

5. Should certain elements, such as a description of a consumer's opt-out rights (if applicable), be given prominence or be presented in a certain order?

6. Should statements describing information sharing practices not subject to a consumer's right to opt-out, such as whether a financial institution discloses information to nonaffiliated financial institutions under joint marketing agreements for financial products or services, be highlighted in the short notice?

C. Language of a Privacy Notice

1. Are there particular "privacy" terms or words that consumers readily understand that should be included in a short notice? Should any terms or language currently used in notices be avoided?

2. Should a financial institution be required to use standardized clauses in a short notice?

3. Rather than using standardized language, should a financial institution be permitted to develop its own language in a short notice so long as the short notice incorporates specified items of information?

D. Format of a Privacy Notice

1. Should the Agencies develop a standardized graphic design for a short notice that financial institutions would use? If so, what graphic design would be most suitable for the format of a short notice?

2. Based on experiences with the current privacy notices or tests that have been conducted in this area, what alternative forms of notice are likely to be useful to consumers and/or to financial institutions?

3. Is there a suggested length for a short privacy notice? Is there a suggested length for phrases or sentences within a short notice?

4. Are there suggestions for overall design of the notice, including layout, use of color, graphic devices, font(s), and size(s) of the text in the notice?

5. If a financial institution does not disclose information to third parties that would be subject to a consumer's right to opt out (under either the FCRA or the GLB Act), what form should the privacy notice take?

6. Should an institution be allowed to modify its short privacy notice to include elements that may be required under state laws? If so, then how can a short notice be designed to include those elements?

E. Mandatory or Permissible Aspects of a Privacy Notice

1. Should use of a short notice be mandatory for all financial institutions?

2. Should use of standardized language and/or format for a short notice be mandatory for all financial institutions? Or should each institution be permitted to create its own short notice following agency guidelines?

3. If a short notice is standardized, should only part(s) of the notice be mandatory, and, if so, what part(s)? Or should all of a standardized short notice be mandatory?

4. If use of standardized part(s), such as standardized clauses, is not required, should the Agencies create a safe harbor from administrative enforcement for financial institutions that use the standardized parts in their notices (or a whole, standardized notice)?

5. Should an institution be required or permitted to deliver both a short notice and a long notice?

6. Financial institutions that generally do not share information with third parties—such as those that do not have any affiliates and do not share information in a manner that is subject to a consumer's right to opt out under the FCRA or the GLB Act and do not engage in joint marketing agreements—currently may have abbreviated and simple notices. If a short notice is mandated, should the Agencies make an exception to allow these institutions to continue to use the simple, abbreviated notices they currently use? Alternatively, should the Agencies prescribe a special short notice for these institutions to use?

7. Some financial institutions offer consumers choices to opt out of information-sharing arrangements that are not mandated by either the FCRA or the GLB Act, such as the ability to opt out of an institution's own marketing or joint marketing arrangements with nonaffiliated financial institutions for financial products or services. If a short notice is mandated, should the Agencies allow these institutions to include in the short notice information about these additional choices to opt out?

8. Should the Agencies allow financial institutions to include other information that relates to their privacy policies and practices in their short notices? For instance, should a financial institution that shares information with affiliates for marketing purposes only if a customer opts in to the sharing be permitted to include this information in a short notice?

F. Costs and Benefits of a Short Notice

With respect to consumers or financial institutions, or both:

1. What are the costs and benefits of providing a short notice and how do they compare with the requirements under the current privacy rule?

2. How, if at all, do the costs and benefits of a short notice depend on:

a. Whether the notice is mandatory or permissible?

b. Whether the format of the notice is standardized? On whether the language is standardized?

c. Whether the use of a short notice requires financial institutions to make supplemental privacy information available upon request?

G. Additional Information

1. Are there any models or samples of notices that work particularly well with consumers that the Agencies should consider? Provide any samples and research or supporting documentation.

2. Provide the results and supporting research or documentation of any consumer testing that has been conducted in this area.

3. What processes or types of consumer testing should the Agencies use to evaluate standardized terms or language, formats for notices, and short notices?

4. If the Agencies adopt an alternative form of notice, should consumer education accompany introduction of the new type of notice? If so, what type of consumer education would be effective?

IV. Conclusion

In the event that the Agencies decide to proceed, the Agencies expect to do so through proposed rulemaking. In addition to evaluating the comments submitted in response to this ANPR, the Agencies contemplate that consumer testing would be an important element of the development of any alternative type of privacy notice.

By Order of the Board of Directors.

Dated at Washington, DC, this 2nd day of December, 2003. Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

By the National Credit Union
Administration Board on December 18, 2003.
Becky Baker,
Secretary of the Board.