

CPB OPINES ON MODEL PRIVACY DISCLOSURE FORM

INTRODUCTION

The credit card industry is a growth industry that shows no sign of slowing down. Statistics illustrate a burgeoning number of credit cards per household¹ and increased debt per household.² While financial institutions are currently meeting minimum requirements under federal law by providing privacy policies to their customers, it is apparent to the CPB that this is not adequate protection for consumers. Often the privacy notices sent by financial institutions contain extremely technical jargon in such fine print that many consumers cannot understand or are not able to read.³ In addition, opt-out provisions, which would allow a consumer to choose not to have their personal financial information shared with other entities, are often hidden within pages of credit card terms, conditions and perplexing terminology.⁴ Large blocks of overly complex language often lead to the consumer either becoming confused or throwing the notice away before reading it.⁵ Consumers would benefit from clearer, more obvious disclosures of their rights and the policies of the credit card companies with whom they do business.

OVERVIEW OF THE GRAMM-LEACH-BLILEY ACT

The Gramm-Leach-Bliley Act (GLB) often referred to as the Financial Modernization Act of 1999, imposes a number of requirements on financial institutions on how to safeguard a consumer's personal and financial information.

- **Financial Privacy Rule**: Financial institutions are required to provide consumers with a written document explaining how they collect and disclose their customers' financial and/or personal information and what rights a customer may have in this regard if they do not wish to have their information shared.
- **Safeguards Rule**: A financial institution must have in place a comprehensive protocol to keep a customer's information secure from unauthorized sources and a plan of action if a security breach occurs. The GLB sets guidelines for these protections.

¹ According to Robert Manning, Research Professor of Consumer Finance and Director of the Center for Consumer Financial Services at the Rochester Institute of Technology, nearly seventy-five percent (75%) of United States households have a bank credit card user, up from (54%) in 1989. Between 1980 and 2005, consumers increased their yearly credit card charges from an estimated \$69 billion per year to more than \$1.8 trillion. This has resulted in an increase in household debt, which grew from \$59 billion in 1980 to approximately \$880 billion in 2007.

² In an article by CNNMoney.com, it was reported that the average American household carries almost \$10,000 worth of credit card debt. From 1978 to 1996, consumer credit card debt grew from \$50 billion to \$378 billion, multiplying six-fold. In 2004, the Federal Reserve estimated that American consumers carry approximately five (5) credit cards each.

³ United States Government Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Needs for More Effective Disclosures to Consumers p. 2 (2006).

⁴ Id.

⁵ According to the United States Government Accountability Office, "disclosures from the largest credit card issuers were often written well above the eighth-grade level at which about half of U.S. adults read." Id.

- **Pretexting Provisions:** The GLB sets forth rules that are designed to protect consumers from individuals or companies who may try to obtain personal financial information about an individual under false pretenses which is illegal under this Act⁶ and punishable with the assessment of criminal penalties.⁷

Model Forms

To encourage better disclosure, the Department of the Treasury Office of the Comptroller of the Currency (OCC), The Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Department of the Treasury Office of Thrift Supervision (OTS), National Credit Union Administration (NCUA) and the Federal Trade Commission (FTC) created a Model Privacy Disclosure Form (available at <http://www.occ.treas.gov/ftp/release/2007-25a.pdf>). This form was presented in two sample versions, one demonstrating how the form would appear for a company that shares financial information (Neptune), and the other demonstrating a company that does not (Mars). The primary difference between the two versions was the inclusion of an opt-out page with the Neptune sample, so that consumers were provided with a clear and concise way to request that their information not be shared.

SUMMARY OF THE CPB'S COMMENTS ON THE MODEL FORM

The CPB asserts that there should be a clearer and more simplified privacy policy notice for consumers so that they can understand exactly how a company with whom they are doing business is collecting and possibly sharing their personal financial information. As it is a well established fact that the average American consumer reads at various levels of understanding, the CPB is concerned as to whether the model privacy form will reflect this reality. When formulating the proposed notice, the Board hopes that the techniques of consumer testing and focus groups were utilized to ensure that the notices are consistent with the average consumer's reading comprehension.

The call for a more uniform privacy notice by the FTC highlights the need for an improved format for privacy notices under the GLB. From a consumer protection standpoint, we believe it would be more desirable to actually provide the consumer with genuine privacy rights when it comes to the sharing of their personal information. Until that time comes, the CPB recommends a uniform, attention-grabbing, easily readable and comprehensive form at the beginning of the privacy notice which makes very clear what rights the customer has or does not have in the sharing of their personal information with third parties and affiliates.

Generally, the CPB finds the examples of the model privacy form (identified as Neptune and Mars) contained in the interagency proposal would be of great benefit to consumers. Those forms would enable a consumer to compare the privacy notice practices of different financial institutions when deciding with whom they would like to do business which may ultimately lead to increased competition in the marketplace. In

⁶ 15 U.S.C. 6821 (2007).

⁷ 15 U.S.C. 6823 (2007).

addition, for those companies providing the ability to opt-out, the model Neptune form makes the directions to do so straightforward, easily understandable and uncomplicated.

In addition, a new GLB disclosure that consumers find clear will hopefully encourage those institutions with less than stellar practices to mirror companies providing a higher degree of privacy. Comparing disclosure practices is currently very difficult for consumers to do because of the complex notices in use. The CPB believes once consumers are empowered with this information, they will have greater ability to conduct business with companies with whom they are more comfortable and familiar.

RECOMMENDATIONS

Notwithstanding the laudable objectives stated above, the CPB calls for the following recommendations or guiding principles which would further enhance the model privacy forms developed by the six regulatory agencies and included in the request for comment.

Format:

- Notices should be dated to make consumers aware of the most current practices employed by the disclosing company.
- Changes to the policy made from a previous notification should be highlighted so that consumers are not required to reread the entire disclosure to try to ascertain what changes have actually been made.
- A larger, clearer font should be used throughout the entire form to assist senior citizens and the visually impaired.

Content:

- An explanation of “creditworthiness” should be included in addition to the definitions already provided.
- On page 2 of the sample form, fourth box down, a website should be recommended where consumers can ascertain information about protections that may additionally be provided by State law (For example: <http://www.ncsl.org/programs/lis/privacy/financeprivacy.htm>).
- On page 3 of the sample form, the sentence “Unless we hear from you, we can begin sharing your information 30 days from the date of this letter” should be modified to reflect the fact that the company may already be sharing the consumer’s information.
- The form should include a notice of how long the opt-out is in effect, as well as when the opt-out will become effective. For example, “Please allow thirty (30) days for your choice to take effect. Your instructions shall remain in effect for X years.” The second option currently reflects the end of the effective period, but the other options do not.

CONCLUSION

The proposed privacy notice format is a positive step in our pursuit to improve the nature and method by which information is conveyed to consumers. Until consumers know what rights they do or do not have, they cannot make informed choices or ask the proper questions in relation to the sharing of their personal information with third parties. When it comes to financial institutions and credit cards, understanding privacy rights is just as important to a consumer as being aware of all contract terms, conditions and fees.