Frequently Asked Questions on Sharing Practices

On page 1 of the model form, the section entitled "What?" sets out the types of information financial institutions collect and share. Financial institutions are not permitted to change the language appearing in this section. This limitation will prevent institutions from complying with the GLB Act requirement that a financial institution disclose the information that it actually collects and is likely to confuse and mislead consumers. For example, the reference to depositing money has no relevance to a company whose only business is originating and servicing mortgage loans. It would be more useful to consumers to be provided information about the information an institution actually collects, which would also help them compare information-collection practices

of different institutions. Therefore, the "What?" section on Page 1 should be modified to allow institutions to indicate the types of information they actually collect and share.

Similarly, institutions should be allowed to modify the language on page 2 of the form under "Sharing practices." For example, the question that states that a company collects personal information when the customer opens an account or deposits money will have little relation to the business of many mortgage lenders and servicers. This statement will only generate unnecessary inquiries from consumers who will have little understanding of how that response applies to their relationship with a mortgage lender. Institutions should be allowed to describe their actual practices under this heading.

Disclosure Table

Yes/No Answers

As with the top of page 1, it is important that the information included in the disclosure table, "reasons we share your personal information," on page 1, also accurately reflect an institution's sharing practices. The column entitled "Does [name] share?" permits only a "yes" or "no" answer. The inflexible structure of the permitted responses does not allow financial institutions to inform consumers about important aspects of their privacy policies, as they are required to do under the GLB Act. For example, financial institutions may wish to inform consumers that they share nonpublic personal information with certain affiliates or types of institutions but not others. Therefore, the rules should allow an answer other than "yes" or "no" to the question of whether the institution shares information. This added flexibility will allow institutions to fully comply with the GLB Act and make the institution's policy clear to the consumer without compromising the goal of making disclosures clear and understandable.

Everyday Business Purposes

The line of the table that discusses "everyday business purposes" should be removed from the table. The GLB Act and the existing regulations specifically allow financial institutions to share information for these purposes. *See* 15 U.S.C. § 6802(e); Agency Privacy Regulations §§ __.14, __.15. Disclosing that the institution shares such information, along with the fact that the consumer does not have the right to limit such sharing, does not enlighten the consumer about a particular institution's practices. In addition, the disclosure as drafted could be misleading because it does not include the myriad other situations in which a financial institution is allowed to share information without providing a disclosure or opt-out right for reasons other than "everyday business purposes" (such as, for example, in connection with secondary market transactions or to protect against actual or potential fraud), but it does include reporting to credit bureaus even when the institution does not do so. Finally, this routine type of sharing is already explained in the sentence in the "How?" row in the "key frame" on page 1.

Therefore, institutions should be allowed to continue to disclose that they "make disclosures to other nonaffiliated third parties as permitted by law," as permitted under the current regulations. This language could replace the "everyday business purposes" language in the "How" section of the form on page 1.

Finally, the term "everyday business purposes" is used in two other places in the table on page 1, in the descriptions of the institution's sharing with affiliates of "transactions and experiences" information and of "creditworthiness" information. This use of the term relates to the Fair Credit Reporting Act ("FCRA") affiliate-sharing provisions, which are different from the GLB Act provisions. Specifically, a company may freely share transaction-and-experience information with its affiliates under both the GLB Act and FCRA, and the affiliate may use the information for any purpose, including marketing as well as "everyday business purposes." If a company provides an opt-out right and the consumer does not opt-out, then both the GLB Act and FCRA again authorize the company to share the information for any purpose. Until the regulations implementing the new FCRA affiliate-sharing provision are adopted, the affiliate will also be able to use the information for any purpose. The term "everyday business purposes" is not helpful in describing the complex rules for sharing information with affiliates under the GLB Act and FCRA and should be deleted. In fact, we recommend that the agencies defer action on finalizing the model privacy notices until the substantive regulations implementing the new requirements for use of consumer report information by affiliates, added by the Fair and Accurate Credit Transactions Act of 2003, are issued in final.

Table Order

The other lines of the table should be reordered so that the information that is most important to consumers–how the institution shares information with affiliated and non-affiliated institutions–is presented first. The lines that refer to "For our own marketing purposes" and "For joint marketing with other companies" should be combined into one line. It is uncommon for companies to offer opt-outs from joint marketing and virtually unheard of for them to offer an opt-out from marketing through a vendor (unless they offer an opt-out from all marketing). Companies that do offer opt-outs from this type of sharing should be able to provide an answer in the "Does this company share?" that explains their marketing policies.

Federal Law

The model form contains many references to federal law. None of these references are required disclosures under the GLB Act. As noted above, including references to federal law makes it difficult to disclose privacy policies that are not mandated by the GLB Act but that the institution has adopted to comply with state requirements or voluntarily. Therefore, these references should be eliminated.

The statement that the company will notify the consumer of its privacy policy annually is also not required by the GLB Act and detracts from the substantive disclosures of the company's policies. Therefore, it should also be removed from the model form.

30-Delay

Page 3 of the model form indicates that institutions must delay sharing for 30 days from the date specified on the model form. Although it is correct that the regulations generally treat a 30-day period as a sufficient time to allow an individual a reasonable opportunity to opt-out after receiving an initial notice, this language would also apply to annual notices. We do not believe that the Agencies intended to impose a new waiting period

every year when an institution sends the annual notice. Therefore, the form should be modified to indicate that the 30-day waiting period applies only to the initial opt-out opportunity provided to consumers, not to subsequent annual notices.

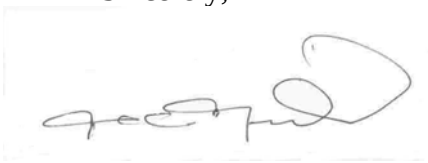
Partial Opt-Out

The Agencies' GLB Act regulations provide that financial institutions may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out. The model form should similarly allow institutions to give consumers the ability to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out.

* * *

We appreciate the opportunity to present our views. Please do not hesitate to call (202) 742-4366 with any questions.

Sincerely,



Anne C. Canfield
Executive Director