

Personal Information (codified at 15 U.S.C. 6801 *et seq.*), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The privacy notice must also provide, where applicable under the Fair Credit Reporting Act (FCRA), a notice and an opportunity for a consumer to opt out of the sharing of certain information among affiliates.³

The Agencies have published consistent final regulations that implement the privacy provisions of the GLB Act (collectively referred to as "the privacy rule").⁴ The privacy rule requires a financial institution to include in its privacy notices specific items of information, such as the categories of nonpublic personal information that the institution collects and the categories of third parties to which the institution may disclose the information. The rule contains sample clauses that institutions may use in privacy notices. The rule does not, however, prescribe any specific format or standardized wording for these notices. Instead, institutions may design their own notices based on their individual practices provided they are consistent with the law and meet the "clear and conspicuous" standard in the rule.

Financial institutions first were required to distribute privacy notices to their customers by July 1, 2001. Many privacy notices in this initial effort were long and complex. Moreover, because the privacy rule allows institutions flexibility in designing their privacy notices, notices have been difficult to compare, even among financial institutions with identical privacy policies.

In response to broad-based concerns expressed by representatives of financial institutions, consumers, privacy advocates, and Members of Congress, the Agencies conducted a workshop in December 2001 to provide a forum to consider how financial institutions could provide more useful privacy

notices to consumers. The workshop featured panel presentations by financial institutions, consumer advocates, and communications experts, and highlighted key communication principles to improve the notices. A number of institutions, particularly those with complex information-sharing practices, described the challenges they faced in explaining their practices and the choices available to consumers in a simple fashion while meeting all of the legal requirements for notice. Some institutions described results of consumer testing and efforts to make their privacy notices clearer and more useful to consumers.

A number of financial institutions have since sought to improve their notices. Additionally, some industry groups have been working to formulate short, consumer-friendly notices that could accompany the longer, legally mandated notices under the rule. The Agencies applaud the efforts by consumer advocates and industry to improve privacy notices to make them more readable and useful to consumers.

To encourage and facilitate the efforts already underway, the Agencies are considering proposing amendments to the privacy rule to provide for privacy notices that are more understandable and useful to consumers. The Agencies believe that this effort could benefit significantly from the breadth and depth of experience that many institutions have gained over the past two years in designing privacy notices, as well as the expertise of communications experts and the input of consumer organizations and comments from the public. Accordingly, the Agencies seek comment on a wide range of issues associated with the format, elements, and language used in privacy notices that would make the notices more accessible, readable, and useful. The Agencies also solicit examples of forms, model clauses, and other information, such as applicable research that has been conducted in this area, that may provide concrete illustrations or evidence to assist the Agencies in considering whether and how to develop various proposals.⁵

Some of the terms and examples used in this Advance Notice of Proposed Rulemaking (ANPR) and sample notices are not suitable for credit unions, which have an organizational and operational structure that is different than other financial institutions. For example, the term *customer*, in the context of credit unions, generally will mean *member*, and while credit unions may form subsidiaries, they do not establish corporate affiliations like other financial institutions. Nevertheless, because of the predominance of issues that are common to all types of financial institutions, the NCUA believes its participation is important at this ANPR stage, whether or not it ultimately determines to publish a separate, but consistent and comparable, rule for credit unions.

Based on the information collected for this ANPR, including information collected through independent research conducted by the Agencies, the Agencies will determine whether to propose changes to the privacy rule and, if so, will seek further public comment on specific proposals. The Agencies expect that consumer testing would be a key component in the development of any specific proposals.

II. General Considerations for Improving Privacy Notices

The Agencies are considering developing a range of alternative proposals for public comment to improve the privacy notices that financial institutions must provide to consumers under the GLB Act. The primary matter the Agencies are now considering is whether to develop a model privacy notice that would be short and simple. In order to illustrate, generally, this type of short notice and to spur specific suggestions for additional ideas that the Agencies should consider, a few of the potential alternative approaches are summarized below. These alternatives are also intended to help frame a number of important questions beyond the design of a short notice, such as whether all financial institutions should be required to use the same form of notice and whether a short notice could be a substitute for or should be a supplement to a longer, more detailed notice. The sample notices included in the appendices do not reflect a determination by the Agencies that any of these notices would be satisfactory under the privacy rule or for any particular financial institution. The Agencies note that these alternatives have not been developed as a result of specific research or consumer testing and are not being proposed for

³ 15 U.S.C. 1681a(d)(2)(A)(iii) (FCRA); 15 U.S.C. 6803(b)(4) (GLB Act).

⁴ 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); 12 CFR part 716 (NCUA); 16 CFR part 313 (FTC); 17 CFR part 160 (CFTC); and 17 CFR part 248 (SEC).

⁵ As stated above, the Agencies will jointly review all of the comments submitted, including those comments submitted to only one agency. Commenters may request confidential treatment of any trade secrets and commercial or financial information that is privileged or confidential information provided to the Agencies in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Agencies' respective regulations regarding availability of information. 12 CFR part 4, subparts B and C (OCC); 12 CFR part 505 (OTS); 12 CFR part 261, subparts A and B (Board); 12 CFR part 309 (FDIC); 12 CFR 792.29 (NCUA); 16 CFR 4.10 (FTC); 17 CFR 145.9 (Petition for Confidential Treatment) (CFTC); 17 CFR part 200, subpart D (SEC).