

# Model Privacy Notice Becomes a Reality

The **National Credit Union Administration** (NCUA) joined other federal regulatory agencies recently in issuing a Proposed Rule (the Rule) requesting comment on a new privacy notice. The Notice is the culmination of work that began in 2004. It includes a year of consumer testing to determine the effectiveness of the document. The Notice of Proposed Rulemaking (NPR) issued on December 31, 2003, specified that any form developed for the purpose of satisfying privacy notice requirements of the *Gramm-Leach-Bliley Act* (GLBA) shall:

- Be comprehensible to consumers, with a clear format and design;
- Provide for clear and conspicuous disclosures;
- Enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and
- Be succinct, and use an easily readable type font.

The proposed Notice consists of three pages. The third page would only be required if the institution shares consumer information. The pages must be printed separately, not back-to-back, because consumer testers said they wanted to be able to put the pages side by side and read them. The Notice must describe an institution's information sharing practices, and the fact that for certain types of sharing consumers have the right to opt out. Consumers must receive a Notice when they first become a customer of a financial institution and then annually for as long as the customer relationship lasts.

If an institution uses the Notice as proposed, the *Regulatory Relief Act* (RRA) stipulates that a safe harbor will be provided. Agencies contemplate that institutions that post a PDF version of the proposed notice may obtain a safe harbor; however, the regulators are requesting comments on whether to develop a Web-based design for financial institutions to use on their Internet sites, including comment on particular design and/or technical considerations.

The proposed Notice is found in Appendix A in the Rule. There is also a description of the contents of each page. Page one has four parts. First is the title and second is the introductory section called the "key frame." This section provides context to help the consumer better understand the required disclosures. Section three is a table that describes the types of sharing Federal law allows, which of those types of sharing the institution actually does, and whether the consumer can opt out of any type of the institution's sharing. Finally, Section four contains the institution's contact information.

Page two of the Notice provides additional explanatory information that in combination with page one ensures the notice includes all elements described in the GLBA as implemented by the privacy rule.

Page three is the opt-out form and will be used by those institutions that share information in a manner that triggers consumer opt-out rights under the GLBA or the *Fair Credit Reporting Act* (FCRA). The Agencies expect that institutions may need to tailor the opt-out page to accurately reflect the institution's particular practices.

## **Form Replaces Current Sample Clauses**

The Notice pointed out that the proposed model form is a standardized notice that would replace the Sample Clauses currently found in Appendix A of the privacy rule. Regulators want to ease the burden for institutions that currently have privacy notices based on the Sample Clauses. Therefore, it is proposed that a transition period of one year would be allowed. After that time financial institutions would no longer obtain a safe harbor by using the sample clauses. Because institutions are required to send notices annually, annual notices that are delivered to consumers, either in paper or electronic form, within the transition period would continue to get the safe harbor until the next annual privacy notice is due one year later. The Sample Clauses would be rescinded one year after the transition period ends.

## **Comments Requested**

The Rule lists several questions that the regulators are hoping commenters will address. These include the content and format of the model form. Other areas of interest include whether additional consumer testing of the model form should be done; whether the Agencies should develop and make available online a readily accessible and downloadable “fillable” form; and whether the consumer’s name and address alone would be sufficient to process an opt-out request, including multiple accounts, or whether a social Security number would be needed.

Comments should be submitted on or before May 29, 2007. The complete Rule may be viewed at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-1476.pdf>.