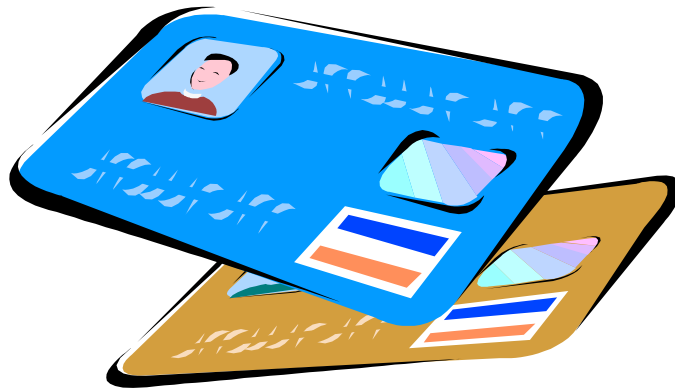


Your Privacy is Important to Us?

A Report Card on How Bank Privacy Notices Discourage Consumers from Exercising the Right to Financial Privacy



A USAction Report

**Prepared by Citizen Action of New York
Bryan O'Malley and E. Joyce Gould**

October 2001

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Executive Summary

Introduction

In 1999, Congress allowed large financial corporations – banks, brokerage firms and insurance companies – to merge when it passed the Financial Modernization Act, otherwise known as the Gramm-Leach-Bliley Act (GLBA). Throughout the debate on this legislation, consumer advocates worried that the law included too few protections to restrict corporate use of personal financial information.

As part of GLBA Congress instructed the Federal Deposit Insurance Corp., Office of the Comptroller of the Currency, Federal Reserve Board, and the Office of Thrift Supervision to develop regulations to require corporations to provide privacy notices to consumers. These privacy notices began arriving in consumers' mailboxes in April 2001. These notices tell consumers with credit cards, bank accounts, brokerage accounts, and other financial accounts how to “opt-out” of selected standard company practices for sharing information.

The federal regulations require that the privacy notice be “clear and conspicuous” and “reasonably understandable”. However the first impression that the notices leave with the average consumer appears to be anything but clear or understandable. USAction, through its New York affiliate Citizen Action of New York, decided to test whether that first impression is fair or whether a closer look at privacy notices would find that they do provide clear, understandable information to

consumers about their privacy rights and the actions that consumers could take to protect their financial privacy.

The report examined the privacy notices of the 15 banks that issue the most credit cards, more than 116 million. The list is dominated by three banks that together issue 101 million cards: MBNA with 44 million; Provident Bankcorp with 31 million and Bank One Corp./ First USA Bank with 26 million.

All but one of the top 15 banks made their privacy notices available to the public, either through a website or by calling the bank. Citizen Action of New York staff read each privacy notice to determine whether:

1. The privacy notice of each of the top fifteen banks complied with the federal law and regulations.
2. The privacy notice – even if it was in strict compliance with federal regulations – is adequate to allow consumers to make an informed choice about how to protect their financial privacy.

Each privacy notice was graded on 16 topics, grouped into three categories:

1. Is the notice clear and understandable?
2. How easy is it for a consumer to exercise privacy rights?
3. How comprehensive is the information provided to consumers?

Each bank received a grade for each topic, a grade for each category and an overall grade.

Results

Overall Grade: Three of the 15 banks received an F, six a D and six a C. None of the banks received higher than a C. MBNA, the number one credit card issuer in the nation with 44 million cards, received the lowest overall grade of any bank, a 0.6 out of a possible 4.0. First Premiere Bank received an automatic F as its notice was not available to the public, only to customers.

Clear and Understandable: Regulations issued by the federal government require that a credit card company's privacy notice be "clear and conspicuous" as well as "reasonably understandable." (12 CFR, § 332.3(b)) In order to clarify these terms, the federal agencies provided several examples of both "clear and conspicuous" and "reasonably understandable."

Of the fourteen companies that were examined, nine met the requirements of the federal law. Seven of the companies that passed received a C. Two of the companies that passed received a D. Five companies flunked, with an F. MBNA America (0.3 out of 4.0 points) received the lowest points for this category. Citigroup and BankOne Corp/First USA Bank received the highest grades in this category, with 2.3 out of 4.0 points.

Exercising the Right to Opt-Out: The most important reason to require banks to issue privacy notices is to alert customers to their right to opt-out of sharing their non-public financial information. This category examined each company's privacy notice to see if it reflected the spirit of the law by making it easy for its customers to understand and exercise their right to

opt-out of information sharing if they so desired.

Of the fourteen privacy notices that were examined, thirteen of them passed this category. Eight of the policies received a C. Five of the policies received a D. First Union Corp. (0.8 out of 4.0 points) was the only company to fail this category. Both MBNA America and Metris Companies Inc. (Direct Merchants Bank) barely passed with a grade of 1.0. Of the companies that received a C, Chase Manhattan Corp. and First Consumers National Bank scored the highest, with 2.5 out of 4.0 points.

Comprehensive Information

Provided: Because information is crucial to the customers' ability to make an informed choice about the sharing of their private financial information, this category analyzed each company's privacy notice in relation to the comprehensiveness of the information that was provided. Some of the topics are federal requirements, while other topics go beyond the federal standards to evaluate a company's efforts to help the consumer understand what the federal requirements actually mean.

Of the fourteen companies whose privacy notices were analyzed, nine passed this category. People's Bank (3.0 out of 4.0 points) and FleetBoston Financial Corp. (2.8 points) received a B in this category. There were three companies that received a C; four companies received a D, and five companies an F. Bank of America, U.S. Bancorp and Bank One Corp/First USA Bank provided consumers with directions on how to ask direct marketing services and credit reporting agencies to stop solicitations from other companies.

Discussion

These findings indicate that banks that issue more than 116 million credit cards to US consumers are doing a poor to failing job of notifying consumers regarding their privacy rights. No bank got better than an overall grade of C, and well more than half received a D or F, fundamentally failing to provide an understandable explanation to consumers about their federal privacy rights.

Federal regulators have an obligation to assure that banks fully comply with the privacy notice regulations. The most glaring instances of banks violating the federal regulations is in the category that measured the federal requirements for a “clear and conspicuous” notice that is “reasonably understandable.” Not only did five banks fail to meet this standard but every bank failed to communicate the privacy notice in language that an average American can understand.

For example, the following is a sentence from the Metris/Direct Merchants Bank privacy notice:

We may disclose to “non-affiliates” for the purpose of those companies offering their products and/or services to you. The information we disclose to non-affiliates is limited to Identifying Information only; however, the Identifying Information may have been selected using Application Information and Transaction Information criteria. (Flesch Reading Ease for the above paragraph is 1.9% out of 100%.)

Aside from the fact that companies presented their notices in wording that was unintelligible to the average American, approximately half of the policies did not present their document in a format that made it easy for consumers to read. Privacy notices that

are poorly spaced, are formatted in long paragraphs, fail to highlight important text, and use small type size are not consumer-friendly and discourage consumers from reading these important materials.

By not making its privacy notice available to the public at-large, First Premiere Bank showed the most glaring fault. This weakness prevents consumers from making an informed choice related to personal financial privacy when shopping for a credit card. Federal laws and regulation should be amended to require that companies make a copy of their privacy notice available to the general public.

Most of the companies made it difficult for their customers to opt-out of having their information shared. They did this by:

- ✓ disguising the directions for how to opt-out,
- ✓ hiding the opt-out section of the policy,
- ✓ minimizing the methods consumers could utilize to inform the company of their decision to opt-out, and
- ✓ making each member of a joint account opt-out on his/her own.

Every bank failed in at least one of these four areas.

Also, with two exceptions – Citigroup and First Consumers National Bank – every bank actively discouraged consumers from exercising even the minimal privacy rights available under the law and most did so within the opening paragraph of the notice. Twelve companies, out of the fourteen that were examined, did not mention within the first paragraph that consumers could follow the directions

in the notice to affirmatively choose to protect some financial information. In fact, many companies tried to conceal the contents of the notice by reassuring their customers with false or misleading statements that inaccurately reflected the content of the notice. These actions have dramatic impact on the consumer, who could be discouraged from reading the entire notice based upon the content of the first paragraph.

One way in which companies could have reduced the difficulty of their privacy policies would have been to implement an “opt-in” procedure, which would require consumers to give the company permission to share their personal financial information with others. None of the banks chose the consumer friendly opt-in.

Recommendations

This analysis points to the concerns offered by consumers and advocates during the congressional debate on the Gramm-Leach-Bliley Act. The research shows that the law and regulations are written to benefit the financial institutions, not consumers. Companies have exploited the vague language in these regulations to undermine the general intent of the privacy protections.

The results of this study lead USAction and Citizen Action of New York to believe that stronger privacy protections are required on a federal level:

- ✓ Close the privacy loopholes that were included in the Gramm-Leach-Bliley Act (GLBA).
- ✓ Adopt new regulations that set objective, measurable standards for the “clear and conspicuous”

requirement, instead of using vague definitions that are open to interpretation and debate.

- ✓ Require an opt-in system, instead of the current opt-out. This step will empower consumers to make informed decisions and send a message that the federal government is on the side of its constituents, not large corporate banks.
- ✓ Close existing loopholes that allow banks to utilize a customer’s private financial information, even after they have opted-out of sharing this information. These loopholes minimize the effectiveness of opting-out, as they allow financial institutions to continue sharing information with too many people, against the wishes of the customer.

Americans have the right to expect that their financial information will be kept private and not be used for commercial purposes without their explicit permission. In the brave new world of our information age, where vast quantities of information can be shared instantly and globally, the potential for growing abuse and invasion of privacy is unlimited.

Congress should stand up to the banks and financial sector and act to provide strict personal privacy financial protections to American consumers. And financial institutions should stop running rough shod over the weak laws that now exist and instead voluntarily provide clear, understandable instructions to consumers about their privacy rights, the sharing of personal information and how to easily act to protect their financial privacy.

Privacy notices of fifteen top banks that issue credit cards

Company	First Union Corp.	Columbus Bank & Trust	HSBC	First Premiere Bank	FleetBoston Financial Corp.	First Consumers National Bank	People's Bank	Metris Companies, Inc.	Citigroup	U.S. Bancorp	Bank of America	Chase Manhattan Corp.	Bank One Corp./ First USA Bank	Provident Bancorp Inc.	MBNA America
Category I: Clear and Understandable Notice (average of 6 topics)	F	F	C	I*	F	C	C	F	C	D	C	D	C	C	F
Category II: Exercising the Right To Opt-Out (average of 6 topics)	F	D	D	I	D	C	C	D	C	C	C	C	C	C	D
Category III: Comprehensiveness of Information Provided (average of 4 topics)	D	C	F	I	B	F	B	D	F	D	C	F	D	C	F
Overall Grade (average of all 16 topics)	F	D	D	F**	D	C	C	D	C	D	C	D	C	C	F
<p>* I means an incomplete because the privacy policy was not available to grade. ** Overall failure based upon the fact that the privacy notice is not available to the general public.</p>															



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94 Central Avenue
Albany, NY 12206
(518) 465-4600
e-mail: mail@citizenactionny.org
<http://www.citizenactionny.org>

1341 G Street NW, 10th Floor
Washington, DC 20005
(202) 624-1730
e-mail: usaction@usaction.org
<http://www.usaction.org>